



Appeal Decision

Hearing (Virtual) Held on 1 June 2021

Site Visit made on 2 June 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/F0114/W/20/3250068

Parcel 9176 , Langley's Lane , Paulton BS39 7SU

- 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 Mr Roddy Thorner (Flower and Hayes Ltd) against the decision of Bath and North East Somerset Council.
 - The application Ref 19/03984/OUT, dated 6 September 2019, was refused by notice dated 6 February 2020.
 - The development proposed is described as 'outline planning application for small scale industrial units with associated works and access from existing Old Mills development'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing the main parties agreed that the site address that I have used in the banner heading above is more accurate.
3. The planning application is submitted in outline, with the principle of the development and details of access to be considered now. Details of the appearance, landscaping, layout and scale of the development are reserved matters which would be considered by a subsequent application.
4. At the hearing the main parties agreed that my decision should be based on the appellant's amended site layout plan, drawing number 1663/115 (the site layout plan), submitted with the statement of common ground (SoCG). The main parties also agreed that the development is for up to 51 industrial units (B1(c) or B8 use) and up to 6,991m² gross internal floor area. The quantum of development is therefore reduced from 56 units and 7,900m². Having regard to the 'Wheatcroft Principles'¹, I consider that this does not materially alter the nature of the application and as a result no party has been prejudiced. I have determined the appeal on this basis.
5. The Council considered the internal road shown in the site layout plan to be part of the details of access. I note that this plan is not marked as 'indicative' or 'illustrative' in this regard and that by definition², there is some overlap between access as including 'within the site' and 'circulation routes' and layout as including 'routes... within the development'. However, in light of the appellant's application and appeal case, including description of development

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

² The Town and Country Planning (Development Management Procedure)(England) Order 2015

and what I heard at the hearing, I have determined the appeal on the basis that the internal road is not part of the details of access. To be clear, the site layout plan shows the extent of the appeal site and the position of the point of access to it for vehicles, cycles and pedestrians; whereas, the internal road layout shown has been submitted for illustrative or indicative purposes. The Council would have an opportunity to seek a different internal road layout, if necessary or appropriate, which would be considered by a subsequent application. At the hearing, the appellant did not object to this.

6. The SoCG includes the appellant's updated Ecological Appraisal and a Transport Supplementary Appeal Statement. At the hearing the Council said that it had been able to consider these documents and did not object to their submission. Having regard to the Wheatcroft Principles, my view is that these documents supplement the appeal case already made by the appellant and as a result no party has been prejudiced. I have considered the appeal on this basis.

Background and Main Issues

7. The appeal site is a large field and borders fields on three sides. The other side is next to the Old Mills Industrial Estate (the industrial estate) which is on the south side of the A362 road, near some other commercial and retail uses. This pocket of development is in the countryside between Paulton and Midsomer Norton. The appeal site is allocated for employment development, including B1(c) and B8 uses, by Policy SSV9 of the Bath and North East Somerset Local Plan, Placemaking Plan, July 2017 (PMP).
8. The Council supports the proposed employment uses in principle. The main parties agree that vehicular access to the appeal site can be achieved from the A362, through the industrial estate. I note that this would accord with the requirements of PMP Policy SSV9(12). In addition, the details of the access point of connection into the appeal site from the industrial estate are not in dispute. On the evidence before me, I have no reason to differ in these regards.
9. In the context of this background and the evidence before me, including what I heard at the hearing, the main issues are:
 - whether the proposed development would make satisfactory provision for travel by non-car modes;
 - its impact on the operation of the local highway network, having particular regard to the A362 Thicket Mead roundabout and the proposed quantum of development; and
 - its effect on the countryside, including the landscape character and appearance of the area, and its visibility, having particular regard to the proposed quantum of development.

Reasons

Travel by non-car modes

10. At the hearing, the Council agreed that suitable details of footways for pedestrians, and roads for cyclists, within the appeal site could be devised in a reserved matters application as part of the layout of the development. Moreover, that these details should not unduly interfere with the indicative

boundary structural landscape belts shown in the site layout plan. I have no reason to differ in these regards. The private road within the industrial estate connects to the A362 public highway. It is a reasonably wide road and has street lighting. In my view it would be a convenient route in its present condition for cyclists travelling to work at, or to visit, the proposed development.

11. The footway along the private road is narrow in places and does not link to the footway along the A362. At the hearing the appellant confirmed that it owned the industrial estate, which the Council did not dispute. The Council also agreed that the appellant's details for proposed footway improvements within the industrial estate, to provide a continuous footway connection from the appeal site to the A362, would be acceptable. These improvements could therefore be secured by a condition, were I minded to grant outline planning permission.
12. The appellant considers that beyond the industrial estate, the appeal site would be connected to a 'comprehensive network of footways serving Midsomer Norton and Paulton' and that 'a large area' of these settlements lie within a 2km walk, 'although many people will commute further on foot'. In addition, that it is 'well located for cycling' including, as I saw at my site visit, via the Norton Radstock Greenway (the Greenway) and that there are nearby bus stops with services to a number of settlements suitable for commuting to the appeal site. I have no reason to differ in these regards. Nonetheless, the Council's evidence refers to some significant deficiencies in the A362 highway network, between the appeal site and the Thicket Mead roundabout (TMR). According to the appellant this is the most likely direction of travel for most employees or visitors who might walk, cycle or use the bus.
13. I saw that this part of the A362 is a reasonably busy road with relatively narrow footways in places, some narrow central pedestrian refuges and uncontrolled crossing points without tactile paving. In addition, the nearby bus stops have no shelters, seating, raised kerbs, real time information displays or bus cage and waiting restriction carriageway markings and there are no dedicated on or off-street cycling facilities. Indeed, I observed a number of cyclists to use the footway in conflict with pedestrians. These circumstances would not therefore be conducive to the use of these alternative modes of travel. Consequently, this would likely deter anyone contemplating walking, cycling or using the bus routinely to access the appeal site and who may otherwise resort to using the private car.
14. I accept that the appellant's forecast of the number of staff at the appeal site who might use these modes of travel from the outset would be relatively low and that, based on the appellant's survey, existing use of the Greenway is relatively limited in this regard. Moreover, at the hearing the Council confirmed that widening the A362 footways would, in places, require third party land and accepted that as a result the deliverability of such improvements would be uncertain. Furthermore, while the Council has referred to a scheme to improve pedestrian and cycle facilities along part of the north side of the A362 to the TMR, and in turn to the Greenway, there are no substantive details of this before me.
15. However, while the appellant's proposed Travel Plan Framework (TPF) seeks to 'promote a reduction in the number of journeys and distance travelled by car' and 'identify and address barriers that discourage travel by non-car modes', it

is based on the premise that 'the predicted levels of non-car travel could be accommodated by existing infrastructure and bus services'. The appeal proposal does not therefore seek to address any deficiencies in the local highway network in these respects. This would as a result substantially reduce the attractiveness of these alternative modes of travel for initial users at the appeal site and be a significant deterrent to use. Furthermore, for the same reasons, it would also be a significant barrier to increasing 'non-car commuting by 10%' or, as the appellant referred to at the hearing, 'encouraging future use' of these alternative modes of travel. The TPF would as a result have a demonstrably more limited practical effect in these regards.

16. Consequently, I find that while satisfactory provision for travel by non-car modes within the appeal site and to the A362, through the industrial estate, could be devised as part of a reserved matters application, the appeal proposal would nevertheless not make satisfactory provision for travel by non-car modes beyond the industrial estate. It would not accord with PMP Policies SSV9(5) or ST7. Amongst other things, these policies require improvements to the transport network or system to mitigate the impact of development, including to provide or enhance convenient access to the site for pedestrians and cyclists. It would also conflict with the National Planning Policy Framework (Framework) paragraphs 102(b) and (c), 103 and 108(a). These seek to manage patterns of growth, including to ensure that opportunities from existing or proposed transport infrastructure are realised, and development should offer a genuine choice of transport modes, having regard to existing or proposed transport infrastructure and the opportunity to promote walking, cycling and public transport use.

Local highway network

17. The appellant considers that it has received inconsistent or ambiguous advice from Council highway officers, including about the assessment of traffic impact on the TMR. Nonetheless, the Council made the decision that it did and maintained its position in its Appeal Hearing Statement³. This included concerns about potential combined traffic impacts on the local highway network from the piecemeal development of the appeal site and a separate employment site, also allocated by PMP Policy SSV9, on the north side of the A362. I note that this policy contains no timing or phasing obligations for the development of either site. Furthermore, at the hearing the Council agreed that the sites are in separate ownership, that there is no current planning application for development of this other site and that it would need to be considered on its individual merits, including its traffic impact and any highway or travel mitigation required. I have no reason to differ in these regards.
18. Based on its predictions of traffic increase, the appellant assessed the TMR junction under a 2024⁴ 'baseline' condition and also 'with development'. The appellant's junction model initially forecast that under baseline conditions the TMR would operate with 'a reserve capacity' and that with development the additional traffic 'would have no material impact on the operation of the roundabout, queues and delays would remain acceptable'. Subsequently, the appellant agreed that the model 'may have over-predicted capacity and under-predicted queues' due to the geometry of the TMR junction. As I saw at

³ Including its Highway Development Control Proof of Evidence.

⁴ Assuming the development to be built and occupied by this time.

my site visit⁵, a large central over-run area influences driver behaviour such that most cars currently enter the TMR from each of its four arms one car at a time, despite a two car entry point width. This restricts capacity and is an influence on the extent of queuing.

19. The appellant's model reflected a theoretical use of the TMR, which the appellant has now promoted as a proposed highway improvement scheme (the scheme). This would use carriage way markings and signs to maximise the use of the existing road space in each arm (ie encourage two cars to enter at once) including in the flare on the approach to the entry point and at the give way line. At the hearing the Council agreed that while the scheme would improve capacity through the TMR and would intrinsically be 'likely to be a benefit to queue length', nonetheless it had observed (as did I) that 'queuing can occur on all approaches at the busiest times'. Nonetheless, I note that the Council considers that the effect of development traffic on the east and south arms of the TMR junction would be 'negligible' and on the evidence before me, including what I saw at my site visit and heard at the hearing, I have no reason to find otherwise in this regard.
20. The appellant sought to address the Council's concerns about queuing and conducted a queue survey on a single day. It used this survey to calibrate the model using 'intercept adjustments'. The calibrated model shows that the ratio to flow capacity (RFC) on the west and north arms would be 'at capacity' under baseline conditions, though the appellant suggests that 'the queue survey shows that is only the case for the 15 minute period between 17:30 and 17:45'. I note that with the development the additional traffic would, albeit by a small amount, worsen the already 'at capacity' RFC at the TMR, though I agree with the Council that this would therefore have a 'minimal impact on the RFC of these two arms'.
21. However, and despite the scheme, the calibrated model shows that the effect of with development traffic would be to double the queue length on the west arm, from 14.7 passenger car units (PCU) to 29.8 PCU and increase the delay per PCU from 62.01 to 107.73 seconds. The queue on the north arm would increase from 17.6 to 22.7 PCU and increase the delay per PCU from 90.38 to 112.54 seconds. On this basis, and notwithstanding the RFC, the effect on queuing and delay would as a result be significant and, in my view, would not therefore be 'an entirely existing issue of queuing' or simply a matter of 'junction geometry', as the appellant suggests.
22. I appreciate that the Covid-19 pandemic may have made it difficult, for a period of time, for the appellant to acquire queue survey data over more days and that such surveys may be 'expensive', as the appellant suggested at the hearing. It may also be difficult, in any event, to calibrate the model to accurately reflect queues, as the appellant also suggests. Nonetheless, I note that the appellant considers that 'queue surveys need to be treated with caution' due to 'substantial variations day to day' and a 'wide range of variability in a short period', and that 'Traffic prediction... will vary from day to day'. The Transport Research Laboratory 'knowledge base' article (the TRL article)⁶ also indicates that 'If queues have been observed on one day only, they may be unreliable because queue lengths have a large daily variability'

⁵ I observed traffic on the approach to, and through, the TMR continuously between 16:30 and 18:00

⁶ Appellant's Transport Statement of Case - Appendix SoC-4

and that queues should 'ideally' be measured 'on several days, and average the results'. The appellant has not done this.

23. Moreover, while the Council has no complaint with the notion of 'iterative adjustments' to the model per se, I note that the appellant agrees that the changes applied to calibrate the model were altered until they matched the observed queues and were 'significant... to force the model to reflect the average queues'. The RTL article suggests that calibrating a model in this way can be done 'if all else fails' (for example, surveys on more than one day) but that if 'very large adjustments' need to be applied to reproduce observed queues, in this case based on only a single day, 'this suggests that there is something wrong with the model data'.
24. Furthermore, notwithstanding that some of the additional development traffic may replicate the appellant's surveyed driver behaviour in vehicles originating from the industrial estate, and so use an alternative route other than through the TMR, as the appellant suggests, there is no certainty of this. Nor is there any compelling, objective evidence before me to justify that 'in reality, many employees at the development will time their departures to avoid the most congested period at the roundabout', as the appellant otherwise suggests. For example, their working hours may not permit this.
25. I am therefore concerned that despite the reduction in the maximum quantum of development, and it's likely commensurate effect on reducing traffic generation, calibrating the model on the basis of a single day queue survey may not be a good representation of typical traffic or driver behaviour. There is as a result at least a possibility that the model has been adjusted in a way that does not sufficiently consider existing queuing patterns. This is not only at odds with the appellant's own caveats in this regard, but it is also in conflict with the RTL article and the Council objects to a single day survey method in the individual circumstances of this appeal. Moreover, given my findings in the first main issue above, with regard to travel by non-car modes, the appellant's FTP would not therefore have the same 'in combination' mitigation benefit in reducing car traffic, including using the TMR, as the appellant suggests.
26. Consequently, I find that while the appellant's scheme could be secured by a condition⁷, were I minded to grant outline planning permission, the appellant has not demonstrated that the appeal proposal would avoid a severe cumulative impact on the operation of the local highway network, having particular regard to the TMR and the proposed quantum of development. It would not accord with PMP Policies SSV9(5) or ST7. Amongst other things, these policies require improvements to the transport network required to mitigate the impact of development on what would otherwise be an unsuitable road system. It would also conflict with Framework paragraphs 102, 103, 108(c) and 109. These include that transport issues should be considered at the earliest stages of development proposals so that significant capacity and congestion impacts on the transport network can be addressed and mitigated, and patterns of growth in support of these objectives be managed to avoid severe residual cumulative impacts on the road network.

⁷ Negatively worded and requiring the appellant to enter into a section 278 legal agreement under the Highways Act 1980 with the Highway Authority, including to agree suitable details in this regard. The Council confirmed at the hearing that this would be its preferred mechanism and the appellant did not object.

Countryside, landscape character and appearance, visibility

27. The appeal site is within the Farrington Gurney Farmlands Landscape Character Area⁸ (LCA). My site visit included all of the viewpoints referred to by the main parties in evidence. I saw that the countryside near the appeal site reflects some key elements of the LCA, including a gently undulating landscape, an open character with some long distance views and trees along the watercourse next to the southern boundary of the appeal site. There are some detracting elements such as the nearby commercial and retail uses, including the industrial estate and, on the other side of the appeal site, a reasonably large electricity sub-station and yard.
28. While this development is a negative feature in the landscape it, and the appeal site, nonetheless sits within an appreciably wider landscape context, low down in a valley floor. In my judgement, the countryside therefore maintains a prevailing expansive rural character and appearance. In addition, the allocation of the site for employment development means that there is a reasonable expectation of change to this local context, which the Council acknowledged at the hearing. I also saw that there are more than a 'few' trees along the other boundaries of the appeal site and generally tall rows of dense, natural (as opposed to 'clipped') hedgerow which are therefore atypical of this LCA.
29. The site layout plan shows an indicative structural landscape belt along the south boundary of the appeal site at least approximately 30m deep and, in places, up to about 50m deep. It is therefore quite extensive, though partly a reflection of the unsuitability of this part of the appeal site for development due to steeper land levels. This plan also shows an indicative structural planting belt along the west boundary, in places at least about 15m deep. At the hearing the Council confirmed that it considered that this enhancement of the existing planting would mitigate the landscape and visual impact of the development in public views from the south and west. I agree.
30. Along the north and east boundaries, the site layout plan shows an indicative structural landscape belt at least approximately 10m deep. At the hearing the Council said that it was concerned that not all of this area would be planted and did not anyway consider it would be 'major landscaping' for the purposes of PMP Policy SSV9. I note that this policy does not define this term. Moreover, the Council has not suggested any other definition to me, and at the hearing was unable to say what it considered would be major landscaping along these two boundaries.
31. It is possible that some industrial units might, in places, be sited closer to these boundaries, including in a terraced arrangement and be reasonably close to parts of Langley's Lane. I also agree with the Council that the development would not be 'small-scale' in terms of the total floor area or site area. However, I note that the appellant intends the industrial units to be 'single storey height' and 'compatible' in scale and appearance to the units in the industrial estate. I saw that these units have relatively low eave and ridge heights and a shallow roof pitch. In addition, there is no substantive evidence before me to suggest that the entire length or depth of a 10m structural landscaping belt could not be planted, if necessary.

⁸ Council's Rural Landscapes of Bath and North East Somerset - A Landscape Character Assessment, 2003

32. I am therefore satisfied that, in this appeal, a 10m deep structural landscape belt, arranged to enhance existing planting, would provide a significant density and height of foliage along the north and east boundaries. It would not therefore, reasonably, fall within a description of incidental or amenity planting but would be major landscaping. Furthermore, it could be devised in a reserved matters application, as part of the details of landscaping, without unduly restricting the layout of industrial units, an internal layout road and requisite car parking, which might also be less rectilinear in arrangement and include more opportunities for some planting within the appeal site. It would therefore mitigate the landscape and visual impact of the development in the public views from the north and in the semi-public views from within the industrial estate to the east.
33. In addition, there is no compelling evidence before me to suggest that it would not therefore be possible, in a reserved matters application, for the development to appear as a suitable extension of the industrial estate into the appeal site, rather than as an 'intrusion' into the countryside beyond the industrial estate, as the Council suggests. Moreover, at the hearing the Council agreed that the indicative structural landscape belts shown in the site layout plan reduces its concerns about the potential impact of the development on the retention of existing boundary trees and hedgerows. In this regard, I agree.
34. Consequently, I find that the development would not likely adversely affect the countryside, including the landscape character and appearance of the area, nor would it likely be unduly visible, having regard to the proposed quantum of development. It would accord with PMP Policies NE2, NE6 and SSV9(2) and (3). Amongst other things, these policies require development to avoid adverse impact on trees, conserve or enhance local landscape character, features and distinctiveness, including important views, and adequately mitigate adverse impacts on the countryside and landscape, including by the retention of trees and new tree planting to form major landscaping. It would also be consistent with Framework paragraphs 124, 127(b) and (c) and 170. These seek to ensure that development results in high quality places that are visually attractive as a result of effective landscaping, sympathetic to local character, including the surrounding landscape setting, and enhances the natural and local environment.

Other Matters

35. A turnover in the occupation of existing commercial premises and vacant premises meantime, including in the industrial estate, is not unusual or unexpected at any particular snap-shot in time. It does not therefore itself suggest a short or longer term lack of need for employment development, as some interested parties have suggested. At the hearing the Council agreed that this part of the Somer Valley, in which the appeal site is located, is a focus for economic development and accepted the appellant's assessment of the need for employment development (such as B1(c) or B8 uses) in the Council's district, including due to historic closures and the loss of such uses. On the evidence before me, I have no reason to reach a different view in these regards. The creation of new employment opportunities would therefore be a significant economic and social benefit of the appeal proposal.
36. At the hearing the appellant confirmed that its ecology surveys are up-to-date and that there is no material ecology data outstanding. Moreover, the Council

confirmed that it considered that the recommendations in the appellant's updated Ecological Appraisal would be capable of being incorporated into the development as part of a reserved matters application, that its objections in this regard were overcome and that reason for refusal No 3 was withdrawn. I am, therefore, satisfied that the appeal proposal would secure the requisite protection, mitigation and compensation for the relevant wildlife habitats and protected species. It would also provide net gains for biodiversity in accordance with the Council's development plan and the Framework. The absence of harm in this regard is a neutral factor in my decision.

37. Some interested parties also objected to the development due to additional advertisement boards obscuring visibility at the junction of the industrial estate access road with the A362, to increased noise and light pollution and to increased risk of flooding due to overloaded mains drainage. Consent to display an advertisement is subject to its own regulatory system and the enforcement of unauthorised advertisements is a separate matter for the Council in the first instance. The proposed B1(c) use would, by definition⁹, be a use that can be carried out in any residential area without detriment to the amenity of that area, including by reason of noise. There is no objective evidence before me to suggest that a B8 storage or distribution use would cause unacceptable noise intrusion. Were I minded to grant outline planning permission I am satisfied that a condition could control the details of external lighting to limit light spill. There is also no objective evidence before me to suggest that there would be a risk of flooding. I note that the Council did not object to the development for any of these reasons.

Planning Balance and Conclusion

38. Section 38(6)¹⁰ states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. As explained in the main issues above, the appeal proposal would not make satisfactory provision for travel by non-car modes beyond the appeal site and the industrial estate. Nor has the appellant demonstrated that the appeal proposal would avoid a severe cumulative impact on the operation of the local highway network. I attach substantial weight to both of these considerations. The development would likely not adversely affect the countryside, including the landscape character and appearance of the area, nor would it likely be unduly visible. The absence of harm in this regard is a neutral factor in my decision. The appeal proposal would not therefore accord with the development plan overall.
39. The development would create new employment opportunities. I give appreciable weight to this benefit. Accordingly, it does not outweigh the harm that I have identified in the first two main issues above. There are no material considerations to indicate that my decision should be taken otherwise in accordance with the development plan.
40. For the reasons given above, I conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR

⁹ The Town and Country Planning (Use Classes) Order 1987, as amended

¹⁰ Planning and Compulsory Purchase Act 2004, as amended

APPEARANCES

FOR THE APPELLANT:

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FOR THE LOCAL PLANNING AUTHORITY:

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Senior Planning Officer

Mr Darren Cox
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Principal Engineer

DOCUMENTS

Doc 1 Council's suggested wording for a condition to require a pre and post development road condition survey of the A362 road and report – email, 1 June 2021