

Appeal Decision

Site visit made on 6 December 2021

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2021

Appeal Ref: APP/C3620/W/21/3274983

Connect House and Trident House, Kingston Road, Leatherhead, Surrey KT22 7LT

- 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 Halcyon Offices Ltd against the decision of Mole Valley District Council.
 - The application Ref MO/2020/1703, dated 25 September 2020, was refused by notice dated 8 March 2021.
 - The development proposed was originally described as: 'Outline application for the consideration of layout, appearance, access and scale in respect of the erection of one block comprising 75 No. flats with associated car parking and landscaping following demolition of the existing office buildings.'
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of one block comprising 75 No. flats with associated car parking and landscaping following demolition of the existing office buildings, at Connect House and Trident House, Kingston Road, Leatherhead, Surrey KT22 7LT, in accordance with application Ref: MO/2020/1703, dated 25 September 2020, and subject to the conditions in the attached Schedule, as well as the terms of the associated Section 106 legal agreement.

Application for costs

2. An application for costs was made by Halcyon Offices Ltd against Mole Valley District Council. This is the subject of a separate decision.

Procedural Matters

3. In allowing the appeal, I have amended the description of development to remove the reference to the outline application and the associated considerations for which it sought approval. This is to provide a more concise description, and I am satisfied that in making this alteration, the interests of the parties have not been compromised.
4. The original application sought outline planning permission with only landscaping reserved for future consideration. I have assessed the appeal on this basis.

Main Issues

5. The main issues are:

- i) whether the proposal would provide suitable living conditions for future occupiers, having regard to noise and disturbance; and
- ii) whether the proposal makes suitable provision for affordable housing, having regard to the requirements of local policy.

Reasons

Living Conditions

- 6. The appeal site is located adjacent a large electricity substation. Accordingly, it is subject to a low-frequency noise and associated vibration. The proposal has been supplemented by a Noise and Vibration Assessment which seeks to address sound reduction performance in order to specify the requirements for the glazed elements of the development, as well as the necessary ventilation strategy.
- 7. The assessment specifies the performance that would be necessary to comply with World Health Organisation Guidelines, and it states that the nominated glazing supplier should verify that their proposed window system would meet the requirements. Evidence presented within the assessment also states that no adverse comment would be expected by future occupants if such specifications were provided.
- 8. Although the Council refused planning permission regarding this matter, evidence presented from their Environmental Health Officer demonstrates that subject to a suggested condition requiring the compliance with the findings of the Noise and Vibration Assessment, no objection to this matter was raised. The appellant has confirmed their acceptance of this condition, and no additional evidence has been provided by the Council to supplement their decision. I note the reference to Paragraph 185 of the National Planning Policy Framework (the Framework). However, based on the evidence before me, I am satisfied that the proposal would suitably mitigate adverse impacts resulting from noise. Accordingly, the proposal would meet the requirements of the Framework.
- 9. In the absence of compelling or substantive evidence presented by the Council, having regard to noise and disturbance, I conclude that the proposal would provide suitable living conditions for future occupiers. It would therefore comply with the requirements of the Framework as identified above.

Affordable Housing

- 10. Policy CS4 of the Core Strategy (2009) (CS) requires that on developments of 15 or more dwellings, 40% of the dwellings should be affordable. Despite this, the proposal does not provide any affordable housing. Based on the evidence before me, the justification behind this approach is due to the provision of basement car parking, the build costs of which make the provision of affordable housing an unviable proposition.
- 11. To justify this position, the proposal has been supplemented by a financial appraisal which has been scrutinised by consultant's appointed by the Council and who agreed with its findings. Accordingly, based on the evidence before

me, the lack of viability of the proposal is not in dispute. Despite this, in refusing planning permission, the Council have chosen to disregard these findings.

12. Within the justification to Policy CS4, at paragraph 6.1.37, it states that applicants who cite non-viability as the reason for not complying with the requirement to provide affordable housing or a financial contribution, must support their case with financial evidence that will be open to scrutiny. As identified above, the financial appraisal that accompanies the proposal was subject to appropriate scrutiny, and its content was found to represent a fair assessment of the proposal. The Council have failed to provide any additional substantive or compelling evidence to justify why the findings of the financial appraisal do not justify the lack of affordable housing. Accordingly, they appear to simply rely on the policy itself. However, the justification to the policy cannot be ignored. Within the CS, the Council clearly state that financial appraisals can be used to justify not complying with local policy, and the appellant has provided the necessary evidence which has been subject to independent scrutiny.
13. In the absence of any contrary evidence, I see no reason why the appellant's evidence cannot be relied upon. They have presented a transparent case which fully complies with the requirements of the CS. On this basis, I conclude that the proposal would make appropriate provision for affordable housing and that it would therefore accord with the requirements of Policy CS4 and its associated justification.

Legal Agreement and Conditions

14. The proposal has been accompanied by a signed and completed Section 106 legal agreement, the terms of which relate to ground rents and the ability to revisit viability in accordance with an agreed approach. This adds weight to my conclusion set out above regarding the provision of affordable housing and offers a degree of protection for the Council should economic circumstances change before development is commenced. Based on the evidence before me, I am satisfied that the content of the legal agreement complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010.
15. In light of my findings set out above, conditions are necessary in the interests of precision and clarity, to establish the terms of the outline planning permission and the time limit for commencing development, as well as to list the approved drawing numbers. Condition 3 is necessary to ensure a suitable external finish for the proposal, and condition 4 is necessary to optimise renewable energy provision. Conditions 5 and 6 are necessary to ensure the provision of a suitable drainage scheme, and conditions 7 and 8 are necessary due to contamination risks.
16. Condition 9 is necessary to provide suitable living conditions for future occupants, and condition 10 is necessary to safeguard the ecological interest of the site. Conditions 11, 12, and 13 are necessary in the interests of highway safety, and conditions 14 and 15 are necessary to promote more sustainable means of transport. Condition 16 is necessary to ensure a suitable landscaping scheme is provided, and finally, condition 17 is necessary to ensure suitable provision of refuse and recycling facilities.

17. Where conditions require information to be provided prior to the commencement of development, the appellant has confirmed their acceptance in writing.

Conclusion

18. For the reasons identified above, the appeal should be allowed.

Martin Chandler

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Approval of details of the landscaping of the site (hereinafter called the 'reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced and carried out as approved. The landscaping details shall include measures to deliver biodiversity net gains, such as bird or bat boxes and log piles, and incorporating the planting of native species of trees, shrubs, herbaceous plants and areas to be grassed. Plans and particulars of the reserved matters referred to above, shall be submitted in writing to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 2) The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the submitted documents and plan numbers 1364-PR-01A, 02A, 03A, 04A, 05A, 06A, 07A, 08A, 09A, 11A and 12A, and Tree Protection Plan contained in Appendix 3 of Report 4 Planning Tree Report dated August 2019; contained within the application and no variations shall take place.
- 3) Before any above ground works commence, details of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to any above ground works commencing, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority and be implemented prior to the first occupation of the development.
- 5) The development hereby permitted shall not commence until details of the design of a surface water drainage scheme have been submitted to and approved in writing by the planning authority. The design must satisfy the SuDS Hierarchy and be compliant with the national Non-Statutory Technical Standards for SuDS, NPPF and Ministerial Statement on SuDS. The required drainage details shall include:
 - (a) Evidence that the proposed final solution will effectively manage the 1 in 30 and 1 in 100 (+40% allowance for climate change) storm events, during all stages of the development. The final solution should follow the principles set out in the approved drainage strategy. Associated discharge rates and storage volumes shall be provided using a maximum discharge rate of 2 l/s for the 1 in 1 year rainfall event and 7.1 l/s for the 1 in 100 (+CC) year rainfall event.
 - (b) Detailed drainage design drawings and calculations to include a finalised drainage layout detailing the location of drainage elements, pipe diameters, levels, and long and cross sections at each element including details of any flow restrictions and maintenance/risk reducing features (silt traps, inspection chambers etc)

- (c) A plan showing exceedance flows (i.e. during rainfall greater than design events or during blockage) and how property on and off site will be protected.
 - (d) Details of drainage management responsibilities and maintenance regimes for the drainage system.
 - (e) Details of how the drainage system will be protected during construction and how runoff (including any pollutants) from the development site will be managed before the drainage system is operational.
- 6) Prior to the first occupation of the development, a verification report carried out by a qualified drainage engineer must be submitted to and approved in writing by the Local Planning Authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company and state the national grid reference of any key discharge element (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 7) No development other than demolition shall take place, or such other date or stage in the development as many be agreed in writing with the Local Planning Authority, until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the Local Planning Authority
- i) A preliminary risk assessment which has identified all previous uses and potential contaminants, including asbestos and potential migration of chlorinated solvents associated with the previous uses and solvent store developing a conceptual model of the site indicating sources, pathways and receptors, potentially unacceptable risks arising from contamination at the site.
 - ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected including those off site.
 - iii) The results of the site investigation shall be submitted along with the detailed risk assessment referred to in (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iv) Prior to commencement of above ground construction, a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.
 - v) No occupation of any part of the permitted development/of each phase of the development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any

plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification report. The long-term monitoring and maintenance plan shall be implemented as approved

- 8) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved. If no remediation is required, then prior to occupation the main contractor shall submit a statement to the planning authority which shall be approved in writing describing the ground conditions encountered and any adverse material identified that may have been removed.
- 9) Prior to the commencement of development, a detailed scheme of noise and vibration attenuation and ventilation sufficient to prevent overheating and maintain thermal comfort shall be submitted to and approved in writing by the Local Planning Authority taking into account the principles detailed in the KP Acoustic Noise and Vibration Report dated 09/09/2020. The scheme shall achieve the habitable room standards as detailed in BS8233:2014 with no relaxation for exceptional circumstances including detailed consideration of the impact and mitigation of low frequency noise from the neighbouring Electrical Supply station and if necessary must include details of post construction validation. All work must be carried out by a suitably qualified person and the approved noise, vibration attenuation and ventilation measures shall thereafter be retained and maintained in working order for the duration of the use in accordance with the approved details.
- 10) To ensure the legislation in the form of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017 is not breached, demolition works of Buildings B 2, 7 and 10 should only be undertaken in accordance with the provisions of Section 4.0 of the applicant's Preliminary Ecological Appraisal by Report4Planning dated August 2019. Works to remove these features should be undertaken only under the watch of a suitably qualified ecologist. Should bats or their roosts be identified at any point during demolition works, all work should cease immediately and Natural England Consulted.
- 11) The development hereby approved shall not be first occupied unless and until space has been laid out within the site for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear in accordance with the approved plans by the Local Planning Authority. Thereafter the parking and turning areas shall be retained and maintained for their designated purposes.
- 12) No development shall commence until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The required CTMP to include details of:

- (a) parking for vehicles of site personnel, operatives and visitors
- (b) loading and unloading of plant and materials
- (c) storage of plant and materials
- (d) programme of works (including measures for traffic management)
- (e) HGV deliveries and hours of operation
- (f) measures to prevent the deposit of materials on the highway.

Only the approved details shall be implemented during the construction of the development.

- 13) The development hereby approved shall not be first occupied unless and until details of an Information Pack to be provided to residents regarding the availability of and whereabouts of local public transport / walking / cycling / car sharing clubs / car clubs has been submitted and approved in writing by the Local Planning Authority. Thereafter, the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.
- 14) The development hereby approved shall not be occupied unless and until at least 20% of the available parking spaces are provided with a fast charge socket (current minimum requirement: 7kw Mode 3 with Type 2 connector - 230 v AC 32 amp single phase dedicated supply) in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.
- 15) The development hereby approved shall not be first occupied unless and until the following facilities have been provided for the secure parking of at least 78 bicycles within the development site in accordance with the approved plans by the Local Planning Authority. Thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.
- 16) Before any above ground works commence, details of the hard surfacing to be used within the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall indicate either porous materials or the provision of a direct run-off from the hard surface to a permeable or porous area. All hard surfacing shall be carried out in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter, permanently retained as such.
- 17) The refuse and recycling storage facilities, as shown on the approved drawings, shall be made available for use prior to the first occupation of the dwellings hereby permitted and, thereafter, shall be permanently retained as such.