



Appeal Decision

Site visit made on 5 January 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/X0360/W/20/3258638

Land at Carney's Yard, Opposite Pulleys Transport Yard, Church Lane, Three Mile Cross, Reading RG7 1HB

- 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 Mr Sean Carney of J Carney Construction Ltd against the decision of Wokingham Borough Council.
 - The application Ref 200596, dated 4 March 2020, was refused by notice dated 20 May 2020.
 - The development proposed is the temporary use of land for the storage of building equipment for a period of 3 years.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Sean Carney of J Carney Construction Ltd against Wokingham Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are (i) whether the site provides a suitable location for the proposal having regard to local and national planning policies, and the effect of the proposal on (ii) the character and appearance of the area, (iii) floodrisk and drainage, (iv) protected species and the local habitat, (v) highway safety, and (vi) the living conditions of nearby residents having particular regard to noise and dust.

Reasons

Location

4. The site is part of a field within the South of the M4 Strategic Development Location (SDL) identified by policy CP19 of the Wokingham Borough Local Development Framework, Core Strategy, January 2010 (CS). The proposed major mixed use development would provide for 2,500 new homes, employment, retail, open space and infrastructure provision. Nevertheless, it does not form part of the appellants case that the proposal would comprise part of a co-ordinated approach to the development of the SDL under policy CP19. The parties generally agree that the temporary use of land proposed would be unlikely to conflict with the delivery of policy CP19 in the long term

and I see no reason to take a different view. However, it follows that policy CP19 does not give support for the proposal.

5. The site is not otherwise located within the development limits identified in the CS and therefore, aside from the SDL allocation, the appeal site lies within the countryside for the purposes of the development plan. Policy CP11 of the CS outlines a restrictive approach to development in the countryside in order to protect the separate identity of settlements and maintain the quality of the environment. It therefore specifies the limited circumstances where development in the countryside will be supported. This includes where development contributes to diverse and sustainable rural enterprises within the borough, or in the case of other countryside based enterprises and activities, it contributes and/or promotes recreation in, and enjoyment of, the countryside. This approach broadly aligns with national policy in relation to supporting a prosperous rural economy in paragraphs 83 and 84 of the National Planning Policy Framework (the Framework).
6. Carney Construction is described as a Reading-based civil engineering company that has been established for over 30 years that has been involved in national and regional infrastructure work throughout southern England and South Wales. As such, there is little before me to suggest that the proposal to use the land for the storage of building equipment for the firm would contribute to diverse and sustainable rural enterprises within the borough, or otherwise constitute a countryside based enterprise or activity. Neither is it suggested that the proposal would fall within any of the exceptions listed in policy CP11. Accordingly, the proposal would constitute development in the countryside that would conflict with the limits imposed by policy CP11 of the CS.
7. The appellant contends that an urgent need for the storage of building equipment justifies the proposal and refers to a contract that Carney Construction have for work as part of the Smart Motorway upgrade of the M4 between Junctions 3-12 scheduled to run until Spring 2022. This includes concrete reinforcement works and it is explained that the company stores large scale equipment and prefabricated formwork materials to save time working on site which necessitates appropriate space. Additional space would also give the appellant greater flexibility in providing working conditions that are coronavirus safe for his workforce. Moreover, the appeal site is well suited to the needs of the firm to fulfil this contract as it has good access to the M4, is located adjacent to an existing yard occupied by the appellant and is conveniently located for employees.
8. Additionally, the appellant states that he has been unable to secure an alternative site in the area necessitating the use of more distant depots which increases vehicle travel time and the associated carbon footprint of the project overall. Taking these factors together, the proposal would promote efficient working, save costs and make the firm more competitive for similar future work.
9. I am mindful that paragraph 80 of the Framework states that significant weight should be placed on the need to support economic growth and productivity taking into account both local business needs and wider opportunities for development. Moreover, paragraph 82 stipulates that planning decisions should recognise and address the specific locational requirement of different sectors. Nevertheless, the Framework should be read as a whole and therefore, this

general support does not advocate unqualified support for economic growth and productivity irrespective of development plan policies.

10. Furthermore, based on the information submitted I am not fully assured that there is no suitable alternative that would both reasonably meet the needs of the business to fulfil the M4 contract whilst avoiding conflict with the development plan. Junctions 3-12 of the M4 covers a sizeable area and therefore, it is reasonable to suppose that the catchment area for such a search could be relatively flexible. The evidence before me falls short of demonstrating that a rigorous approach has been taken to finding an alternative. For example, it is not clear what timescale, catchment area or qualifying criteria have been utilised, nor how these specifically relate to the requirements of the M4 contract secured.
11. In addition, the financial costs savings and reduction in carbon footprint are not quantified which makes it more difficult to ascertain what weight should be given to them. However, the M4 Smart Motorway Upgrade is described as a crucial piece of regional and national infrastructure and is therefore a large project. It is likely that the benefits of the proposal to the appellants operation would make a relatively limited contribution to the efficiency and carbon footprint of the project overall. Neither is the indirect financial benefit to other local firms quantified. Nor is it demonstrated that it would only result from the store being provided at the appeal site as opposed to an alternative arrangement.
12. I acknowledge that space requirements could be a qualifying factor that may limit the number of suitable alternative locations. Nevertheless, no specific dimensions are given that demonstrate that the requirements of the appellant would be at the extreme end of the spectrum in order to fulfil his contractual requirements. This is reinforced by the indication that the maximum sized vehicle used by the appellant would be equivalent to the size of a refuse truck¹.
13. Therefore, overall, the benefits the proposal would bring in supporting economic growth attract moderate weight, which I shall consider later in the overall planning balance.
14. My attention is drawn to recent permissions that the Council have permitted nearby for transport and storage yards, namely an extension of Pulleyns transport yard opposite² and the temporary consent granted to Southern Electric Power Distribution (referred to by both parties as SSE) on adjacent land³.
15. Of these examples, SSE is of most relevance given that it was for a temporary use of a field on the northern side of Church Lane. Its proximity in spatial and temporal terms to the proposal before me gives it considerable relevance. Nevertheless, there are some differences, firstly SSE proposed a 2 year use rather than 3 years as in this case. Furthermore, the committee report acknowledges that the development did not fulfil any of the exceptions of policy CP11 of the CS. It appears that the Council gave significant weight to the status of the proposed users of the land as a statutory undertaker of essential infrastructure that would assist in the delivery of future development. This is

¹ Paragraph 41, Appellant's Appeal Statement

² Reference 200102 dated 14.2.20

³ Reference 193248 dated 26.5.20

reflected in condition 2 which confines the use of the land to SSE and is referred to as a special circumstance of the case. The email from the Service Manager⁴ to the appellant reinforces that the Council found the status of the statutory undertaker to be an important distinction between the two applications.

16. The appellant is critical of the Council in this regard and considers that the SSE depot was established to support work in Reading rather than Wokingham. Be that as it may, my determination does not extend to reviewing the degree of weight that ought to have been attached to the relative merits of the SSE depot decision, rather the question is what weight does its existence attract in relation to the merits of the scheme before me. Overall, whilst I accept it is material and to an extent, weighs in favour of the proposal, I am not persuaded that the circumstances are identical. Accordingly, it attracts limited weight.
17. I have also had regard to the extension of Pulley's transport yard opposite. However, based on the limited information provided which includes a layout plan and a copy of the decision notice, it is not clear whether the Council found the proposal would conflict with policy CP11 of the CS and if so, what factors the Council considered outweighed the development plan policy. This inhibits a meaningful comparison with the appeal proposal and in these circumstances, it attracts limited weight.
18. Accordingly, I find that the site would not provide a suitable location for the proposal having regard to local and national planning policies. It lies in the countryside and does not fall within the limited exceptions permitted by policy CP11 of the CS. Consequently, it also conflicts with policy CP9 of the CS which, amongst other things, seeks to direct development to settlements that have identified development limits of a scale commensurate with its category in the hierarchy of settlements.

Character and appearance

19. The appeal site lies to the south of the M4 between the settlements of Three Mile Cross and Shinfield. There are clusters of development along the section of Church Lane nearest the appeal site which includes a large transport yard opposite, land used for caravan storage, the SSE depot adjacent and the appellant's existing storage site. The presence of stored vehicles, materials, in some cases lighting, functional buildings and boundary treatments give these sites an industrial appearance. Otherwise, there is generally limited built form which together with the proximity and number of small irregular fields and established hedgerows and trees, conveys a peripheral rural verdant character. The contrast in the appearance and activity associated with the large SSE depot with nearby agricultural land is particularly stark. Overall, although the character of the area is somewhat mixed having undergone recent development, the prevailing character and appearance remains a rural one.
20. The appeal site constitutes the majority of an irregularly shaped field that is set back from Church Lane. It is one of several similar small fields with established boundaries nearby. Its open, agricultural character positively contributes towards the prevailing rural character and appearance of the area.

⁴ Dated 28.5.20

21. The proposal would remove most of the rough grass and introduce hardstanding, with tree protection fencing following the contours of root protection areas around the edges. The appellant indicates that very large items of construction machinery and materials would be placed on the land in addition to heavy goods vehicles and other vehicles. As such, the use would generate a notable level of vehicular movement and activity. Although not expressly mentioned, it is likely that some degree of external lighting would be required in order for the use to operate effectively. The reduction in natural vegetation and presence and concentration of materials and equipment across a large area would result in a dramatic change to the appearance of the land, which together with increased activity would harmfully erode its rural character and appearance.
22. This is reinforced by the 'before' and 'after' photographs of the neighbouring SSE land provided⁵ which the appellant considers is similar to the proposal. To my mind, these serve to illustrate the visual incongruity of the SSE depot which has caused harm to the rural character of the area and is acknowledged by the Council in their reference to it as not typical of the characteristics of the open countryside on the northern section of Church Lane.
23. The proposal would exacerbate the extent of that harm as it relates to an area of land considerably larger than the appellant's existing storage area adjacent to Church Lane and would encroach deeper into the countryside between Church Lane and the M4. In combination with the existing and permitted transport and storage yards in the vicinity, the proposal would harmfully change the prevailing character of the land from rural to industrial.
24. In support of the proposal the appellant asserts that the character of the area is one of open storage and parking and that therefore, the proposal would not be harmful to it. However, as already indicated, my observations lead me to find otherwise. Moreover, my findings are reasonably consistent with those of the Inspector in considering the previous enforcement appeals⁶. Notwithstanding that development has taken place since 2016, these are not so fundamental that his findings in relation to the rural character of the area are irrelevant.
25. It is highlighted that the mature trees and hedgerows would be protected, which would provide screening to the land which is set back from the road. I accept that these measures would reduce the extent of harm. Nevertheless, it is still likely that views of the land would be possible when the access gates are open. Moreover, activity to and from the land would be apparent. Furthermore, even if a height restriction on the storage of materials were employed, there is limited evidence to show that the hedgerows would entirely screen the large scale equipment referred to, nor any associated lighting at the site. As such, the proposed screening would not fully overcome my concerns.
26. The proposed use would be limited to 3 years after which time the land could be restored. Nevertheless, this is still a considerable period given the dramatic change in the visual character of the land proposed. Hence, whilst this would limit the degree of harm, it would not, of itself, make the proposal acceptable.

⁵ Appendix 2, Appellant's Appeal Statement

⁶ Appeals referenced APP/X0360/C/15/3032651, APP/X0360/W/15/3032656 & APP/X0360/W/15/3032653, paragraph 15.

27. Accordingly, I find that the proposal would result in harm to the rural character and appearance of the land and wider area. Therefore, it would be contrary to policies CP1, CP3 and CP11 of the CS, which in combination, and amongst other things, seek to maintain or enhance the quality of the environment. In addition, it would conflict with policy TB21 of the Wokingham Borough Development Plan, Managing Development Delivery Local Plan, February 2014 (MDD) which requires proposals to retain or enhance the condition, character and features that contribute to the landscape.

Floodrisk and drainage

28. The appeal site is in Flood Zone 1, a designation that reflects the lowest risk from flooding. However, policy CC09 of the MDD states that all sources of flood risk, including historic flooding, must be taken into account and that where required, suitable and appropriately detailed flood risk information will need to accompany a planning application. It expressly states that a Flood Risk Assessment (FRA) is required in areas of known historic flooding from all sources.
29. Policy CC10 of the MDD goes on to require all development proposals to ensure surface water arising from the proposed development is managed in a sustainable manner. This must be demonstrated through either a FRA or through a surface water drainage strategy.
30. The Council's drainage officers have indicated that Church Lane experiences serious surface water flood issues. As such, there are reasonable grounds to ensure that appropriate provision is made to avoid exacerbating historic flooding or drainage problems in the area.
31. The appellant has confirmed that the proposed hardstanding would be permeable. The planning application form also refers to surface water being managed by Sustainable Drainage Systems (SuDS). Nevertheless, this falls short of providing a Flood Risk Assessment. Neither does it show that the requirements of policy CC10 are met which, amongst other matters, includes confirmation that the proposal would reproduce greenfield runoff characteristics and return run-off rates and volumes similar to the existing levels.
32. Reference is made to the approach taken in relation to the SSE depot application adjacent. However, based on the information provided, it is not shown that the applicants in that case failed to submit a FRA, nor that the planning supporting statement provided represents the entirety of the flood and drainage information reviewed by the Council as part of that application. In any event, it is not demonstrated why this should overcome the policy requirements of CC09 and CC10 in relation to the scheme before me.
33. I have considered whether a condition would overcome my concerns but note the supporting text to policy CC10 at paragraph 2.74 states that it will always be more effective to manage surface water flooding early in the land acquisition and design process rather than to resolve problems after development and that surface water techniques for a site, including SuDS have to be decided at the earliest stage of the development proposal. In these circumstances, and in the absence of information to establish that the proposed drainage can be achieved at the appeal site, I am not satisfied that it would be appropriate to use a condition.

34. Accordingly, I find that the proposal would be likely to have an unacceptable impact on floodrisk and drainage as compliance with policies CC09 and CC10 of the MDD is not demonstrated. It would also conflict with policy CP1 of the CS which, in setting out criteria for sustainable development, states that development should ensure the provision of adequate drainage and avoid increasing risks of or from all forms of flooding.

Protected species and the local habitat

35. The Preliminary Ecological Appraisal (PEA) dated February 2020 found⁷ that the rough grassland and hedgerows at the site provided habitats that offer the structural diversity required for reptiles to forage, take cover and traverse the site. Furthermore, there was some evidence of slow worm and grass snake in the local area, both of which are protected species. The report went on to recommend that a survey for the presence of reptiles on site should be carried out and that this should comprise a minimum of seven survey visits to check artificial refugia set out on the site in advance and carried out between March and September. It further recommended that a botanical survey of the grassland should be carried out between mid-May and mid-June given the seasonal restrictions of the PEA.
36. A Phase 2 Ecological Survey and Assessment (Botanical and Reptile Surveys) Interim Report, dated August 2020 accompanies the appeal information. The findings show that the proposed temporary conversion of the site to storage is unlikely to lead to the loss of Priority Habitat or affect notable plant species and I have seen little evidence to demonstrate otherwise. A condition could be used to ensure the restoration of the site following the cessation of the temporary use.
37. It also referred to one check of artificial refugia having been carried out in July 2020. Subsequent information has now been submitted in relation to a further six checks. No reptiles were found. Therefore, the evidence presented is recent and specific and indicates that the proposal would be unlikely to have a harmful impact on habitat used by slow worm or grass snakes.
38. On that basis, I am satisfied that subject to an appropriate condition to require the restoration of the land, no harm would result to a protected species or local habitat as a result of the proposal. As such, it would accord with policy CP1 of the CS. This policy does not expressly refer to bio-diversity but has a criterion that generally requires development to maintain or enhance the high quality of the environment.
39. Refusal reason 6 on the Council's decision notice also cites policy CP6 of the CS but it is confirmed this is an error and should refer to policy CP7 of the CS. I also note that the appellant, in referring to policy CP6 in their appeal statement, quotes wording from policy CP7 of the CS which does seek to conserve and enhance biodiversity. For the reasons stated, I find that the proposal would also comply with this policy.

Highway safety

40. Paragraph 109 of the Framework states that development should only be refused on highways grounds if there would be an unacceptable impact on

⁷ Paragraph 8.1.9, Preliminary Ecological Appraisal, dated February 2020 prepared by John Wenman Ecological Consultancy

highway safety, or the residual cumulative impact on the road network would be severe. The access onto Church Lane already exists, is set back from the highway and has visibility splays approved as part of the appellant's existing storage facility under reference 172941. A considerable area of hardstanding is proposed such that there is little reason to suppose there would be insufficient room to provide an adequate turning facility. This is reinforced by the overlay of the swept path analysis for a large refuse vehicle provided by the appellant which the Council accepts would be appropriate.

41. There is little detail in relation to the number of HGV movements that would be generated by the proposal. However, due to nearby weight restrictions, HGVs should not approach or depart from the west and a temporary use of land is sought in relation to work on the M4. Furthermore, the appellant has operated a similar, albeit smaller, storage use using the access for some time. In addition, there is an established transport yard opposite that has recently been permitted to extend. So too has the SSE depot been operating adjacent. There is little evidence to suggest that these uses have, or are likely to, result in highway safety problems on the local highway network.
42. Paragraph 54 of the Framework indicates that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Based on the information submitted with the appeal, the Highway Authority now consider that their remaining concerns could be adequately addressed by planning conditions to secure a routing plan, construction method statement and parking details and I have no reason to disagree.
43. Therefore, in this regard, I find no conflict with the criteria for sustainable development set out in policy CP1 of the CS which requires development to provide accessible and safe schemes. Neither would the proposal be contrary to the criteria that seek to protect highway safety set out in policy CP6 of the CS.

Living conditions

44. The Council originally raised concerns regarding the potential impact from noise and dust generated by the proposed use of the site. The nearest residential properties lie south west of the appeal site, with the majority on the opposite side of Church Lane. The Council indicates that the nearest resident at The Grove lives approximately 75 metres away⁸. The layout proposed would ensure that storage operations and vehicle movements would be kept well away from the boundary with the garden of The Grove.
45. The existing context for nearby residential occupiers includes Pulleyns transport yard, the appellant's existing storage site as well as the SSE depot. The Council have confirmed that there have been no complaints relevant to the existing site or neighbouring builder's yard / storage sites in relation to noise or dust. Moreover, due to the proximity of the M4, there is already a noticeable amount of background traffic noise. In addition, nearby traffic weight restrictions would prevent HGVs from approaching or departing from the west which would limit the impact of noise and dust arising from vehicular movements on the occupants of the nearest residential properties.

⁸ Memorandum from Public Protection Partnership dated 10.12.20

46. Based on the information submitted with the appeal, which includes confirmation from the appellant that he would operate the site during normal working hours, the Council are now satisfied that planning conditions to secure a noise management plan and dust mitigation measures would suitably address their concerns.
47. Taking the above factors together, the proposal would be unlikely to generate a level of noise or dust that would unacceptably compromise the living conditions of existing residents. Accordingly, I find that in this regard the proposal would accord with the general principles set out in policy CP3 of the CS which, amongst other matters, supports development that would not cause detriment to the amenities of adjoining land users and their quality of life. In addition, as I am satisfied that appropriate measures could be secured to protect noise sensitive receptors, I find no conflict with policy CC06 of the MDD.

Other matters

48. The appellant contends that the appeal site is no longer needed for agriculture but there is little substantive evidence provided to support this. In any event, this would not justify an otherwise harmful development.
49. Significant reference is made to the Council's recent decision to allow the SSE depot nearby. The appellant is aggrieved by what he considers to be the difference in approach by the Council to the appeal proposal, which he perceives to be unfair. I have indicated in my reasoning where I consider the SSE depot decision to be a relevant consideration or relevant as part of the context to the appeal site. However, it is not within the remit of this determination to review the merits of the Council's decision for the SSE depot. The behaviour of the Council in relation to the appeal proposal is considered in the associated costs decision but does not attract weight insofar as the planning merits of the case are concerned.

Planning balance and conclusion

50. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁹.
51. I have had regard to the economic benefits that the proposal would bring to the appellant's business and his involvement in the upgrade works to the M4. Moreover, in the long term a modest bio-diversity gain could be secured. These matters attract moderate weight.
52. The proposal would be for a temporary period of 3 years which could be secured by planning condition. Planning Practice Guidance¹⁰ (PPG) sets out when conditions can be used to grant planning permission for a use for a temporary period only. PPG does not suggest that temporary permissions should be employed to justify or allow development to proceed that conflicts with policies in the development plan. Therefore, I am not satisfied that a condition to make the development temporary would overcome my concerns, nor make the development acceptable.

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

¹⁰ Paragraph 014 Ref ID:21a-014-20140306

53. As I did not find harm in relation to the matters of highway safety, the living conditions of nearby residents and protected species these are neutral factors in the overall balance. However, I did find harm and conflict with the relevant development plan policies in relation to the location of the proposal, the character and appearance of the area, floodrisk and drainage. These matters attract significant weight and would not be outweighed by the benefits of the proposal.
54. As such, the benefits would not justify my determining the development other than in accordance with the adopted development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector