
Appeal Decision

Site visit made on 15 September 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/Y0435/W/20/3254217

Site 2, Elmswell Gate, Townergate, Milton Keynes MK17 8US

- 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 SME Corporation (2) Ltd against the decision of Milton Keynes Council.
 - The application Ref 19/02134/FUL, dated 22 August 2019, was refused by notice dated 13 December 2019
 - The development proposed is described as the erection of drive-through restaurant (Class A3/A5) and 87-bed hotel (Class C1), with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since this appeal was made, there have been revisions to the Use Classes Order 1987 (as amended). Consequently, the proposed A3 component of the scheme is now defined as Class E(b) (Commercial, Business and Service) and the proposed A5 component of the scheme is now defined as sui generis. The proposed hotel use remains unaffected. The appeal proceeds on that basis.

Main Issues

3. The main issues are:
 - the effect of the appeal proposal upon biodiversity, with particular regard to biodiversity net change;
 - whether or not the appeal proposal would represent sustainable construction, with particular regard to reducing and off-setting carbon emissions;
 - whether or not the appeal proposal would be harmful to the vitality and viability of town centres in the area; and
 - the effect of the appeal proposal upon local infrastructure capacity.

Reasons

Biodiversity

4. The appellant has advanced calculations regarding the proposal's biodiversity impact that have been prepared by a competent person. This demonstrates

that the appeal proposal would result in a net loss of biodiversity units for broad habitats compared to the baseline value of the site. The evidence states this is a 'strong' indication that the required biodiversity net gain cannot be achieved on site.

5. Although this evidence suggests that this reduction could be compensated for off-site, no specific proposals for doing so have been advanced. The appellant has stated that a Unilateral Undertaking to secure the required mitigation could be pursued with the Council. However, this has not formed part of the appeal submission and there is no means available to me through the planning appeals procedure to secure this.
6. For the reasons given, I must conclude that there is a reasonable likelihood that the appeal proposal would, in the absence of a suitable planning obligation, cause harm to biodiversity, with particular regard to biodiversity net change.
7. Policy NE2 of 'Plan: MK 2016-2031' (the Local Plan) states that where there is a reasonable likelihood of the presence of statutorily protected species or their habitat, development will not be permitted unless it has been demonstrated that the proposed development will not result in a negative impact upon those species and habitats. Policy NE3 states amongst other things that development proposals will be required to maintain and protect biodiversity and wherever possible result in a measurable net gain in biodiversity. A Biodiversity Impact Assessment Metric is required to demonstrate any loss or gain of biodiversity. Mitigation and compensation measures must be secured.
8. Given the likely harm that I have identified, in the absence of an obligation, there is conflict with these policies. This weighs against the appeal proposal.

Sustainable construction

9. The appellant has evidenced the proposal's 'Good' BREEAM standards and has calculated the contribution to the Carbon Off-Set Fund that would be required by Policy SC1 of the Local Plan. The Council has not disputed this evidence.
10. Although the latter partially addresses the Council's objection to this matter, as set out earlier, there is no means available to me by which the necessary Carbon Off-Set contribution could be secured through the planning appeals procedure.
11. Furthermore, the appellant has not adequately demonstrated that the appeal proposal would be capable of meeting all of the relevant criteria set down in Policy SC1. Therefore, the imposition of a planning condition would be unreasonable, contrary to the appellant's opinion.
12. Consequently, I must conclude that it has not been satisfactorily demonstrated that the appeal proposal would represent sustainable construction, with particular regard to reducing and off-setting carbon emissions.
13. Policy SC1 of the Local Plan sets out the standards required of those developments that do not reach a BREEAM 'Outstanding' rating in order to attain the sustainable construction of new developments. Given my findings in this regard, there is conflict with this policy. This weighs against the appeal proposal.

Effect on Town Centres

14. In response to the appeal site's out-of-town location, the submitted Planning Statement includes a sequential assessment. This focusses upon the appeal proposal relative to the Kingston District Centre and the availability of alternative 'town centre' and 'edge of centre' sites and premises. The methodology has not been challenged by the Council. Furthermore, this assessment meets the minimum requirements set out in the National Planning Policy Framework (the Framework) and also the Planning Practice Guidance (the PPG).
15. The submitted sequential assessment concludes that there are no suitable sites or units within closer proximity to the Kingston District Centre that would be available and of a size that would accommodate the appeal proposal either collectively or separately. Furthermore, links to this centre are reasonable and the appeal site is a short distance away from that District Centre. The findings have not been challenged by the Council. From the evidence before me, I have no reason to dispute that the necessary sequential test has been met.
16. An impact assessment has not been submitted. However, I am satisfied that such an assessment is not required in this instance. This is because the qualifying floor space would not breach the locally derived threshold set out in Policy ER10 of the Local Plan.
17. For these reasons, I find that the appeal proposal would not be harmful to the vitality and viability of town centres in the area.
18. Policy ER16 of the Local Plan supports new hotel accommodation within town and district centres. Furthermore, Policy DS4 of the Local Plan sets out the Council's retail and leisure development strategy which includes promoting hotels in appropriate locations and seeking to grow the Borough's leisure and entertainment offer within town centres.
19. Policy ER10 of the Local Plan states that proposals for main town centre uses which are outside defined Town Centre Areas and are not allocated for such uses will be subject to a sequential test. Proposals should be readily accessible by a choice of means of transport or have the potential to be so. The policy also sets out the circumstance whereby an impact assessment will be required.
20. In the absence of harm, there is no conflict with these policies. This weighs in favour of the proposal.

Local infrastructure

21. The Council's evidence is unclear as to the nature and extent of the burden to local infrastructure that is cited in the decision notice over and above biodiversity and carbon offsetting matters which I have already concluded upon.
22. Interested parties have raised concerns over the local highway network, although these are not supported by the Local Highway Authority. From the evidence before me, there is no basis to conclude that the existing capacity of local infrastructure, including the local highway network, would be breached.
23. My attention has been drawn to Policy CC1 of the Local Plan which requires new developments to contribute towards the provision of cultural wellbeing,

including public art. The level of contribution that would be applicable is clearly stated in that policy. In the absence of a planning obligation there is no means for this to be secured. However, failure to secure this would not necessarily cause harm.

24. Consequently, I find that the appeal proposal would not cause harm to local infrastructure capacity.
25. In addition to Policy CC1, Policy INF1 of the Local Plan states that new development that generates a demand for infrastructure will only be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of that development is either already in place or there is a reliable mechanism in place to ensure it will be delivered.
26. In the absence of harm, I find that there is no conflict with this policy. This weighs in favour of the appeal proposal.

Conclusion

27. I have found that the appeal proposal would not be harmful to the vitality and viability of town centres in the area. Neither would it cause harm to infrastructure capacity. There would be no conflict with the development plan in those regards. However, when balancing all of the relevant issues, I afford greater weight to the harm that would arise in the absence of the necessary environmental mitigation and the consequential conflict with the development plan. Therefore, for the reasons given, the appeal should be dismissed.

C Dillon

PLANNING INSPECTOR