



Appeal Decision

Site Visit made on 26 August 2021

By JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th November 2021

Appeal Ref: APP/Y3425/W/21/3274407

Unit L Beacon Business Park, Weston Road, Stafford ST18 0WL

- 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 Barnett Ratcliffe Partnership & Gastronomy Foods UK Ltd (on behalf of KFC) against the decision of Stafford Borough Council.
 - The application Ref 19/31094/FUL, dated 21 August 2019, was refused by notice dated 6 November 2020.
 - The development proposed is the demolition of existing buildings, and the erection of a proposed KFC drive-through and restaurant with associated external works, A3-A5 use classes.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings, and the erection of a proposed KFC drive-through and restaurant with associated external works, A3-A5 use classes, at Unit L Beacon Business Park, Weston Road, Stafford ST18 0WL in accordance with the terms of the application, Ref 19/31094/FUL, dated 21 August 2019, subject to the conditions in the Conditions Schedule below.

Main Issues

2. The main issues in this case are
 - a) the effect of the proposal on the delivery of employment land
 - b) whether it is contrary to the intention of locating such uses in Town Centres and other similar centres, and
 - c) its impact on public health.

Reasons

The loss of employment land

3. The appeal site is within the settlement boundary of Stafford in an industrial area that was formerly an RAF storage depot. In 2003 a Certificate of Lawfulness was granted for the use of the depot for storage and distribution together with ancillary offices, canteen and associated infrastructure facilities (the 2003 Certificate). The appeal site fell under the area covered by the 2003 Certificate, being ancillary offices at the site entrance. I have been told that since then it has been used as standalone offices in Class B1 of *The Town and Country Planning (Use Classes) Order* (the UCO), but has been vacant for a number of years.

4. Subsequently, much of the RAF Depot has been developed for business purposes following the grant of outline planning permission in 2007 as part of the first phase of the Beacon Business Park (BBP1). Outline planning permission was granted for a second phase of the business park adjacent in 2014.
5. The development plan includes *The Plan for Stafford Borough 2011-2031* (Local Plan 1) and *The Plan for Stafford Borough: Part 2 2011-2031* (Local Plan 2). In the Local Plan 1 the appeal site is not identified as within any specific designation. Policy Stafford 1 states that development should not result in the loss of employment land to non employment generating uses unless certain circumstances are met. In Local Plan 2 the site is within a 'Protected Employment Area'. Policy SB3 says that in employment areas only employment uses consistent with Policy Stafford 1 will be permitted.
6. I have not been told that an employment use has been defined in any glossary or similar in the Local Plan. In considering the definition of employment uses the Officer Report refers to Policy E3 in Local Plan 1, which defines them as being Class B uses in the UCO but excluding B1 offices. However, that definition is given in the explanatory text to a policy that relates to development within specifically defined Recognised Industrial Estates. There is no reason to infer it should have wider application across the plan as a whole, and there is nothing in or around Policies Stafford 1 or SB3 to confirm or imply it is relevant to those.
7. In its statement though the Council said employment was synonymous with uses in Class B of the schedule to the UCO. Moreover, it adds that Policy SB3 seeks to protect and retain uses in UCO Class B in Protected Employment Areas and resist their loss to other uses. These therefore point to a broader definition of employment uses than given in the text accompanying Policy E3, as it encompasses B1 offices. Moreover, such a use of the term appears to be in line with how it is used in paragraphs 20 and 123 of the *National Planning Policy Framework* (the Framework), where similarly it is undefined. Indeed, it also tallies with Condition 5 on the permission for BBP1 that restricted uses to those in Class B1 and/or B8 of the UCO. Clearly that condition would sit uncomfortably with the definition given in the text for Policy E3.
8. Furthermore, non employment generating uses are also undefined. Whilst it could be reasonably contended that, as it is a different phrase, an employment generating use is not the same as an employment use, I have no alternative definition before me and so shall assume they have similar meanings.
9. The 2003 Certificate concerned a storage and distribution use. That does not mean that its ancillary elements, even if clearly defined, are then able to be deemed lawful uses in their own right. Since that date no further Certificate of Lawfulness has been granted for this site, and so I am unable to find its lawful use is in Class B1 at present. However, I have also been told of no planning permission having been forthcoming since the 2003 Certificate was granted. As such, I accept the lawful use of the site still falls in Class B of the UCO.
10. The proposal would employ a significant number of staff, even when taken on a full-time equivalent basis, but I have difficulty accepting that means it is an employment use or even an employment generating use for the purposes of interpreting planning policy. This is because most uses apart from maybe dwellings or flats could potentially employ people, and so to my mind defining

the term so broadly renders the concept of an employment use virtually meaningless.

11. Therefore, in the light of the above, it is reasonable to interpret employment land and uses as being those in Class B of the UCO, and so this scheme would result in the loss of employment land.
12. Local Plan 2 Policy SB3 requires consistency with Local Plan 1 Policy Stafford 1, and that accepts the loss of employment land to non-employment generating uses in 2 circumstances. The first is if the existing use causes environmental problems (Criterion 1), which is not relevant in this instance.
13. However, the second accepts such a loss if each of 3 other criteria are met. To my mind there is substantial evidence submitted by the appellant to show the site has been marketed without success, even before KFC showed an interest, for what could be considered as employment-generating uses (Criterion 3). Although I accept this evidence was forthcoming at the appeal stage, to my mind its submission seems a reasonable response to the decision notice and the Council has had opportunity to respond. Consequently, contrary to the Council's request, it is not evidence I propose to disregard.
14. Moreover, given my findings in relation to Criterion 3, I have no reason to conclude that losing this land would result in a reduction in the range or diversity of jobs available (Criterion 2) as there appears to be no latent demand for this site to be taken over by a Class B use. Furthermore, being satisfied that it has been marketed for employment uses without success, I see little benefit in retaining the site for its existing use (Criterion 4). Therefore, the use of this land for non-employment uses accords with the second circumstance in this policy.
15. Accordingly, I conclude that the scheme would result in the loss of employment land to a non employment generating use, but compliance with Criteria (2)-(4) means it would not conflict with Local Plan 1 Policy Stafford 1, or be inconsistent with Local Plan 2 Policy SB3.

Whether the scheme is contrary to the intention of locating such uses in Town Centres

16. Policy E8 in Local Plan 1 says planning permission will be granted for hot food uses such as this by applying 2 criteria, which broadly state that the development is within a town, local or other centre and it would not cause unacceptable disturbance to nearby residents. The second one is not an issue here given its distance from housing, but this development lies outside of any recognised centre. To my mind while this policy says such uses would be granted planning permission in those centres, it does not expressly state that such uses would not be permitted outside of those 2 criteria. This indeed seems to be accepted in the Officer Report where it states that 'by implication' such uses are unacceptable outside such centres. Therefore, while not authorised by the policy the development is not explicitly prevented by it either.
17. From the supporting text to the policy, it appears that its aim is to promote competitive town centre environments through vitality and viability, provide local services and minimise car trips. I have no evidence to show the vitality and viability of any centre would be compromised by this scheme being located here. Indeed, the Council accepted that the proposal meets the sequential test

for the use in an out-of-centre location. Moreover, given the unit's location on a large industrial area next to a main road in to/out of the town, I anticipate that much of its custom would be drawn from around the site, whether it would be serving local employees or passing motorists.

18. As a result, I see no direct conflict with Policy E8, but if I did find a conflict with the wording, the lack of harm resulting could well be another consideration that indicated the decision should be otherwise than in accordance with the development plan conflict.
19. Accordingly, I conclude that the development would not conflict with Local Plan 1 Policy E8 and would provide a local service, would not fail to promote competitive town centre environments through vitality and viability and would not undermine the aims of minimising car travel.

Its impact on public health

20. The Framework states that planning decisions should aim to achieve healthy places by, among other things, enabling and supporting healthy lifestyles. Moreover, in relation to a healthier food environment, the *Planning Practice Guidance* states that

'Planning policies and supplementary planning documents can, where justified, seek to limit the proliferation of particular uses where evidence demonstrates this is appropriate'

21. The appeal site is directly opposite a secondary school. However, from the above, it is clear there is no specific national policy automatically preventing hot food uses close to schools. Rather, they can be resisted '*where justified*' and '*where evidence demonstrates*'. In this case I have no specific evidence put forward to show why the use should be resisted on this ground, and there is no policy basis in the development plan.
22. I note the contention that the development plan is out-of-date because it pre-dates such guidance coming forward. However, even if I were to rely on national policy to determine the scheme, as is shown by the above, it still identifies a need for justification and evidence to resist the proposal.
23. Accordingly, noting the guidance contained in the Framework and the *Planning Practice Guidance*, and in the absence of local policy or any evidence to demonstrate otherwise, I conclude that I have no basis to resist this scheme on the grounds of public health.

Other Matters

24. There is no specific evidence to show that safeguarding and anti-social behaviour will cause an unacceptable problem here. The contribution of the development to traffic passing the site is likely to be minimal, whilst a crossing outside the school, and I am aware that a small supermarket and other hot food outlets are on the same side of the road as the proposal. Consequently, I am not satisfied that the effect on highway safety would be worse than at present. The issue of the concentration of pupils is not a matter on which the appeal can be dismissed. I consider I have insufficient grounds to dismiss the scheme on the basis of a possible litter nuisance or to find that odour would be unacceptable in this location.

25. The site is within the 8km Zone of Influence around the Cannock Chase Special Area of Conservation (the SAC), which is a large area of European Dry Heath habitat. Likely significant effects on its conservation objectives may occur from pollutants from roads near to the SAC, recreational pressure, water abstraction, eutrophication, and increased development. Given its nature and the distances involved, even if I were to take into account the precautionary principle, I consider there to be no pathway that would result in the proposal having a likely significant effect on any important features of the SAC, whether alone or in combination with other developments.
26. A Unilateral Undertaking has been submitted in relation to travel plans, and I have no basis to consider this is not in line with Regulation 122 in the *Community Infrastructure Levy Regulations 2010*.

Conditions

27. For the avoidance of doubt the development should be in accordance with the approved plans. In the interests of the appearance of the locality details of the building's materials and means of enclosure should be approved before the development advances above slab level, the existing trees to be retained should be safeguarded and a landscaping scheme should also be agreed and implemented. Moreover, highway safety concerns mean the parking and access should be provided, as should the footpath alongside the car park serving the Costa unit.
28. Having regard to promoting alternative means of travel, the cycle stands should be provided and a travel plan agreed. Although I note that the matter of the travel plan is addressed in some respects in the Unilateral Undertaking, the suggested condition covers slightly different matters. The submission of compliance reports over time could be a requirement of the travel plan and need not be referenced explicitly in the condition.
29. Finally, having regard to ecological matters bat and bird boxes should be introduced and if there is any external lighting it should only be in accordance with details first agreed with the local planning authority. Otherwise, I consider the Council's suggested condition requiring compliance with the submitted ecological appraisal and activity survey for bats to suffice.
30. However, given its location in an industrial estate it is unclear why, under planning legislation, a construction management plan should be sought, burning should be prohibited or the hours of working restricted. I also see no clear justification to remove the 'permitted development' rights, or indeed any other rights, concerning boundary fencing or the changing of use of the building. I consider there is no particular reason to agree the materials and finishes of the gantry or pedestrian barriers, and given the development's proximity to the trees and mindful of the presence of other legislation, a condition relating to work during the bird nesting season is not justified in this instance.

Conclusions

31. In the light of the above the appeal is allowed.

JP Sargent

INSPECTOR

Conditions Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise modified under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 1918/PL/01 Rev B; 1918/PL/02 Rev A; 1918/PL/03 Rev B; 1918/PL/04 Rev D; 1918/PL/05 Rev A; 19076 100 Rev A; 19076 101 Rev A; 19076 102 Rev A; 19076 103 Rev A; 19076 104 Rev A; 19076 105 Rev A.
- 3) No development shall commence above slab level until details / samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) No development shall commence above slab level until details of the proposed boundary treatments and means of enclosure have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall commence above slab level until details of the proposed hard and soft landscaping scheme for the site (including tree planting) has been submitted to and approved in writing by the local planning authority, together with a timetable for its implementation. The approved landscaping scheme shall then be implemented in accordance with the approved details and timetable, and any plants that, within 5 years of planting, die, become diseased or are removed, shall be replaced with the same species no later than in the next planting season.
- 6) No development shall commence above slab level until details of the location and design of cycle parking stands have been submitted to and approved in writing by the local planning authority. The development shall not be first used until the approved cycle stands have been installed and they shall thereafter be retained.
- 7) Before the first use of the building hereby approved, details shall be submitted to and approved in writing by the local planning authority of the position of 2 1FR Schwegler bat roosting tubes and a 1SP Schwegler Sparrow Terrace nesting box, together with a timetable for their installation, and the tubes and nesting box shall then be installed in accordance with the approved details and timetable and thereafter retained.
- 8) Before the first use of the building hereby approved, the access, parking, servicing and turning provision shall be provided in accordance with plan 1918/PL/04 Rev D and thereafter retained.
- 9) Before the first use of the building hereby approved, the walkway shown on plan 1918/PL/04 Rev D that would run from the building towards the A518 along the southern edge of the parking area to the Costa unit shall be provided
- 10) Before the first use of the building hereby approved, a travel plan to promote travel by sustainable modes, together with a timetable for its

implementation, shall be submitted to and approved in writing by the local planning authority. The approved travel plan shall be implemented in accordance with the approved timetable.

- 11) With the exception of limiting tree removals to TO578, TO592 and TO593 in accordance with plan 1918/PL/04 Rev D, the development hereby approved shall be carried out in accordance with plan Q1868 TPP & AMS A1 entitled *Plot R24 Tree Protection Plan & Arboricultural Method Statement For Link Footway* by Rob Keyzor Tree Surgeons. All measures shall be implemented and maintained throughout development until completion of all construction related activity.
- 12) The development hereby approved shall be carried out in strict accordance with the recommendations, methods of working and mitigation measures, detailed within submitted *Preliminary Ecological Appraisal*, dated October 2019 and the *Activity Survey for Bats*, dated August 2020, both produced by Absolute Ecology.
- 13) There shall be no external illumination other than in accordance with details that have first been submitted to and approved in writing by the local planning authority