The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2020

by Graham Wyatt BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2021

Appeal Ref: APP/M1595/W/20/3254933
Land North of Gunning Road, Grays RM17 6UQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gunning Road Thurrock Ltd against the decision of Thurrock Borough Council.
- The application Ref 19/00807/OUT, dated 21 May 2019, was refused by notice dated 4 February 2020.
- The development proposed is described as "Outline planning application for light industrial units, use class B1 (c) with associated hardstanding and acoustic fencing following partial demolition of existing warehouse building. To include determination of the matters of access, landscaping, layout and scale (matters relating to appearance reserved)".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development in the banner above is taken from the Council's decision notice as it more accurately reflects the proposed development.

3. The planning application was submitted in outline form with access, layout landscaping and scale for consideration and I have considered the proposal on this basis. Matters relating to appearance are reserved for future determination. The appellant has provided indicative elevations which I have treated as illustrative for the purposes of this appeal.

Main Issues

4. The main issues in this appeal are the effect of the proposal on 1) the provision of open space, 2) the character and appearance of the area and the living conditions of adjoining occupiers with particular regard to noise and disturbance, and outlook for the residents of Gunning Road, and 3) highway safety and parking.

Reasons

Open Space

5. The appeal site forms part of an area of grassed open space which contains a football pitch and an equipped play area. Policy PMD5 of the Thurrock Borough Council Core Strategy and Policies for Management of Development 2015 (CS) states, amongst other things, that the Council will safeguard all existing opens spaces. Although the Council confirm that the appeal site has been the subject of a legal agreement securing its retention as an area of open space, it has not provided me with a definition of what it considers to represent an open space.

However, Annex 2 of the National Planning Policy Framework (the Framework) defines an open space as that which has a public value, offers important opportunities for sport and recreation and one that can act as a visual amenity. Thus, the appeal site is considered to represent an open space.

6. CS Policy PMD5 states that proposals for the complete or partial loss of an open space, or that which would cause or worsen a deficiency in the area will not be permitted unless it meets the criterion as set out therein. In this instance, I have not been provided with any evidence that the development would not cause or worsen deficiency in the area served by the open space, or that improvements to remaining spaces or facilities such as that at Delafield, can be provided to a level sufficient to outweigh the loss.

7. Moreover, although the appellant has submitted a unilateral undertaking transferring the remaining land to the south of the proposed development as an area of open space, which could be considered as conveniently located, it has not been demonstrated that the remainder of the site would provide facilities of an equivalent or improved standard to serve current and potential new users. In addition, the partial loss of the open space is not as a result of facilities that would be ancillary to the use of the space nor incorporates a type of open space for which there is a greater need. Thus, the proposal would be in conflict with CS Policy PMD5.

8. The appeal site, however, is also allocated as a Secondary Industrial and Commercial Area (SICA) under CS Policy CSTP6, which safeguards such sites for employment generating uses falling within Class B1, B2 and B8 and sui generis uses. Consequently, given the allocation of the appeal site as a SICA within the CS, the development would not be in conflict with CS Policy CSTP6.

9. However, having regard to the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act), a determination must be made in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 12 of the Framework reflects this and makes it clear that the development plan is the starting point for decision making. Although the importance of the plan-led system is clear, the Act nevertheless provides scope for other factors to be considered in the planning balance. Thus, the Framework is a material consideration.

10. The appellant argues that as a result of the site's allocation under CS Policy CSTP6, CS Policy PMD5 is therefore irrelevant. However, although the appeal site is not referenced as such within the CS proposals maps, it is nonetheless an area of open space that is used for recreational purposes and the Framework does not require the land to be specifically allocated for such a use, rather that the open space is existing and is of public value.

11. Additionally, it has not been demonstrated that the open space is surplus to requirements. Moreover, although a smaller area of open space would be retained, the appellant has also failed to demonstrate that its partial loss would be replaced by an equivalent or better provision in terms of quantity and quality in a suitable location or that the development is for an alternative provision, the benefits of which outweigh the loss of the current or former use. Therefore, the proposal would be in conflict with paragraphs 96 and 97 of the Framework.

12. Furthermore, I have not been provided with any information that would steer me to the circumstances that led to the site's allocation as a SICA and whether this was made in the full knowledge, or despite of, the sites use as an area of open space, nor any up to date information regarding the need to continue to protect

land for employment uses or assessments clearly showing that the loss of the open space is justified.

13. It is not unusual for policies within a development plan to pull in different directions and it is clear that there is a degree of tension between CS Policies PMD5 and CSTP6. However, in accordance with paragraph 213, CS Policy PMD5 is consistent with the aims of the Framework in that it applies a strong presumption in favour of the protection of open spaces. Conversely, in this particular case and based upon the information presented, the allocation of the appeal site as a SICA under CS Policy CSTP6 is in conflict with the Framework for the same reasons.

14. Thus, notwithstanding its allocation as a SICA under CS Policy CSTP6, the proposed development would be in conflict with CS Policy PMD5 and paragraph 97 of the Framework, which is a material consideration to which I afford substantial weight, the specific requirements of which are specified above.

Character and Appearance/Living Conditions

15. The appearance of the development is a reserved matter for later consideration. However, the appellant has provided illustrative details of the proposal along with details of its scale, which would broadly follow that of the existing building it would be attached to.

16. Although the proposal would see the industrial building brought closer to the open space and residential properties, it also proposes a "tree alley" and an acoustic fence along the southern boundary of the site which would adjoin the relocated football pitch. I do not consider this area to be limited in size as suggested by the Council and as an area of landscaping, it would ensure an effective screen between the proposed development and the football pitch, play area, and properties to the south.

17. Furthermore, as a result of the remaining distance between the appeal site and intervening landscaping and the open space and neighbouring properties, I am not persuaded that the development would be any more domineering, intrusive or incongruous than the existing building, which can be viewed over the existing belt of trees and currently separates the appeal site from the commercial area to the north. Moreover, the inclusion of an acoustic fence on the southern boundary, together with the proposed tree alley, would ensure that the development would not harm the living conditions of nearby residents through noise and disturbance.

18. Thus, the development would not result in harm to the character and appearance of the area or the living conditions of adjoining occupiers through noise and disturbance or outlook. It would not be in conflict with CS Policies PMD1, PMD2, CSTP22 and CSTP23 and paragraph 127 of the Framework which seek, amongst other things, to ensure that developments contribute positively to the character of an area in which it is proposed and does not cause unacceptable effects on the amenities of the area.

Parking

19. The Council argue that the proposal fails to provide adequate parking to serve the development, is in a location that is reliant upon travel by private car and in an area of existing parking stress. Therefore, the development would have an adverse impact upon highway safety. It would also fail to meet the expectations of the document referred to as the Thurrock Parking Standards and Good Practice 2012 (TPSGP).

20. The appellant amended the layout of the development so that it provided an overall provision of 20 spaces, which includes two disabled spaces. From the layout plan, the development also proposes storage spaces for nine bicycles. Nonetheless, the Council state that the level of parking provided would fall short of the amount required by the TPSGP.

21. However, the appellant's Highway Statement[1] clarifies that Grays railway station is some 2km from the appeal site. A bus stop is also within walking distance with a seven day a week service between Lakeside and Chadwell St Mary. There are also cycle routes within the vicinity of the appeal site. Consequently, it is clear that the site is within a location that is served by other realistic opportunities to travel other than the private motor car.

22. Furthermore, the TPSGP makes it clear that a lower provision of vehicle parking may be appropriate in urban areas where there is good access to alternative forms of transport. Moreover, I have not been presented with substantive evidence that the area is susceptible to high levels of parking stress or that the level of parking proposed would cause harm to highway safety.

23. Thus, the development would not result in harm to highway safety. It would not be in conflict with CS Policies PMD8 and PMD9 which seek, amongst other things, to ensure developments provide appropriate access, prevent inappropriate on-street car parking, and ensure developments do not impinge upon highway safety.

Other Matters

24. The appellant refers to a planning application that was approved in 2016[2] for a similar development, immediately to the north of the appeal site. While I note this development, I have not been provided with details of the planning application to enable me to make a direct comparison to the proposal before me as part of this appeal. In any event, I have considered this appeal on its own merits which is a fundamental principle that underpins the planning system.

25. I note that representations were made by local residents, some of whom raise additional concerns. However, given my findings on the main issues, it is not necessary to consider these matters in detail.

Conclusion

26. Although I have found that the development would not result in harm to highway safety or parking in the area, nor would it harm the character and appearance of the area or the living conditions of adjoining occupiers, I have found that it would result in the loss of open space. Thus, for the reasons given above, and having regard to the development plan when read as a whole and other material considerations, the appeal is dismissed.

Graham Wyatt

INSPECTOR

[1] Milestone Transport Planning, July 2019
[2] 16/00370/FUL