The Planning Inspectorate

Appeal Decision

Site visit made on 7 June 2021

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 JUNE 2021

Appeal Ref: APP/D3830/W/21/3266701
Land at Bolney Grange Industrial Park, Stairbridge Lane, Bolney RH17 5PA

- 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 London Town Property Holdings Ltd against the decision of Mid Sussex District Council.
- The application Ref DM/20/0521, dated 4 February 2020, was refused by notice dated 25 September 2020.
- The development proposed is for the expansion of Bolney Grange Business Park to provide 5 additional B-class commercial units.

Decision

1. The appeal is allowed and planning permission is granted for the expansion of Bolney Grange Business Park to provide 5 additional B-class commercial units on land at Bolney Grange Industrial Park, Stairbridge Lane, Bolney RH17 5PA in accordance with the terms of the application, Ref DM/20/0521, dated 4 February 2020, and the plans submitted with it, subject to the conditions set out in Annex A.

Application for costs

2. An application for costs was made by London Town Property Holdings Ltd against Mid Sussex District Council. This application will be the subject of a separate Decision.

Main Issue

3. The main issue is whether financial contributions are required to make the proposal acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development.

Reasons

4. The appeal site is a parcel of land that is located within the Bolney Grange Business Park which is an established industrial type estate approximately 4 miles from the town of Burgess Hill. The business park can be accessed directly by car via A2300 or Job's Lane, from a bus stop approximately 10 minutes away or by cycle via the National Cycle Route 20. The existing industrial and office units surrounding the site offer a range of off-road vehicle parking opportunities. The road serving the business park estate is restricted by double red lines.

5. The proposal is to construct 5 Class B commercial units on the site. There would be parking for 76 motor vehicles and 10 electrical charging spaces. 10 cycle parking spaces would also be provided that would be secured by condition.

6. The main parties agree that the principle of development as well as the design, scale, appearance and siting of the proposal is acceptable on the site and would support economic growth, and I see no reason to disagree. However, the Council contend that in order to make the proposal acceptable in planning terms that a S106 ('TAD') financial contribution is required in respect of highway and sustainable transport infrastructure.

7. Nonetheless, while Policy DP20 of the Mid Sussex District Plan 2018 (MSDP) includes the aim that infrastructure required to service developments and mitigate their impact will be secured through the use of planning obligations, the *Planning Practice Guidance* (PPG) states that no payment of money or other consideration can be positively required when granting planning permission. As such, contributions are required to take the form of a planning obligation. Moreover, Paragraph 56 of the *National Planning Policy Framework* (the Framework) and Regulations 122 of the Community Infrastructure Levy (Amendment) Regulations 2015 (the CIL Regs) state that obligations should only be sought where they meet three tests:

   a) Whether an obligation is necessary to make the development acceptable in planning terms

8. Paragraph 54 of the Framework requires that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. In this case the stated requirement for a highway and sustainable transport infrastructure planning obligation is to provide improvements to passenger waiting and boarding facilities including RTPI equipment in order to improve public transport links to nearby residential areas, Burgess Hill town centre and its rail stations and the 'Sussex Way' cycleway.

9. However, planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. In this respect from the evidence before me it is possible for the provision of cycle storage, electrical vehicle charging points and a 'Travel Plan' associated with the scheme could be secured by condition. Accordingly, the proposal would meet with the requirements of Policy 21 of the MSDP related to a sustainable location on the long-established business park. Moreover, I noticed at my site visit that the volume of car parking spaces proposed is similar to other provision within the business park, all of which is restricted to an off-road location by virtue of the double red lines skirting the highway.

10. As such, the scheme would have a limited effect on highway safety within the park which has a recognised access route and no recorded road traffic collisions nearby. Indeed, notwithstanding Paragraph 32 of the Framework, West Sussex Highways department, consider that the B1 use and vehicular activity associated with the proposal would not have a severe impact on the local highway network.

11. Therefore, I conclude that the proposal would provide sustainable transport options by means of conditions, would be unlikely to harm highway safety and would have a limited effect on the surrounding road network. Therefore, it has not been demonstrated that the 'TAD' contribution is necessary.

b) directly related to the development

12. While the contribution would be likely to improve public transport links generally, I have no concrete evidence to persuade me that the contribution would be required to address any identified harm, and therefore be of direct benefit to the proposal before me. Indeed, even if the contribution enhanced transport connections to the business park, the impact would likely to be very limited given the modest scale of the proposal that is some distance from the infrastructure proposed.

c) fairly and reasonably related in scale and kind to the development

13. Contributions have been calculated by the Council based on the scale of the proposal, that includes additional office space and the volume of car parking space using a standard formula provided in the adopted Mid Sussex District Council Supplementary Planning Document,' Development Infrastructure and Contributions', (SPD) 2018.

14. However, notwithstanding the removal of the proposed infrastructure works related to the dualling and junction improvements to the A2300/A23 from the obligation, and whether the proposed schemes have been defined or costed or not, the fact remains that I have found no convincing evidence to persuade me that a contribution would be needed to overcome harm to highway safety or the highway network. Moreover, there are conditions related to sustainable transport that could be imposed in order to make the proposal acceptable in planning terms. I conclude therefore, in this case that the calculated contribution of £152,660 would not be fair or reasonable.

15. Consequently, and notwithstanding the aims of Policy 20 of the MSDP, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the CIL Regs or Paragraph 56 of the Framework.

Other Matters

16. I note Policy SA5 contained within the emerging Mid Sussex District Council 'Site Allocations Development Plan Document', 2020 and the aspirations to improve public transport links between the site and the proposed Science and Technology Park. However, as this document is still under consultation and is yet to be submitted for examination, I give this little weight in respect of the appeal before me.

17. I acknowledge that the appeal site falls within a European protected site, namely the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). As the competent authority in this appeal case I have considered the findings of the Habitats Regulations Assessment carried out by Mid Sussex District Council and concluded in accordance with the Council, that the proposal would likely to have no significant effects, alone or in combination on the SPA or SAC. Therefore, in this specific case no mitigative actions are required in this respect.

Conditions

18. I have considered the suggested conditions against Paragraph 55 of the *National Planning Policy Framework* and the national *Planning Practice Guidance* and imposed the following conditions; for certainty a time limited condition and a condition requiring that the development is carried out in accordance with the approved plans.

19. In the interests of the character and appearance of the area conditions have been imposed related to external materials, and hard and soft landscaping. There is a condition to ensure the site is properly drained.

20. There are conditions requiring a construction method statement, works of construction and a condition related to deliveries associated with the development works. Similarly, there is a condition related to the use of the buildings. These conditions will ensure the amenity of the occupiers of the nearby hotel and/or any residential dwelling which is located to the rear of the site.

21. To protect human health, water courses, and the environment there are conditions to remediate contamination should it be found, to maintain air quality and biodiversity on the site.

22. To encourage sustainable forms of transport there are conditions that requires the provision of cycle storage, electrical vehicle charging points and a travel plan. In the interests of highway safety there are conditions for the provision of parking and turning spaces and means of access.

Conclusions

23. For the reasons given above I conclude that the appeal should be allowed subject to the conditions set out in Annex A.

J E JOLLY

INSPECTOR

Annex A – Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the approved plans and drawings listed below:

- Site Location Plan - AD100, dated November 2019
- Existing Site Layout Plan - AD101, dated November 2019
- Proposed Site Layout Plan - AD110, dated November 2019
- Proposed Floor Plans Units 1,2,3 - AD111, dated November 2019
- Proposed Floor Plans Units 4-5 - AD112, dated November 2019
- Proposed Roof Plan Units 1-3 - AD113, dated November 2019
- Proposed Roof Plan Units 4-5 AD114, dated November 2019
- Proposed Elevations Units 1,2,3 AD115, dated November 2019
- Proposed Elevations Units 4,5 AD116, dated November 2019
- Proposed Site Boundary Treatments - AD 117, dated November 2019
- Proposed Site Finishes - AD 118, dated November 2019
- Site Sections as Proposed AD 122, dated November 2019
- Site Sections as Existing Sections AD 109, dated November 2019
- Arboricultural Impact Plan AIP -01, dated October 2019
- Tree Location Plan, TLP-01 - dated October 2019
- Tree Constraints Plan TCP-01, dated October 2019

3) No development shall commence until a drainage strategy detailing the proposed means of foul and surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

i) the anticipated number, frequency and types of vehicles used during construction,

ii) the method of access and routing of vehicles during construction,

iii) the parking of vehicles by site operatives and visitors,

iv) the loading and unloading of plant, materials and waste,

v) the storage of plant and materials used in construction of the development,

vi) the erection and maintenance of security hoarding,

vii) the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway

viii) details of public engagement both prior to and during construction works.

ix) measures to control the emission of dust and dirt during construction;

x) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

5) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.

6) Deliveries or collection of plant, equipment or materials for use during the demolition/construction phase shall be limited to the following times:

- Monday to Friday: 08:00 - 18:00 hrs
- Saturday: 09:00 - 13:00 hrs
- Not at any time on Sundays and Bank/Public Holidays

7) Works of construction or demolition, including the use of plant and machinery, necessary for implementation of this consent shall be limited to the following times:

- Monday – Friday: 08:00 - 18:00 Hours
- Saturday: 09:00 - 13:00 Hours
- Not at any time on Sundays and Bank/Public Holidays

8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

9) No development shall be carried out above ground slab level unless and until there has been submitted to and approved in writing by the Local Planning Authority full details of both hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of those to be retained, together with measures for their protection in the course of development and these works shall be carried out as approved.

10) Hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

11) No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the Local Planning Authority.

12) No building shall be occupied until space has been laid out within the site in accordance with drawing Proposed Site Layout Plan AD 110, dated November 2019 for 76 cars to be parked and 10 electrical vehicle charging points, and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for the parking of vehicles.

13) No part of the development shall be first occupied until such time as a Travel Plan Statement has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan Statement shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport or as advised by the Highway Authority.

14) Machinery shall be operated, processes shall be carried out and deliveries shall be taken at or despatched from the site only between:

- Mon to Sat - 07:00 to 19:00 hours
- Sunday - 09:00 to 19:00 hours
- Not at any time on Bank or Public Holidays.

15) No development shall commence until a biodiversity enhancement plan has been submitted to, and approved by, the local planning authority. These enhancements shall be implemented in full unless otherwise agreed in writing with the local planning authority.

16) The mitigation recommendations given in the Ecological Impact Assessment report by 'Lizard Landscapes', dated June 2019 shall be implemented in full and evidence of this submitted in the form of a completed checklist, signed by the project ecologist/wildlife consultant prior to first occupation of any unit.

***** End of Conditions*****