



Appeal Decision

Site visit made on 6 May 2021

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th May 2021

Appeal Ref: APP/V0510/W/20/3256802

Hanson Depot, 42 Station Road, Kennett, Cambridgeshire CB8 7QD

- 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 Victoria Stanley Limited against the decision of East Cambridgeshire District Council.
 - The application Ref 19/00886/FUM, dated 21 June 2019, was refused by notice dated 6 February 2020.
 - The development proposed is 38 residential dwellings (40% affordable units) with associated access, open space and drainage, replacing the disused commercial yard. One commercial unit (B1 office) to be included within 38 units.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following submission of the application, and prior to the Council making its decision, amended plans were submitted to the Council which show 36 dwellings instead of the 38 proposed in the application. There is no record before me of any agreement between the parties as to a changed description of the development, but I shall consider the proposal on the basis of the amended plans.

Main Issues

3. The main issues in the appeal are:
 - i) the effect of the development on the character and appearance of the area;
 - ii) the implications of the loss of the existing site for employment use;
 - iii) whether or not the development would provide acceptable living conditions for its occupiers in terms of noise disturbance; and
 - iv) whether or not the development would be acceptable in terms of flood risk and drainage.

Reasons

Character and Appearance

4. The appeal site includes a yard which was previously used for storage of aggregates and adjoining open land. The site is to the rear of frontage

residential development along Station Road and other commercial buildings. It lies immediately south of the A14. To the east is a wooded area along the River Kennett.

5. While the yard area is within the development envelope as defined in the development plan, the remainder of the site is outside that envelope. Policy GROWTH 2 of the Local Plan¹ (LP) restricts the development that may take place outside the defined development envelopes. The proposal does not accord with that policy.
6. When the Council made its decision, it could not demonstrate a 5 year supply of deliverable housing sites, however the situation has since altered. The two appeal decisions² in which the Inspector found that the Council could not demonstrate a 5 year supply have subsequently been quashed by the High Court. In a more recent appeal decision³ the Inspector found that the Council could demonstrate a 5 year supply.
7. The Council's strategic policies are more than 5 years old and the local housing need should be calculated using the standard method. The Council's Addendum to its Five Year Land Supply Report (December 2020) reports that the Council achieved 87% of its Housing Delivery Test requirement. Because delivery is above 85% and the Council has not chosen to produce an annual position statement, a buffer of 5% is required to be applied. The Addendum demonstrates that the Council has 7.01 years housing land supply. This indicates that its policies are not out-of-date. No other evidence has been provided to show that the policies that are most important for determining the application are out-of-date.
8. Kennett is a dispersed settlement, the main part of that settlement being to the north of the A14. There is linear housing along the eastern side of Station Road which extends as far as the built up area of Kentford. The site forms part of an open area which separates the linear development along Station Road from the eastern part of Kentford. The river and the adjacent trees form a defining landscape feature to this area and contribute significantly to its attractiveness.
9. The proposed development would occupy a significant proportion of this open area. It would be visible from public viewpoints such as from Bury Road as well as from surrounding properties, notwithstanding the trees which provide some screening in views from the east. The development would intrude into the attractive landscape setting to the surrounding built up areas. It would also reduce the degree of separation between the settlements that currently exists.
10. The proposed acoustic bunding would be a necessary part of the development and would be viewed in this context. It would not be out of scale with the proposed housing and trees would be planted which would have the effect of softening its appearance. I do not find this aspect of the proposal to be individually harmful but nonetheless it would be visually intrusive in combination with the proposed housing development.

¹ East Cambridgeshire Local Plan (2015)

² APP/V0510/W/18/3213834 and APP/V0510/W/19/3227487

³ APP/V0510/W/20/3245551

11. Policy ENV1 of the LP requires proposals to demonstrate that they will protect, conserve and where possible enhance the settlement edge, space between settlements and their wider landscape setting. For the reasons given above, the proposal would not accord with these requirements. Neither would it accord with Policy ENV2 of the LP which requires development to enhance and complement local distinctiveness and to have regard to local context. For the reasons given, the proposed development would unacceptably harm the character and appearance of the area.

Employment

12. Policy EMP1(a) of the LP permits mixed-use development on sites last used for employment purposes where it can be demonstrated that continued use of the site for 100% employment purposes is no longer viable, taking into account the site's characteristics, quality of buildings and existing or potential market demand. Paragraph 5.2.2 of the LP states that, where viability is in question, applicants will be required to demonstrate that the site has been actively marketed for a continuous period of 12 months.
13. No evidence of any marketing of the site has been provided, but a report on likely market demand for commercial use of the site was prepared in October 2017. This records that there were a significant number of commercial properties for sale or to let within 5 miles of the site, and a significant number of existing employment sites within a 3 mile radius of the site. The report concluded that there is not likely to be any significant demand for commercial use of the site. This conclusion is based on the number of alternative properties available in the area, rather than any particular aspect of the site which might limit its commercial attractiveness. While the report indicates that viability in terms of commercial demand may be limited, it does not conclusively demonstrate that 100% employment use of the yard is not viable. Indeed, this has not been demonstrated through any marketing exercise.
14. Part (b) of Policy EMP1 allows mixed use redevelopment where there would be significant community benefits which outweigh the partial loss of employment uses. The application form states that the proposed B1 office unit would provide employment for 2 full-time and 1 part-time members of staff. The Design and Access Statement says that the B1 office would have capacity for approximately 6 to 10 employees, while the appellant's statement says that, based on the Government's 'Employment Density Guide' there would be capacity for 22.5 full-time equivalent employees.
15. Policy EMP1 requires provision of clear and robust evidence and the limited information that has been provided both in respect of viability and any employment benefit is somewhat inconclusive. It has not been conclusively demonstrated that the level of employment that would be likely to be provided in the B1 unit would be greater than that which would otherwise be provided by the existing site. On this basis I have doubt as to whether this would constitute a community benefit. Nonetheless, there would be community benefits from the provision of new housing including affordable housing. These benefits would be significant and would outweigh any partial loss of employment use. The proposal would accord with Policy EMP1 of the LP on this basis.

Noise

16. It is proposed to provide an acoustic bund and fence along the northern boundary of the site in order to mitigate noise impact from traffic on the A14. There is no dispute between the parties that external noise levels within gardens and internal noise levels in living rooms would be within acceptable limits.
17. The nationally applied standard for internal noise levels in dwellings is BS8233:2014⁴. This states a standard of 30 dB LAeq 8 hour for bedrooms. The Council aims to ensure that external facades containing bedroom windows do not exceed 45 dB LAeq 8 hour but is prepared to relax this to 50 dB LAeq 8 hour if the development is considered necessary or desirable. These levels allow for residents to open windows to provide ventilation. The scheme has been designed to ensure that, where bedroom windows are on facades that exceed this level, second windows would be provided to other façades that would be subject to lower noise levels.
18. The difference between external and internal noise levels will depend on the periods when windows are open. Nonetheless, the 50 dB LAeq 8 hour external noise level standard would not necessarily ensure that internal levels would be to the standard in BS8233 and, indeed it seems likely that that standard would be exceeded. The appellant's noise statement⁵ acknowledges that, for some plots, it may be the case that, when residents open their bedroom windows, acoustic conditions would exceed the guideline value.
19. On the basis that the standards in BS8233 reflect the Lowest Observed Adverse Effect Level and given that this standard is likely to be exceeded, the quality of life of occupiers of the development would be affected. This would not amount to a significant adverse effect.
20. Nonetheless, Policy ENV2 of the LP requires high standards of amenity for occupiers of new buildings. For the reasons given it is unlikely that such standards would be achieved in the part of the development most exposed to traffic noise from the A14, and the proposal would not accord with Policy ENV2.
21. For these reasons the proposal would not provide acceptable living conditions for its occupiers, considered against the development plan requirement.

Flood risk and drainage

22. A Flood Risk Assessment (FRA) was submitted with the application. The Environment Agency had no objection to the proposal on grounds of flood risk but noted that the sequential test should be undertaken to determine whether land is available for the development that is at lower risk of flooding.
23. The Environment Agency Flood Risk mapping shows that while the majority of the site is in Flood Zone 1 (low probability of flooding), an area adjacent to its eastern boundary is within Flood Zones 2 and 3 (medium and high probability of flooding). The appellant states that all of the proposed development would be within Flood Zone 1. The flood risk mapping has not been overlaid on the proposed site layout, but it would appear from the submitted information that the proposed dwelling on Plot 27 would be within Flood Zone 2. This has not

⁴ BS8233:2014 'Guidance on Sound Insulation and Noise Reduction for Buildings'

⁵ Dated 31 March 2020

been explained or justified having regard to the need for the sequential test, which is a requirement of the National Planning Policy Framework and Policy ENV8 of the LP.

24. The Lead Local Flood Authority (LLFA) objected to the application on the basis that it had not been demonstrated that the surface water drainage system would not adversely affect ground water quality. The area of the former depot is contaminated, and measures are required to avoid contamination of the ground water in the underlying aquifer. A further FRA and Drainage Strategy were submitted with the appeal. This explains that tanked systems would be used to avoid ground water contamination.
25. While this measure would provide some reassurance, the drainage strategy is based on a previous layout and not the proposed development. It refers to the provision of a detention basin, but such a facility is not shown on the layout plan. The drainage strategy does not, therefore provide certainty regarding the suitability of the proposed drainage scheme in terms of managing flood risk and avoiding contamination of ground water.
26. I also note that the LLFA has concern about the clearance between the sustainable drainage scheme and ground water levels. The FRA states that infiltration systems would be designed following further testing of the subsoil. However, for the above reasons, it has not been demonstrated that appropriate surface water drainage arrangements for dealing with surface water run-off can be accommodated. This is a requirement of Policy ENV8 of the LP and the proposal would not accord with that policy in this respect.
27. For these reasons, it has not been demonstrated that the development would be acceptable in terms of flood risk and drainage.

Planning Balance

28. The development plan policies which are most important for determining the application are not out-of-date. The proposal conflicts with a number of those policies, and with the development plan as a whole. The provision of 36 new dwellings, including affordable housing would be a significant benefit, including in terms of contributing to the local economy through provision of construction employment and expenditure by residents.
29. The employment provided in the new B1 unit may compensate for the loss of the previous employment use, but no evidence has been provided to show that this would amount to a benefit. The provision of open space within the site is a policy requirement and as such this does not carry weight as a benefit. Overall, the benefits of the proposal are not of sufficient weight to outweigh the conflicts with the development plan.

Conclusion

30. For the reasons given, I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR