



Appeal Decision

Site visit made on 21 September 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

Appeal Ref: APP/T2215/W/20/3252952

4-5 Victoria Wharf, Victoria Road, Dartford DA1 5AJ

- 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 Mrs Hannah Obalade against the decision of Dartford Borough Council.
 - The application Ref DA/19/01522/COU, dated 4 November 2019, was refused by notice dated 31 March 2020.
 - The development is described as change of use from Class B1 and B8 use to a mix uses for Class B1 and B8 plus additional Class D1 (non-residential institutions) and D2 assembly & leisure (proposed uses include training and education centre (D1) and conferences, meetings, weddings and reception (D2)), 5 No. fire escape doors, parking bays and cycle stands.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development described in the banner above, which is taken from the application form, started before the date of the application.
3. Despite the appellant's description of the intended mixed use, I note that the 'as proposed' appeal plans do not include B1 or B8 floorspace and that in section 20 of the application form the appellant describes only D1 and D2 uses. I also note that the appellant's appeal statement refers to the development as a 'mixed D1 and D2 use'. I have dealt with the appeal on this basis.
4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the UCO). Having regard to regulation 4 of the Regulations, I have considered this appeal on the basis of the use classes specified in the Schedule to the UCO on 31 August 2020.

Main Issues

5. The main issues are the effect of the development on employment floorspace and an important employment area, and its effect on highway safety with particular regard to servicing, car parking and pedestrian movement.

Reasons

6. The Dartford Core Strategy, September 2011 (the CS) was adopted more than 5 years ago¹ under a previous National Planning Policy Statement regime. The Dartford Development Policies Plan, July 2017 (the DPP) was adopted within five years under a previous National Planning Policy Framework. Nonetheless, the CS and DPP policies in the Council's decision are the most important for determining this appeal. These are consistent with the National Planning Policy Framework, 2019 (the Framework) and therefore have substantial weight. Consequently, they are not out-of-date² and in this regard the presumption in favour of sustainable development is not engaged in this appeal,³ as the appellant otherwise suggests.

Employment Floorspace and Important Employment Area

7. The appeal site includes a large portal frame building of just over 950m² gross floor area.⁴ It was previously in B1 and B8 employment use. It is located in Victoria Industrial Park (VIP) which is an 'Identified Employment Area' (IEA). It is also in the 'Dartford Town Centre & Northern Gateway Priority Area' which is a broad location for strategic development of the majority of the boroughs residential and employment uses. DPP Policy DP20(1) states that IEAs are 'important for providing storage, industrial and distribution services, and other business uses' and that 'development for B-class and industrial sui generis uses will be permitted at these locations'. The development does not provide any B-class use or industrial sui generis use and, in these circumstances, DPP Policy DP20(2) indicates that it must therefore meet any of the remaining three parts of DPP Policy DP20.
8. In DPP Policy DP20(3) redevelopment at an IEA will be permitted 'only where it is clearly shown that significant overriding local economic and job benefits will be achieved'. Also, 'that any loss or re-location of existing employment uses is clearly justified'. The development has occupied what was previously a vacant premises, the D1 and D2 uses employ around 30 people for certain events, including full and part time jobs, and there is some indirect employment of suppliers or other service providers. This generates some local economic benefit and Community Infrastructure Levy payments commensurate with the scale of the development. The appellant considers that the appeal proposal is a suitable use of the appeal site and an appropriate response to changing business needs over time.
9. However, even if the appeal site had been unoccupied for 'some months' and not providing employment, the appellant has not justified why this reasonably short period of vacancy establishes that the appeal site (or any other vacant premises in VIP) is not suitable or appropriate for B1 or B8 use now, or that there is no demand or need for such uses in the medium or longer term and notwithstanding the current Covid-19 pandemic which may be a temporary influence in these regards. Nor is it apparent why the landlord (owner) was unsuccessful in letting the appeal site to another tenant for B1 or B8 use.
10. The appellant seeks a temporary planning permission for the duration of the remaining lease on the appeal site (which on the evidence before me would be

¹ Framework paragraph 33.

² Framework paragraph 213.

³ Framework paragraph 11(d).

⁴ According to section 17 of the planning application form.

about another 4 years) and suggests that the appeal site could thereafter revert to B1 or B8 use, similar to other premises in VIP granted temporary planning permission by the Council for change of use including from B1 and B8 use to D2 use with a condition limiting D2 use to the respective applicants. However, no details of other Council decisions in this respect are before me in this appeal, which I have considered on its individual planning merits and the evidence that is before me. Moreover, even if planning permission was granted subject to conditions limiting the duration of the use to 4 years and to the appellant, and the appeal site did return to B1 and B8 use thereafter, this would not alleviate meantime the harm caused by the total loss of B1 and B8 floorspace over this significant period of time.

11. I appreciate that the appellant considers that 'employment comes in many forms' and that the D1 and D2 uses are a 'commercial and employment use' which 'provide employment opportunities'. However, the supporting text to DPP Policy DP20 confirms that the flexibility envisaged by the Council's economic strategy includes 'to manage existing employment areas for B1, B2, B8 and A2 uses',⁵ and that this policy is not intended to 'govern all job generating functions'.⁶ The D1 and D2 uses in the development are not therefore compatible uses in this regard and consequently undermine the status and functioning of this IEA as a suitable and attractive location for existing or future B1, B2, B8 and A2 business occupiers. What DPP Policy DP20 seeks to achieve for these types of employment sites, including the appeal site, can therefore be clearly distinguished from employment that might be generated by other uses, such as the D1 or D2 uses in this appeal, which are to be accommodated at appropriate locations elsewhere.
12. Having regard to DPP Policy DP20(4) a training, meeting or conference centre may be of some benefit to businesses in this IEA. However, there is no substantive evidence before me in this regard and such a facility or service (or indeed any of the proposed D1 or D2 use) has not therefore been justified by the appellant as 'ancillary' to any business, 'small scale' or 'critical to the functioning' of this IEA; this use is, in any event, only part of the development. In addition, under DPP Policy DP20(5) even if the D1 or D2 uses include some 'assembling or storing of decorative items and other products created by the company' neither use is itself a B-class employment use. These goods are not therefore 'direct sales' ancillary or incidental to a B-class employment use at the appeal site for the purposes of this policy.
13. Considering the above, the development has led to the loss of a reasonably large amount of B1 and B8 employment floorspace and as a result has caused significant harm to the Council's economic development strategy, contrary to DPP Policy DP20(1). Furthermore, on the very limited and mostly anecdotal evidence before me, the appellant has not substantiated that any part of DPP Policy DP20(3), (4) or (5) is engaged in any meaningful or objective way, or at all, and the development does not therefore trigger DPP Policy DP20(2).
14. In addition to DPP Policy DP20 the development does not accord with DPP Policy DP5 or CS Policies CS1 and CS7. These policies include that development should avoid unacceptable impacts on neighbouring uses and should result in the complementary redevelopment of redundant land and protect existing employment areas for B1, B2, B8 and A2 uses. It also conflicts

⁵ DPP paragraph 13.1

⁶ DPP paragraph 13.3

with Framework paragraphs 8, 80, 81 and 82 which seek to ensure that sufficient economic land of the right type is available in the right place, having regard to local business needs, local industrial strategies and the locational requirements of different sectors, including storage and distribution uses.

15. The Council also cited CS Policy CS15 and DPP Policies DP3 and DP4 in its first reason for refusal. However, these policies relate to transport and are relevant to my determination of the second main issue below.

Highway Safety

16. The appeal site has a relatively limited parking and turning area in front and to one side of the building, and the site plan⁷ includes a combined pedestrian and vehicular entrance. The appeal site and this part of VIP is accessed from Victoria Road by a reasonably narrow private cul-de-sac road and through a raised arm security barrier. It is signed as subject to a 10mph speed limit and has double yellow lines either side. According to a directory sign that was displayed there are 55 business premises and I saw a large number of cars and commercial vehicles at many of these.
17. The layout of the entrance, parking and turning area on the appeal site includes sufficient space for a reasonably sized service vehicle to enter and exit in a forward gear. In this regard it is likely that the practical use of the appeal site is not materially different to B1 or B8 use, including that deliveries or collections could be scheduled to avoid congestion at peak D1 or D2 event times. The development includes 14 car parking spaces which are all for staff. Even if some of these spaces do not meet the Council's requisite dimensions⁸ and some are required for the adjoining B1/B8 building at Unit 3, there is nonetheless no on-site visitor parking for the D1 and D2 uses which include events for up to 300 people. The development relies on alternatives to the private car but considering the reasonably large scale of some events the absence of any, let alone sufficient, on-site visitor car parking is a significant cause for concern.
18. Despite a reasonable expectation for some car sharing, the number and frequency of car and taxi drop-off/pick-up vehicle movements is therefore likely to be disproportionately high, particularly at the peak event start or finish times. There is as a result a realistic prospect of undue vehicular and pedestrian conflict and congestion within the appeal site, in the cul-de-sac road (including temporary parking or even for the duration of an event) or in the entrance forecourts of many nearby business premises. Consequently, despite yellow lines and CCTV it is likely to be difficult for the appellant to effectively supervise all driver behaviours or to manage unauthorised access by vehicles unconnected to events. The appellant has also not substantiated that it has or can 'make arrangements' with the VIP owner to have the raised arm barrier 'opened as and when needed' for vehicular access after 7pm as is required given the D1 or D2 hours of operation for some events.
19. In addition, there is no mechanism before me to demonstrate that spaces in nearby public or shopping centre car parks are pre-booked and reserved under an 'arrangement' as the appellant suggests. Nor is there any objective evidence about how many of the 150 spaces at one are actually available to the

⁷ Drawing number VP-19-A001A.

⁸ Dartford 'Parking Standards' supplementary planning document (SPD), July 2012.

appellant, including at times in the evening when public demand may be less, or whether this is the car park which is said by the appellant to be 'less than a 5-minute walk away' and open '24/7', nor where it is actually located and whether it (or any other car park) is connected to the appeal site by a continuous pavement with level access suitable for pedestrians. I also saw that there is unrestricted on-street parking in residential roads nearby. I am therefore concerned that in the absence of satisfactory car parking provision elsewhere (or suitable alternative transport arrangements) it is possible that some visitors could park in these streets and cause unacceptable nuisance, including make it more difficult for residents to park safely and conveniently near their homes.

20. Furthermore, on the evidence before me it has not been justified that there is satisfactory access to the appeal site by cycle routes, as the appellant suggests. Nor has the precise location of bus stops and a train station been demonstrated or the frequency of services or how far away these are by walking and whether visitors can safely and conveniently walk to the appeal site. Moreover, pedestrian visitors must in any event walk along the very narrow shared surface refuges on either side of the cul-de-sac road. At some event peak start and finish times, in particular, this could potentially result in an influx or egress of a sudden or sustained large number of people into these limited access corridors, including people crossing or spilling into the road.
21. This would include at times when other businesses in VIP are, or could be, in operation and consequently require unfettered access to premises and be generating car and light and heavy commercial goods vehicle movements along the cul-de-sac, including during hours of darkness. While the cul-de-sac is not a busier or faster through road, vehicles nonetheless need to make two passes along it (entry and exit) and I saw that although the refuges are separated from the carriageway by low steel barriers and traffic speeds are relatively low, there are no street lighting columns in the cul-de-sac, the refuges are unsurfaced and not level near the junction with Victoria Road and vehicles nonetheless transit very close to people using the refuges, especially if there is passing two-way traffic or larger vans or lorries.
22. The cul-de-sac and the refuges are therefore an unduly hostile and dangerous environment for pedestrian visitors to events, including those being dropped off or picked up. In particular, for elderly persons, children, people with disabilities and, in this appeal, people who may be distracted from safe and orderly access and egress by the hustle of event and crowd activity or be under the influence of alcohol and as a result be less aware of their surroundings, such as the cul-de-sac road and passing traffic.
23. Alternative transport is an integral operational part of the development and the appellant's transport plan, the Council has relevant development plan policies in this regard and there is significant uncertainty about whether the alternatives advanced by the appellant provide suitable mitigation. These are important material considerations relevant to an in principle decision to grant planning permission and, accordingly, such matters cannot be left to be resolved as part of the customer or client booking process, as the appellant otherwise suggests.
24. Considering the above, the development makes inadequate provision for on-site car parking and there is not safe or convenient means for car and

non-car travel to the appeal site. This results in significant harm to highway safety, having particular regard to car parking and pedestrian movement. It does not accord with CS Policy CS15 or DPP Policies DP3, DP4, DP5 or DP20. These include that development should make relevant car parking provision and be compatible and appropriately located to minimise adverse impacts on adjoining uses (including with regard to intensity of use, hours of operation, traffic, access, parking and nuisance), manage transport impacts including to minimise car use, provide for safe and convenient access to walking, cycling, public transport and taxis, including for people with disabilities and be acceptable with regard to highway safety and free flow of traffic. In these regards it also conflicts with the Council's parking standards SPD.

25. It also conflicts with Framework paragraphs 108, 109 and 110 which seek to promote sustainable transport modes, ensure safe and suitable access for all users, mitigate significant impacts on the transport network, facilitate access to public transport, address the needs of people with disabilities and reduced mobility and minimise conflicts between pedestrians, cyclists and vehicles. And avoid unacceptable impact on highway safety.

Other Matters

26. The development may require an amount of space and land which might be prohibitively expensive for the appellant to buy or rent in a town centre. However, the D1 and D2 uses are not 'main town centre uses'⁹ and consequently the 'sequential test'¹⁰ does not apply or therefore support the development, as is otherwise suggested by the appellant. The appellant considers that greater 'permitted development'¹¹ (PD) freedoms for changes of use ought to be available to facilitate the development, but there are currently no PD rights for change of use from B1 or B8 use to D1 or D2 use and there is therefore no realistic fall-back position in this regard.
27. It would be preferable for business premises to be fully occupied, albeit by appropriate types of employment uses. However, the payment of business rates on empty property is a matter of national Government policy and the benefit to the landlord of rental income from the development as a means to alleviate such charges (including buildings insurance) does not therefore outweigh or overcome the harm that I have identified in the main issues above.
28. The development may have improved the appearance of the appeal site and, on the very limited evidence before me, noise and disturbance generated by equipment, plant and machinery for the D1 and D2 uses is likely be different in nature to that generated by B1 and B8 uses in VIP but similar in effect, and not therefore likely to result in any unacceptable adverse impacts on the operation of nearby businesses. I am also mindful that the Council has other regulatory powers available to investigate alleged statutory nuisance. However, the absence of harm in these regards is a neutral factor in my decision.
29. I appreciate that the Council and some interested parties are concerned about the potential for anti-social behaviour by some visitors to the appeal site in connection with D1 or D2 events. However, on the limited and mainly anecdotal evidence before me I am unable to come to a firm view in this

⁹ Framework glossary.

¹⁰ Framework paragraph 86.

¹¹ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

regard. Some interested parties are also concerned that emergency escape doors, routes and muster points referred to by the appellant are inadequate or are on land that is not suitable, owned or controlled by the appellant. However, these are matters for the relevant regulatory authority(s) or are a private matter between respective landowners.

Conclusion

30. I sympathise with the appellant's genuine and sincere intentions for its use of the appeal site. Nonetheless, the development is fundamentally not a type of use or employment that is supported by the Council's development plan or national planning policy at the appeal site and, on the evidence before me, the practical realities of its location in this industrial park with regard to access by large numbers of visitors also mitigates against the development.

31. For the reasons given, the appeal does not succeed.

Robin Buchanan

INSPECTOR