



Appeal Decision

Inquiry Held on 24 to 27 & 29 June 2021

Site visit made on 1 July 2021

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th August 2021

Appeal Ref: APP/G5180/W/20/3263978

Former Gasholder Site, Homesdale Road, Bromley BR1 2UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Travis Perkins (Properties) Limited against the Council of the London Borough of Bromley.
 - The application Ref 19/04839/FULL1, is dated 27 November 2019.
 - The development proposed is the construction of a builders' merchants building (Sui Generis Use) and associated storage and loading areas, creation of new vehicular access to Homesdale Road, a new substation, 6 no. residential dwellings, with associated car and cycle parking, landscaping and associated highway works.
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters and Main Issue

2. The description of development used in the heading above differs from that stated on the planning application form. However, the original description of development was amended by the Council, with the agreement of the appellant, prior to the submission of the appeal. I have therefore determined the appeal accordingly.
3. Amended plans and additional supporting documents were submitted prior to the submission of and during the course of the appeal. The changes to the proposal include amendments to the new vehicular access, to fence positions within the site and to works affecting the culvert. They are all relatively minor in the context of the overall proposal. The amended plans and additional supporting documents were discussed with the main parties at the case management conference prior to the Inquiry and the parties were in agreement that none of the amendments or additional supporting documents materially affect the proposal.
4. In any event, prior to the Inquiry opening, the Council carried out additional consultation and in reaching my decision, I have had regard to any comments made in response to that consultation. I am therefore satisfied that no party would be prejudiced by me having regard to the amended plans and additional supporting documents and have determined the appeal accordingly.
5. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal

against the failure of the Council, as the local planning authority, to determine the application.

6. The Council's Planning Committee considered the proposal in January 2021, after the appeal had been lodged, and resolved to contest the appeal on three grounds relating to the quantum of housing proposed; noise impacts and flood risk. However, during the course of the appeal, further discussions between the main parties means that agreement has now been reached in respect of noise impacts and flood risk, subject to the imposition of suitably worded conditions¹. Therefore, the one remaining area of disagreement between the main parties relates to the quantum of housing proposed.
7. At the time that the Council considered the proposal, it had regard to relevant policies in the London Plan 2016 and in the draft London Plan, the Publication London Plan 2020. However, the London Plan 2021 has now been published and supersedes the London Plan 2016. The implications of the London Plan 2021 have been taken into account during the appeal proceedings and in this decision.
8. A revised National Planning Policy Framework (the Framework) was published on 20 July 2021, after the Inquiry had closed. However, the main parties have been given the opportunity to comment on the revised Framework and in reaching my decision I have had regard to it, where relevant, and to any comments received from the parties.
9. Having regard to the evidence submitted by all parties, including local residents, I consider that the main issue is whether the proposal provides a suitable mix of development and in particular whether the amount of employment floorspace and the quantum and type of housing proposed is acceptable having regard to matters including employment and housing need (including affordable housing), housing supply, the requirements of Policy 1 - Site Allocation 4 of the Bromley Local Plan, density and viability.

Reasons

Mix of development

10. The Development Plan for the area comprises the London Plan 2021 (LP) and the Bromley Local Plan January 2019 (BLP).
11. The appeal site is 1.4 hectares in size and comprises land formerly used as a gasworks. Policy 1 of the BLP allocates a number of sites for housing, with details of housing allocations set out in Appendix 10.2. The majority of the site (1 hectare) is allocated as Site 4 within Policy 1 and Appendix 10.2. Site policy for Site 4 as set out within Appendix 10.2 is redevelopment for mixed use including 60 residential units. The allocation states that proposals will be expected to include employment floorspace, to ensure appropriate remediation of contaminated land on the site is completed and to mitigate flood risk. The local plan phasing is stated as being years 6-10.
12. The proposal is for the construction of a builders' merchants building, 6 dwellings and associated development. It was submitted following pre-application engagement with the Council relating to various schemes on the site. The main parties agree that the site policy for Site 4 is for a residential

¹ Statements of Common Ground relating to noise and fluvial flood risk

led scheme and that the proposal is not a residential led scheme but rather is employment led, though it is common ground that it would, assessed on its own merits, address some requirements of the site policy namely, the inclusion of employment floorspace, mitigation of flood risk and the appropriate remediation of contaminated land.

13. Having regard to the proposed mix of development, and in particular to the number of dwellings proposed, the proposal is clearly contrary to the requirements of housing site allocation Site 4 (Site 4) in that the quantum of housing proposed is significantly lower than that required by the allocation. Moreover, as the allocation forms part of the anticipated source of housing supply over the plan period, the significant shortfall in the quantum of housing proposed would also be contrary to the requirements of Policy 1 of the BLP which sets out the Council's approach to achieving the required number of dwellings over the plan period. The fact that the more recently published LP² establishes higher housing targets for the area than those set out in Policy 1, means that there is an even greater need to ensure that proposals provide the amount of housing set out within the adopted allocations.
14. The appellant's evidence refers to the preparation and examination of the BLP and suggests that this affects the weight to be given to Policy 1 and Site 4. However, notwithstanding any representations made at the time, including by the then landowner and the appellant, BLP and the policies within it were found sound by the examining Inspector and it was subsequently adopted by the Council relatively recently in 2019 with a plan period of 2015 to 2030. There has been no significant change in circumstances since BLP was adopted or the site allocated, other than the Council's five year housing land supply position which I will address later in my decision. Consequently, and in light of the increasing housing need in the area, I attach significant weight to the conflict with BLP Policy 1 and Site 4 and with LP Policy H1.
15. Policy 2 of the BLP relates to the provision of affordable housing with part a) of the policy seeking affordable housing on all developments of 11 residential units or more with the Council seeking a provision of 35% affordable housing with 60% social-rented/affordable rented and 40% intermediate provision. The more recently adopted LP states that a 35% provision of affordable housing will be sought on schemes of 10 or more dwellings. Both the BLP and the LP require viability appraisals to be submitted in such circumstances where a level of affordable housing below 35% is proposed.
16. The proposal itself is not contrary to BLP Policy 2 and LP Policy H4 in that the requirement for 35% affordable housing is not triggered. However, the provision of the higher number of dwellings required by the allocation would trigger a requirement for affordable housing of 35% of 60 dwellings, that is 21 affordable dwellings as opposed to the 6 proposed, unless a lesser amount is justified based on a financial appraisal. I will consider the likely viability of a policy compliant scheme in due course.
17. Similarly, my consideration of viability will also establish whether the proposal is in compliance with Policy D3 of the LP which relates to optimising site capacity through the design-led approach. It states that all development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations and that optimising capacity

² Policy H1 and Table 4.1

means ensuring that development is of the most appropriate form and use for the site.

18. Finally, in reaching my decision I note that there is policy support for employment uses specifically within Site 4 itself and also more generally within BLP Policy 83 and LP Policy E4, notwithstanding that the site's previous designation as part of a wider Business Area was removed upon adoption of the BLP.

Viability of the allocation and whether reasonable prospect of application coming forward

19. Paragraph 122 of the Framework states that where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan that they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs; and in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.
20. As stated, the use allocated in the BLP is for a mixed use including 60 dwellings and an unspecified amount of employment floorspace. The allocation does not specify what type of dwellings are to be provided or set out any design parameters for development such as scale, height or layout.
21. There was much discussion during the Inquiry as to whether a proposal including more or less than 60 dwellings would be in accordance with the allocation, with reference being made to other housing allocations within the BLP which refer to "around" a certain number of dwellings rather than "including" as is the case with Site 4 and a number of other allocations. Having regard to the evidence, I consider that the wording of the allocation does not necessarily preclude a higher number of dwellings than 60 as such a proposal would "include" 60 dwellings. In any event, even if I were to take the appellant's view that the requirement is for exactly 60 dwellings, I would need to be satisfied that there is no reasonable prospect of an application for 60 dwellings coming forward.
22. With regard to timing, the allocation states that the local plan phasing is years 6-10 of the BLP which as previously stated, covers the period 2015 to 2030. Although the BLP envisages delivery of the allocation at this time as confirmed by the housing trajectory at Appendix 10.1 of the BLP, the appellant makes much of the fact that the site is not included in the Council's 2020 housing trajectory. The Council explained its reasons behind the exclusion in evidence and in any event, I do not consider that its exclusion from the 2020 trajectory or the findings of the Inspector dealing with the Dylon appeal³ regarding the deliverability of the site mean that the site is not developable.
23. Noting that the definition of developability in the Framework refers to viable development "at the point envisaged", it is arguable as to whether the point envisaged in this case is years 6-10 or the longer plan period. At the point that a plan is being prepared, a judgement is made about when developable housing site allocations are likely to be deliverable and this comprises the phasing. It is clear that various factors can result in an allocated site not being

³ APP/G5180/W/18/3206569

considered to be deliverable and I note that a number of other BLP housing allocations with phasing of years 6-10 now show phasing of years 6-15 in the 2020 trajectory (Sites 1, 3 and 5). Consequently, I consider that the relevant time period for considering whether there is a reasonable prospect of an application coming forward is the plan period as opposed to the local plan phasing of years 6-10.

24. However, in any event, even if the appellant's view that it is years 6-10 is correct, there is no reference to developability within paragraph 122 of the Framework but rather reference to whether there is a reasonable prospect of an application coming forward for the use allocated in the plan.
25. It has been established that no specific viability testing of the site and the allocation was carried out at the plan making stage. However, whilst this may have been useful given the previous use of the site and the associated levels of contamination, I note that a site specific viability appraisal of the site was not required and indeed the examining Inspector was satisfied that the viability evidence submitted at the plan making stage was acceptable.
26. The appellant considers that a policy compliant scheme is unviable and notwithstanding their view on the number of dwellings required by the allocation, numerous options for development on Site 4 incorporating a different number of dwellings ranging from 50 to 120 have been submitted. It is common ground that none of the schemes that have been viability assessed are currently viable and I can see no reason to disagree with this conclusion. However, there is disagreement between the parties as to whether there is the possibility that a viable scheme could come forward that is in accordance with the site allocation.
27. I have been provided with various documents that tackle the issue of viability and heard evidence from expert witnesses on the matter. In reaching my decision I have had regard to all of this evidence, some of which was updated and added to during the course of the Inquiry.
28. Firstly, I do not consider that it has been demonstrated that the various scheme options incorporating varying numbers of dwellings put forward by the appellant optimise the site capacity through a design-led approach as is required by LP Policy D3.
29. For instance, with the exception of Option A, which was for a large builders' merchants building with 120 flats above, Options B to D all have a very similar site layout including an identical access point and internal road layout, position and siting of units 2A and 2B and location of children's play area. Additionally, Options B to D all include a mix of 1 bedroom flats, 2 to 3 bedroom dwellings and either 2 or 4 commercial units. There are no alternative schemes before me for 60 dwellings within the site allocation incorporating different layouts, building designs or housing mixes. Such alternative schemes and designs would inevitably affect remediation costs, construction costs, sales values and consequently viability.
30. Though there is disagreement between the parties in respect of the net margins associated with flats and houses, even if I were to take the appellant's view that flats are not more profitable than houses, then building more flats than houses on the site may still materially affect viability due to potential

differing build and remediation costs associated with different building types and layouts.

31. As stated above, my view is that the allocation does not preclude the development of the site for more than 60 dwellings and whilst I note that the predominant housing type along Liddon Road is two storey terraced and mews houses, there are larger scaled buildings adjacent to the site at the western end of Liddon Road and at the Tesco site to the south. This together with the fact that the area is not subject to any heritage designations means that larger scaled, higher density development may be acceptable on the allocated site, particularly in light of the higher housing targets following publication of the LP and may not necessarily result in harm to the character and appearance of the area. However, any such proposal would also clearly need to comply with other development plan policies relating to matters such as living conditions, accessibility, density and access requirements and would also need to have regard to site constraints in terms of contamination which in turn could affect construction costs.
32. I acknowledge that all of the viability appraisals before me show a significant negative residual land value, however I also note that as well as altering the layout and housing mix of the scheme, there may be other ways to reduce the costs associated with developing the site. For example, all of the appraisals provided by the appellant include a cost of £1.875 million associated with providing access off Homesdale Road via land adjacent to the site allocation. This is despite the fact that this land is also owned by the appellant and that the site allocation anticipates access via Liddon Road. Whilst access via Homesdale Road may be preferable in planning terms, it is not required by the allocation and in any event, I am not convinced that under the circumstances the cost cited for the access is reasonable or that it should be borne by development on the allocated site.
33. I also note that construction costs contribute significantly to the overall cost of the schemes and that these include various abnormal environmental costs associated with remediating the site to accommodate the particular schemes before me. The abnormal environmental costs are significant and I am unconvinced that these could not be reduced by alternative policy compliant schemes incorporating different layouts and mixes of development, particularly ones that avoid development on the most contaminated parts of the site and reduce the area covered by gardens. This is notwithstanding that the remedial costs associated with residential development are likely to be higher than for commercial development.
34. Although the appellant states that the options submitted are the result of a multi-disciplinary approach to designing an optimal scheme for the site that has regard to site constraints and opportunities, there is no evidence to demonstrate that this is in fact the case. In the absence of this, I am not convinced that the schemes before me optimise development on the site allocation.
35. Other matters relating to viability such as land value, developer returns and future trends in residential sales value have also been dealt with in evidence. Although how much developer return ought to be expected on commercial development is in dispute, it is agreed that this would not have a significant effect on viability. Any disagreement with regard to future trends in sales

values is also of limited relevance as the evidence relates specifically to the scheme options put forward by the appellant and for the reasons stated above, I am not convinced that these optimise the site capacity. Different schemes will require different levels of uplift of sales values to make them viable and in any event, as discussed at the Inquiry, forecasting is inherently unpredictable.

36. With regard to land value, guidance is provided within the PPG⁴ which clearly states that where viability assessment is used to inform decision making, under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan. Instead, the PPG states that benchmark land value should be based upon existing use value (EUV), allow for a premium to landowners and reflect the implications of various costs including abnormal costs. In this case the appellant considers the purchase price to be the most appropriate land value to use and considers that this is less than the EUV noting that the site has been remediated to accommodate an open storage use.
37. Although the appellant has not relied on land value in the assessment of scheme viability, it would become more relevant should other factors as outlined above mean that a policy compliant scheme is viable. Bearing this in mind and having regard to the evidence before me, it appears that the last known use of the allocated site was as a gasworks and therefore that should form the basis of the calculation of EUV. This is likely to be much less than the purchase price and a B8 land value.
38. The fact that the allocated site has never been marketed is also of relevance. I acknowledge the apparent lack of speculative interest in the site, the difficulties in marketing the site now and the significant investment made to date by the appellant. Nevertheless, the PPG⁵ states that when considering whether there is a realistic prospect of an allocated site being developed for its intended use, it may be relevant to take into account factors such as whether there is evidence that the site has been actively marketed for its intended use for a reasonable period, and at a realistic price. Although this is not a policy requirement, the fact that the site has never been actively marketed for residential led development in accordance with the allocation casts further doubt on whether the schemes before me optimise its residential capacity.
39. For all of the reasons set out above, there are a large number of questions that remain unanswered with regard to the appellant's viability evidence and I am not convinced that the site allocation is not viable, notwithstanding the costs associated with remediation of the contamination on site. I therefore consider that at this point in time, it cannot be said that there is no reasonable prospect of an application for a policy compliant scheme coming forward within the plan period. Consequently, the proposal is contrary to Policy D3 of the LP in that it fails to optimise the capacity of the site which includes a housing site allocation. I attach significant weight to this conflict.

Other Matters

40. Both main parties agree that the Council cannot currently demonstrate a five year housing land supply with the most up to date supply position showing a 3.31 year supply. It is agreed that this is a significant under supply.

⁴ National Planning Policy Guidance Paragraphs: 013 to 017 Reference ID: 10-013-20190509 to 10-017-20190509

⁵ National Planning Policy Guidance Paragraph: 001 Reference ID: 66-001-20190722

41. Paragraph 11d of the Framework states that under such circumstances, the policies which are most important for determining the application are out of date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
42. The proposal would provide 6 affordable dwellings and a large builders' merchants building. The parties agree that moderate weight should be attached to the benefit of providing 6 affordable dwellings and I see no reason to disagree with this having regard to the demand for affordable housing and to the relatively low number of dwellings proposed. However, I note that the tenure proposed is not the one preferred by the Council.
43. It is anticipated that the proposal would provide 35 to 40 FTE jobs connected to the builders' merchants and employment would also be provided during the construction phase of the development. In addition, an apprenticeship scheme secured through a planning obligation is proposed to employ 5 apprentices each year for the first 5 years that the builders' merchants is open. I attach significant weight to the employment benefits of the proposal having regard to the number of jobs that would be created.
44. The proposal would provide other benefits in that it would provide an additional builders' merchants in the area which the appellant states, would meet an unmet need, would support the needs of the construction sector and would help to reduce journey times. The provision of a large builders' merchants in the area would improve choice and the quantity and quality of employment floorspace and may, under some circumstances reduce journey times. However, noting that the allocation does not specify what type of employment use ought to be provided on the site and the apparent lack of policy relating specifically to the provision of builders' merchants, I attach moderate weight to the economic benefits of the provision of the builders' merchants and any other economic benefits associated with the proposal including spending in the local economy.
45. Remediation and de-contamination of the site would occur as part of the proposal. Whilst this is a policy requirement of the allocation and more generally, it is nevertheless a benefit and given the large amount of contamination on the site, I attach significant weight to it. Like the parties, I attach limited weight to the landscaping and biodiversity improvements.
46. The appellant also makes reference to the sustainable transport benefits of the proposal attracting moderate weight. It is not entirely clear what sustainable transport benefits are being referred to, though reference is made to reducing travel distances in the appellant's evidence. Whilst the provision of an additional builders' merchants at the site is likely to affect travel distances for some customers, it is difficult to quantify how many would be affected and by how much. Consequently, I attach limited weight to this benefit.
47. Finally, the appellant states that should planning permission be refused for the proposal, then the site will simply remain undeveloped and that permission will be sought for a temporary open storage use and/or an amendment to the site allocation will be sought through the plan review process. Be that as it may, given my finding that the evidence does not show there to be no reasonable prospect of the site allocation coming forward within the plan period, it would

be premature to permit an alternative use at this stage. Moreover, there is no substantive evidence to indicate that the first two alternative scenarios stated by the appellant are likely to occur. Consequently, I do not attach any weight to this purported benefit of the proposal.

48. Weighed against these benefits is the significant harm that arises from the conflict with BLP Policy 1 and Site 4 and with LP policies H1 and D3 which seek to optimise the use of sites and to secure the provision of housing with a minimum requirement of 60 dwellings on Site 4. The proposal fails to maximise the amount of housing on the site which, subject to viability, may also result in a failure to maximise the amount of affordable housing, at a time when there is a significant under supply of housing, including affordable housing, and rising demand as evidenced by the LP. Moreover, given my finding on whether there is a reasonable prospect of an application coming forward for the allocated use, the proposal is also in conflict with paragraph 122 of the Framework.
49. Taking the above matters into consideration, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including policies to boost the supply of housing and to meet the need for affordable housing (including paras 60, 62 & 63). The proposal does not therefore benefit from the presumption in favour of sustainable development.
50. A completed Planning Obligation has been submitted during the course of the appeal addressing various matters. However, there is no need for me to consider the form or content of the obligation as it would not alter the outcome of the appeal.
51. In determining the appeal, I note that a large number of representations from local residents raised concerns with regard to highways matters and there was some discussion regarding this issue at the beginning of the Inquiry. However, as I am dismissing the appeal having had regard to the main issue, there is no need for me to consider highways matters or any other issue raised by interested parties as my findings on them would not alter the outcome of the appeal.

Planning Balance and Conclusion

52. As stated, the proposal is contrary to a number of development plan policies and although the Council's five year housing land supply position means that some of the policies are considered to be out of date, the proposal is nevertheless contrary to the development plan when taken as a whole. There are no material considerations that indicate that the proposal should be determined otherwise in accordance with the development plan.
53. Therefore, for the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed and planning permission refused.

Beverley Wilders

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Parkinson	Of Counsel
Instructed by LB of Bromley	
Ben Johnson	London Borough of Bromley
Andrew Jones	BPS Chartered Surveyors
Catharine Leadbeater	London Borough of Bromley
Nojan Rastani	London Borough of Bromley
Ajit Gill	Environment Agency
Harry Washington-Smith	Environment Agency

FOR THE APPELLANT:

Simon Pickles	Of Counsel
Instructed by Travis Perkins (Properties) Limited	
Jonathan Best	Montague Evans
Mark Whitfield	Montague Evans
Ian McGrane	JPP
Doug Sharps	Sharps Acoustics

DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 Appellant's opening submissions
- ID2 Council's opening comments
- ID3 Updated Plan forming part of Appendix 12 to Jonathan Best's POE
- ID4 Supplementary Note by Mark Whitfield
- ID5 SOCG and issues concerning valuation matters
- ID6 Development Appraisals prepared by BPS
- ID7 Updated draft S106 signed by the appellant
- ID8a OS Site Map relating to application reference 08/03879
- ID8b Site Map labelled Landmark Historical Map dated 1995
- ID9 Aerial Photograph of the site
- ID10 Updated agreed list of conditions marked FINAL 17 June 2021 received on 21 June 2021
- ID11 Copy of title plans for SGL622967 and SGL802076

- ID12 Note and further table prepared by Mark Whitfield
- ID13 Note prepared by Andrew Jones
- ID14 Option B ground floor plan showing road area calculation (13104-059 (ROAD) rev D
- ID15 Council's Closing Comments
- ID16 Appellant's Closing Submissions