



Appeal Decision

Inquiry Held on 21 -24 July & 30-31 July 2020

Site visit made on 16 July 2020

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th November 2020

Appeal Ref: APP/C1570/W/19/3241526

Warehouse at Elizabeth Way, Saffron Walden, CB10 2BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Charterhouse Property Group Ltd against the decision of Uttlesford District Council.
 - The application Ref UTT/19/0125/FUL, dated 14 January , was refused by notice dated 11 September 2020.
 - The development proposed is the demolition of the existing warehouse and redevelopment of the site to provide a replacement care home (Use Class C2) together with associated car parking, landscaping and amenity space.
-

Decision

1. The appeal is dismissed.

Application for costs

2. At the inquiry an application for costs was made by HHGL Ltd against Charterhouse Property Group Ltd. This application will be the subject of a separate Decision.

Background and Main Issues

3. I carried out an unaccompanied site inspection on 16 July 2020. This followed an itinerary compiled by the Council, Appellant and Rule 6 teams. In particular I was able to view the appeal site and surrounds, go inside the Homebase store, Ridgeons and B & M Bargains. I also walked the town centre to visit the stores highlighted by Appellant. I also viewed the location of the Former Pulse Packing Factory site raised by interested parties.
4. The emerging Uttlesford Local Plan (ELP) was initially referred to by the main parties. The Council confirmed that it held an extraordinary meeting on the 30 April 2020 and resolved to withdraw the emerging plan. The Council has now formally withdrawn the ELP. As such it was agreed by the main parties that policies referred to in the decision notice as 'Draft Policies' would no longer be referred to as part of the inquiry evidence.
5. The Council's initial statement of case indicated that amended plans¹ which, amongst other things, were provided to show a revised parking layout for the scheme. On the basis of these plans the Council did not pursue defence of

¹ CD-C1; CD-C2; CD-C3; CD-C4; CD-C5; CD-C6

reason for refusal 4 of its decision. In addition, prior to the inquiry, the Council undertook re consultation on the amended plans. As such interested parties have had an opportunity to comment on them. The changes would be limited to those required as a result of revisions to the parking spaces, to ensure consistency with the revised layout plan. Therefore, I am minded to accept these plans and therefore the appeal is considered on this basis.

6. The impact in the quantitative terms of comparison goods floorspace is agreed as between UDC and the appellant². Therefore, the Council confirmed that it would not be pursuing arguments relating to the effect of the scheme on the vitality and viability of the town centre³. Accordingly, this matter was not explored in detail at the inquiry and the appeal is considered on this basis.
7. The main issues in the appeal are:
 - Whether the scheme would provide an appropriate use of the site having regard to; the provision of comparison goods floorspace in the district; relevant planning policies and location; and
 - The effect of the development of a care home on the site on the living conditions of the existing occupiers of Elizabeth Close, with particular regard to outlook and privacy.

Reasons

The provision of a care home on the site

8. The Retail Capacity Studies carried out on behalf of the Council in 2016 and 2018 calculated the amount of floorspace that can be provided based on the amount of household expenditure available to support it in the area. The exercise includes a forecasting exercise for 2026 in respect of comparison goods. It was agreed between UDC and the Appellant that those forecasts indicate that even if Homebase close there would remain an over-supply of existing comparison goods floorspace out of the town centre. If, as the Council say, the town centre constraints mean that Homebase would not be able to relocate in the town centre, there would then be no quantitative justification for an out-of-centre Homebase store. Nonetheless, the Council clarified that they consider that quantitative assessment only paints part of the picture, as such the inquiry evidence focussed on the qualitative impact of the loss of Homebase that would result from development of the site as a care home.

Development plan policy

9. The Council's reason for refusal refers to LP policy E2 although both LP policy E1 and E2 were put to the inquiry. What constitutes employment land was a matter of dispute. Specifically, LP policy E1 refers to '*...land for business, general industry, storage or distribution development within the plan area...*'. E1 refers to the Essex and Southend on Sea Structure Plan, which is no longer in force, when determining the amount of employment land that would be required within the district. These policies were provided by the appellant⁴ as a contextual document for the appeal. Nevertheless, this is under the policy that

² Retail SOCG para 10

³ Para 1.2 Addendum proof of evidence Mrs Hutchinson

⁴ ID9 and JPB27

seeks to provide future employment land. It does not refer to existing uses on existing sites, such as the appeal site.

10. The inquiry primarily focused on LP Policy E2. It is common ground that the relevant part of the policy is the second part. This refers specifically to the development of employment land for other uses outside of key employment areas. The policy sets out that this will be permitted if the employment use has been abandoned or if the present use harms the character or amenity of the surrounding area.
11. There is no dispute that the current use of the site has not been abandoned. In addition, there is no evidence that the present use harms the character or amenities of the surrounding area. The supporting text is clear that the aim and purpose of the policy is to protect existing employment land. Therefore, for the policy to bite and safeguard the appeal site consideration is required of whether it is employment land in employment use. Policy E2 does not explicitly refer to just B Class uses in the second paragraph. It seems to me that by using the term 'employment land' that this matter is open to the judgement of the decision maker on a case by case basis.
12. The aim and purpose of the employment policies includes the need to ensure that a range of employment opportunities are available at key locations across the district and to enable opportunities for local employment close to where people live. The appeal site is in retail use and as such it is clearly not in a B class use. That said it is also clear that the existing use of the site supports employment in so far as it provides jobs and contributes to the range of employment opportunities in the district. The site, whilst unallocated, is in a retail use which supports and provides employment. As such it is my judgement that this existing use sits within the aims and purposes of policy E2 and that this policy should be applied to the appeal scheme. Therefore, as the existing use has not been abandoned and does not harm the character or amenities of the surrounding area and, taking the wording of policy E2, development of the site for another use should not be permitted. As such the appeal scheme would be in conflict with LP policy E2.
13. The Appellant submits that the amendment to the use classes order⁵ complicates consideration of the matter of whether the appeal site is a key site. In his evidence Mr Best suggested that it would in fact weaken LP policy E2. Policy E2 is a policy that seeks to safeguard employment land. It does not specify or seek to limit use classes. Policy E2 provides a basis for assessing whether residential development should be permitted on sites. The changes to the use classes order that form the new Class E now combine a large number of uses which are, in the main, employment uses (including offices, industry etc (old B1), retail, medical services). These uses represent some of the most important employment generators within Uttlesford District and include the current use of the appeal site. Therefore, I agree with that Council that E2, as the main employment policy within the Local Plan, would potentially relate to Class E uses. As such I cannot agree with the Appellant that there should be reduction in weight to E2 as a result of these changes.

⁵ Class E of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Loss of the Homebase store

14. The National Planning Policy Framework (The Framework) encourages local authorities to take a positive approach to alternative uses of land where the site is not allocated for a specific purpose within a local plan. In this case there is agreement that the site is not specifically allocated; it is currently developed and is an area of high housing demand. As such para 121 is applicable, which goes on to set out two paragraphs (a) and (b). The main point of dispute is whether in the application of 121 (a) the development of the site for an alternative use would '*undermine key economic sectors or sites*'. There were a number of factors examined at the inquiry regarding establishing whether the site was in fact a key site and then the effect of the development of the site for an alternative use. I go on to consider these.
15. As part of the evidence base for the now withdrawn ELP the Council commissioned a household shopping survey in 2016⁶ and with a 2018⁷ update. The results from the surveys, undertaken by NEMS a specialist survey company, were provided as part of the inquiry documents. The surveys sought to capture a representative sample of residents in the Uttlesford district area to assess convenience and comparison goods shopping habits. As part of the methodology⁸ a geographical zoning system was created. There was no dispute that the relevant zone for the appeal is Zone 1A, which contains Saffron Walden.
16. The specific question referred to in evidence at the inquiry was '*Where do you do most of your household's shopping for DIY or decorating goods?*'. Within Zone 1A 53.8% of respondents answered Homebase in Saffron Walden. In this regard the appeal site is clearly dominant when considering shopping for DIY and decorating goods. In this case there was no dispute that retail (not just town centre retail) is a key economic sector in Saffron Walden. This is supported by the survey information presented to the inquiry. In particular that in the Savills study Saffron Walden attracts a high proportion (80.24%) of potential DIY/Decorating/Garden Equipment sales and with Homebase accounting for 53.82% of expenditure. The appellants raise the date of the NEMS survey⁹. In particular that the survey predates the change to Ridgeons and the opening of B&M. However, it seems to me that it would only be pertinent if these stores in fact offer a realistic alternative to Homebase. This is a matter I consider further below.
17. The appellants evidence referred to a further survey which was provided by Tesco¹⁰ as part of a planning application submission. This survey predates the NEMS survey and the methodology was not presented to the inquiry. As such I agree with the Council that it cannot be advanced as a reliable alternative to the NEMS survey. Further, this survey would also predate the change to Ridgeons and opening of B&M. As such if the Appellant submits that the NEMS survey should be discounted on this basis then it follows the Tesco survey should be too. Therefore, overall, I consider that the NEMS survey information does demonstrate the key role of the Homebase store in Saffron Walden.

⁶ CD.F3

⁷ CD.F4

⁸ Paragraphs 3.21-3.33 of the update

⁹ JPB29

¹⁰ JB10

18. The Appellant suggests that Homebase could in fact be removed from the appeal site as there are alternative provisions for DIY and decorating shopping in Saffron Walden. In particular focussing on the offer of the Ridgeons and B&M stores as well as Saffron Walden town centre. I have not been provided with any policy basis for the provision of alternatives as mitigating for loss of the existing use. Nonetheless, the Appellant has advanced these examples as other material considerations and I have considered each in turn.
19. Ridgeons has been present in Saffron Walden for some time and was remodelled around 2017. The evidence within¹¹ the inquiry documents demonstrates that Ridgeons describes itself as '*Timber and Builders Merchant*'. More specifically that the focus of the business is on account customers, with trade, professional DIY'ers and retail customers represented. The statement provided by Ridgeons is clear that in remodelling it did not seek to change the business model but rather provide the same products and services on a more efficient site. As such its remodel does not necessarily make it an alternative as the Appellant suggests.
20. B & M Bargains is the second store referred to by the appellants. The store is located on the Knight Retail Park. It is described in the Mintel¹² report as a '*broad based retailer*' and as a '*discounter*' as opposed to a specialist DIY store. This description is reinforced by what I heard in evidence regarding both the range of products offered and the consistency of what is available within the store week by week. Therefore, I do not consider that it can be considered to be directly comparable to Homebase.
21. Within the town centre of Saffron Walden there are a number of household and fashion retailers as well as other independent traders. The Appellant considers that collectively these shops would provide an alternative to Homebase. I do not doubt that many of the shops I have been referred to within the town centre could offer some of the products available at Homebase. Furthermore, as the Council points out town centre shoppers also have to park on street or in car parks which are remote from the shops themselves. This is distinct from the Homebase store where parking is on site. Therefore, I am inclined to agree with the Council that individually or collectively it is not reasonable to suggest that these smaller shops provide something comparable.
22. There is nothing before me that sets out that if I were minded to accept the loss of the Homebase store that there needs to be consideration of alternatives. However, even if I were minded to adopt that approach, for the reasons set out above I do not consider that any of the various alternatives advanced by the Appellant in fact represent a realistic substitute for the existing Homebase store.
23. Therefore, bringing matters together on the first main issue, the appeal scheme would be in conflict with LP policy E2 and therefore with the development plan. It is clear from the evidence that the existing use of the site, Homebase, represents the key site for DIY retail in Saffron Walden. Indeed, it was also agreed that retail is a key economic sector. Therefore, it seems to me that the loss of a site that provides a key function within an acknowledge key economic sector to an alternative use would be in conflict the aims of paragraph 121 (a) of the Framework. As such the Framework is a

¹¹ JPB36

¹² JPB21

material consideration which weighs against the proposal. I therefore conclude that the scheme would not provide an appropriate use of the site. It would be in conflict with LP policy E2 and the Framework.

The effect of the development of a care home on the site on the living conditions of the existing occupiers of Elizabeth Close, with particular regard to outlook and privacy

24. LP policy GEN2 is the relevant policy relating to design. The elements of that policy which deal specifically with privacy and overlooking are parts (f), (h) and (i). In addition, the Council confirmed¹³ that the Essex Design Guide (EDG) has been adopted as Supplementary Planning Guidance. The extracts that the main parties consider are relevant were provided in the evidence¹⁴.
25. There was some discussion at the inquiry regarding which elevation of the appeal scheme would be the front. Whilst the entrance door is not on the south elevation it is clear to me that the site layout is such that the building would address Elizabeth Close. In addition, the layout on the plans shows an entrance door from the car park via a covered area. As such it is reasonable to treat the south elevation as the front of the building. I note that there were not objections to the appeal scheme from the residents of Elizabeth Close directly affected. However, this does not remove the need to consider the effect of the scheme on the living conditions of the occupiers of these properties.
26. The Council clarified that there were three areas where it considered that the appeal scheme would lead to harm to the living conditions of the existing occupiers of dwellings in Elizabeth Close. I take each of these in turn.
27. Nos 5-9 Elizabeth Close (Nos 5-9) currently front onto Elizabeth Close. As such the front elevations of these dwellings face the car park area of the Homebase store. The EDG does not provide guidance on requirements for the relationship between new development and the front elevation of an existing dwelling. Should the appeal scheme go ahead there would be a change from a mainly open car park area to a three storey building that would have a ridge height of about 11m. I also appreciate that there is a level change between Ashdon Road to Elizabeth Close, with the appeal site being on higher ground. Within the elevation facing Nos 5-9 the plans show that there would be six openings of different sizes. At all floors these would relate to the hall/landing and stairwell.
28. The plans and appendices to the proof of evidence¹⁵ of Mr Lewis demonstrate that the closest part of the appeal building to these dwellings would be about 24.5m away. Overall, given the orientation of the existing dwellings to the appeal scheme and that the openings would not relate to habitable rooms, I do not consider that the separation distance would be unreasonable. Therefore, in respect of Nos 5-9 I do not consider the appeal scheme would be overbearing or lead to a loss of privacy to the existing dwellings.
29. 25-29 Elizabeth Close (Nos 25-29) have their rear elevations and garden areas facing onto Elizabeth Close. The rear elevations of these dwellings and their garden areas face toward the existing Homebase building and adjacent

¹³ Mrs Hutchinson Evidence in Chief

¹⁴ CD-F6

¹⁵ Appendices D2 & D3

business centre. The plans and appendices to the proof of evidence¹⁶ of Mr Lewis demonstrate that the closest part of the appeal building to these dwellings would be about 40.7m away and the dwellings have a rear fence on the pavement edge.

30. The EDG refers to the relationship between existing development and upper storey flats. The first floor would contain bedroom and dining room windows. At second floor the windows would relate to a staff kitchen and office. The EDG recommendation for upper storey living rooms is that they should be no closer than 35m from the rear of any other dwelling. The appeal scheme would meet this guideline. As such I do not consider that the appeal scheme would lead to a loss of privacy for these dwellings.
31. In the case of 33 Elizabeth Close (No 33) the area of concern was the relationship between the living areas on upper storeys of the new building and the garden area of No 33. No 33 itself has a side elevation that faces Elizabeth Close with its garden to the rear. The separation distance between the appeal building and the side/garden area of No 33 is shown within the appellant's evidence¹⁷ to be about 33.9m. The guidance in paragraph 1.99 of the EDG refers specifically to the relationship between upper storey living areas and the rear of any other dwellings which is not the relationship here. However, the EDG also considers the effect of living rooms on the upper storey of schemes on the private sitting out areas of other dwellings. In particular that they should be no closer than 35 metres unless the private sitting out area is effectively screened from view.
32. In this case the private garden area of No 33 would be within 35m of the upper stories of appeal scheme. In this regard there would be conflict with the EDG. Furthermore, the appeal scheme would be higher than the garden of No 33 compounding the effects. The second element of the guidance to be considered is whether the 35m requirement can in fact be relaxed due to the screening of the garden of No 33 being effective.
33. In this case there is an existing hedge along the boundary of No 33 with the pavement along Elizabeth Close and the photographs¹⁸ show a fence behind it. However, neither of these would be in the control of the Appellant in perpetuity, a point acknowledged at the inquiry. It was suggested that obscure glazing could be utilised to mitigate any privacy issues. However, the windows on the first and second floors would relate to private bedrooms and staff areas. As such the use of obscure glazing would, in my view, have an adverse effect on the future use of the building. As such it cannot be relied upon for mitigation.
34. It was suggested that paragraph 1.98 of the EDG was applicable to the scheme. On this matter I agree with the Council that this paragraph would not be applicable as it would not be concerned with the rear of new homes and there is a window in the flank end of No 33. Therefore, overall, I consider that the scheme would have a harmful effect on the living conditions of the existing occupiers of No 33. This would be in respect of privacy due to the proximity of the proposed building and the absence of effective mitigation. The scheme would be in conflict with the EDG and LP policy GEN2.

¹⁶ Appendices D2 & D3

¹⁷ Appendix D3 to Mr Lewis's proof

¹⁸ Appendix D7 to Mr Lewis's proof

35. I have found that there would not be harm to Nos 5-9 and 25-29. However, this does not alter my finding with respect to No 33. I therefore conclude that the proposal would have a harmful effect on the living conditions of the existing occupiers of Elizabeth Close, with particular regard to privacy.

Other material considerations

36. The Appellant submits that the provision of a care home would be a significant material consideration that would weigh in favour of the scheme. This case was supported by reports provided as Appendices¹⁹ to the proofs of evidence of Mr Butcher. The inquiry focussed on the issue of demand and supply for registered care beds.
37. A report was also provided (October 2018) for the purposes of the planning application process²⁰. In considering the reports there is information for a target area²¹ and district wide. In terms of the target area the 2018 report sought to forecast the demand for 2020. This has been compared to the report provided to the appeal which demonstrated that the demand has in fact decreased and at district level the increase in demand was overestimated in 2018. In this regard I agree with the Council that this does suggest that the forecasts now submitted for 2025 should be treated with caution.
38. In terms of supply within the district it was pointed out that since the reports were undertaken The Grange Care home, Newport²² has opened providing 40 en suite bed spaces and planning permission has been granted for a 66 bed (en suite) care home in Takeley²³. It was not in dispute that the impact of the pandemic would not be significant. The HPC report treats supply from 2020 to 2025 as static. It does not include the Newport or Takeley schemes and, even discounting these, it does not seem a reasonable approach to assume no other care home schemes, other than the appeal scheme, would come forward during this period. As such in considering the evidence I have had regard to both the Newport and Takeley schemes. Discussion of the figures through evidence in cross examination of Mr Butcher demonstrated that district wide, taking into account the operational Newport site and consented scheme at Takeley, there would be an oversupply for 2020. The picture for 2025 would produce a shortfall but it would not be significant.
39. Taking the target area for consideration of supply and demand produces a small shortfall and this is assuming no other sites come forward in the district. In 2025 the target area position advanced by the Appellant assumes a static supply. I appreciate it included the Newport scheme, nonetheless, I agree with the Council that it is reasonable to consider that another scheme coming forward and/or a change in the demand forecast is a possibility.
40. The appellant's planning evidence suggested that a buffer should be applied to the consideration of the supply of registered bed spaces. No planning policy basis for this was presented to the inquiry and the expert HPC reports did not argue that this should be applied. As such I do not attach any weight to this proposition.

¹⁹ Appendix B to Mr Butcher's main proof, Appendix 1 to the Supplemental Proof and Appendices 1 & 2 of the Rebuttal Proof

²⁰ CD.A4

²¹ ID 16 para 16 this is said to have been developed to reflect the likely needs of Saffron Walden and its hinterland; it deploys a 6 mile radius

²² Para 6.11 of Mrs Hutchinson's proof

²³ CD.H1

41. Overall, there is no dispute that the provision of a care home is a benefit²⁴. However, the extent of the benefit is reduced by the fact that there is not in fact a substantial shortfall in the district now or in 2025. As such whilst this is a material consideration in the appeal it is one to which I attach moderate weight.
42. It is common ground that the Council does not have a five-year supply of deliverable housing and that the figure is 2.68 years²⁵. Therefore, as it stands there is a need for housing in the borough. The Appellant submits that the provision of a new care home would free up existing housing that could be returned to the market. As such the appeal scheme would contribute to meeting the district's housing need and thereby facilitate the government's aim of boosting significantly the supply of housing.
43. Within the planning obligation the scheme would contribute to meeting the need for a financial contribution for Healthcare. The contribution would be for use towards capital projects and to provide improvements to capacity arising as a result of the scheme. I consider that this obligation would be necessary to secure the additional floor space at Gold Street Surgery identified in the CIL compliance statement²⁶, directly related to the development and fairly and reasonably related in scale and kind to the development. There would be no conflict with Regulations 122 & 123 of the Community Infrastructure Regulations 2010 (as amended) (CIL Regs) or paragraph 56 of the Framework.
44. The scheme would also be likely to give rise to economic benefits. Construction employment and expenditure would be associated with the implementation of the scheme. Thereafter, future residents would be likely to support local services and facilities through direct as well as indirect expenditure. There would also be townscape changes within the local area, including the provision of a landscaping scheme for the care home. Collectively, those benefits would be moderate.

Planning balance and conclusion

45. There is no dispute that the Council does not have a five-year supply of deliverable housing and that the tilted balance in the Framework is engaged. In this case there would be adverse effects from the impact of the scheme on the existing occupiers No 33 Elizabeth Close. In addition, there would be an adverse effect if the development were to go ahead in terms of development of the site for an alternative use and the resultant conflict with the development plan and the Framework in this regard.
46. In terms of benefits, the construction of a care home would deliver additional en suite care home bed spaces within the context of some shortfall in the district and within the appellants submitted target area. Nonetheless, for the reasons set out above this is a benefit to which I attach moderate weight. The Appellant also advanced other social and economic benefits arising from the appeal which I have considered in turn in the paragraphs above. However, none of these amount to more than limited weight either individually or collectively. Therefore, whilst this proposal would deliver social and economic benefits, they would, to my mind, be significantly and demonstrably

²⁴ SOCG 3.14

²⁵ SOCG 3.13

²⁶ CIL Justification: Appendix 2 to Mrs Hutchinson's Rebuttal & Addendum Proof of Evidence

outweighed by the adverse effect of the provision of the care home on the site and the harm to the existing occupiers of No 33 Elizabeth Close.

47. The proposal would be in conflict with LP policies E2 and GEN2. Therefore, it would be in conflict with the development plan as a whole. It would also be in conflict with paragraph 121 (a) of the Framework. The proposal should also be assessed on the basis of the tilted balance set out at paragraph 11 of the Framework which is a material consideration. On this point I have found that the harm from the scheme would significantly and demonstrably outweigh the benefits of the provision of a care home in this case. The Framework is a material consideration which also weighs against the proposal. As such, in the circumstances of this appeal the totality of the other material considerations does not justify making a decision other than in accordance with the development plan.
48. Therefore, for the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant of Counsel
He called

Alison Hutchinson MRTPI

FOR THE APPELLANT:

Thomas Hill QC
He called

Andy Butcher Dip TP MRTPI
Jonathan Best BSc (Hons) Dip TP MRTPI
Philip Lewis BSc (Hons) BArch RIBA

FOR THE RULE 6 PARTY:

Gwion Lewis of Counsel
He called

Gareth Roberts BA (Hons) MRTPI

INTERESTED PERSONS:

Cllr Paul Gadd
Elizabeth Wright
Graeme Whippy
Courtney Plummer
Helen Hancock

DOCUMENTS

- ID1 Opening submissions for the Appellant
- ID2 Opening submissions for the Council
- ID3 Opening submissions for the Rule 6 party
- ID4 Submissions from Cllr P Gadd
- ID5 Draft conditions
- ID6 Draft Unilateral Undertaking
- ID6a Plan for UU
- ID7 B & M Statement
- ID8 UCO Class E implications note
- ID9 Status of Structure Plan
- ID10 Use Classes Order Amendment Regulations 2020
- ID11 Explanatory memorandum
- ID12 Closing submissions for the Council
- ID13 Closing submissions for the Rule 6 party
- ID14 Closing submissions for the Appellant