



Appeal Decision

Hearing held on 9 November 2021

Site visit made on 9 November 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2022

Appeal Ref: APP/A4710/W/21/3269942

Land north of Mill Lane, Mill Lane, Boothtown, Halifax HX3 6TR

- 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 Reflecting Roadstuds Ltd against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 20/00236/OUT, dated 2 March 2020, was refused by notice dated 1 September 2020.
 - The development proposed is erection of Business Park for B1b and B1c Uses.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Reflecting Roadstuds Ltd against Calderdale Metropolitan Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The main parties at the Hearing agreed that the site address differs between the application form, appeal form and that stated on the decision notice. Therefore, for clarity I have taken the correct site address from that which was agreed by the parties.
4. The application was submitted in outline. The application form indicates that approval was sought for access, with the matters of appearance, landscaping, layout and scale reserved for future approval. Indicative plans have been provided, including a site layout and planning and design statement. These give an indication of the layout of units, parking, site sections and future landscaping of the site. I shall deal with the appeal on this basis.
5. The Council's decision letter does not reference Saved Policy BE5 of the Replacement Calderdale Unitary Development Plan, 2006, as amended by direction of the Secretary of State, 2009 (RCUDP). This policy refers to the design and layout of highways and accesses. At the Hearing the parties confirmed that BE5 is a relevant planning policy from the development plan in respect of the case. I have therefore, taken this policy into consideration, insofar it is relevant.

6. I have been referred to policies within the emerging local development plan '*The Calderdale Local Plan Publication Draft 2018*' (CLP). The CLP is currently being independently examined by an Inspector and it was confirmed at the Hearing that there are outstanding objections including housing, and main modifications are still to be undertaken. Most relevant to this appeal are emerging Policy EE1, which has outstanding representations. As such, in accordance with paragraph 48 of the Framework, and given its stage of the plan preparation, these policies have only limited weight.
7. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In the interests of natural justice both main parties have had the opportunity to make representation. In reaching my decision I have had regard to the revised Framework.
8. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) came into force, amending the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order). Relevant to this appeal, the Use Classes B1b and B1c were replaced by Class E, in Part A of Schedule 2. In the interests of natural justice both parties had the opportunity to make representation. However, having regard to regulation 4 of the Regulations, I have considered this appeal on the basis that prior to the commencement of the material period, a relevant planning application was submitted, and that it must be determined by reference to those use classes specified in the Schedule to the Use Classes Order on 31 August 2020.
9. Prior to the determination of the planning application the appellant submitted a 'transport assessment addendum'¹ (TAA) within this contained a number of plans which offered alternative solutions to the highway network. The Council did not determine the application on the basis of these plans, as these were not submitted independently or as revisions. However, in the interests of natural justice and for the purposes of the appeal decision, I have taken this document and the plans into account as a whole. All parties have seen this document and I do not consider that any party would be prejudiced if I were to do so.
10. At the Hearing the appellant provided a map extract which showed the extent of the 20mph zone in the surrounding area. All parties have seen this additional plan. As such, I have taken this plan into account in this decision on the basis that this indicates the location of the 20mph zone.

Main Issues

11. The main issues are:

- Whether the principle of the proposed development is acceptable, having particular regard to the site's allocation as a mixed use; and
- The safe and efficient operation of the highway network in the vicinity of the appeal site.

¹ SCP Transport Assessment Addendum, Ref: MD/190223/TN01 – 26 August 2020

Reasons

Principle of development

12. The appeal site relates to an agricultural field extending some 2.20ha located on the northern side of Mill Lane and is surrounded by a mixture of industrial, agriculture and residential uses. The site is allocated for mixed-use development under MU1 as identified in Saved Policy E4 of the RCUDP.
13. MU1, West of Boothtown Road, is a wider allocation as a new mixed used site which incorporates the appeal site. The RCUDP sets out that MU1 is 15.35ha in size and the appropriate Use Classes (A2, B1, C1, C2, C3, D1 and ancillary small scale A1 and A3). Since the allocation of MU1 there has been no development carried out on the significantly larger allocation of the wider site, and it has been unable to deliver any economic progress.
14. The policy criteria at E4A permits development proposals which include a mix of residential and the appropriate employment uses, provided that it relates well in scale and character; does not create any unacceptable environmental, amenity, safety, highway, or other problems; it is not for piecemeal development that would prejudice the comprehensive development of the site.
15. The policy criteria at E4B, states that within mixed-use sites, applications for a single use, or that comprise a disproportionately high amount of a particular use, will only be permitted in exceptional circumstances. It requires justification either in terms of their non-suitability for mixed use development or in terms of their contribution to the overall mixture of uses within the locality. The criterion at E4D, sets out other forms of land use (including proposals which support existing uses) are also acceptable providing they are compatible with residential development and comply with the other criteria.
16. However, the Framework takes a more flexible approach and requires that policies set out a clear economic vision and strategy which positively and proactively encourages sustainable growth. Paragraph 83 sets out that policies and decisions should recognise and address the specific locational requirements of different sectors. Although, the Framework is supportive of mix-used developments which promote social interaction, Saved Policy E4 appears to be more restrictive and not wholly consistent with the approach to that in the Framework.
17. In the Council's written evidence, figures indicate that the proposal would result in some 6% of the allocated site for business use and there would be no connectivity to the wider site, including the allocated mixed-use site at MU2. At the time of the planning application determination, the Council stipulated that it was not demonstrated that a mixed use could not be achieved taking account of the constraints of the site and surrounding land uses, and that it would also prejudice the comprehensive redevelopment of the wider site.
18. Nevertheless, the Council at the Hearing set out that they did not wish to now contend the reason for refusal on the basis of Saved Policy E4. In particular that the site has been put forward within the emerging local plan as unallocated land. It appears that the Council's focus is to provide housing land with the sites put forward as (LP1216) and to the north (LP1229), excluding the appeal site. Notwithstanding this, I can only afford limited weight to any

proposed new allocation given that it appears there are a number of outstanding objections in regard to surrounding land and uses.

19. Therefore, although the Council at the Hearing still considered that it would be a piecemeal development and stifle the whole site and development of the wider area including future masterplans. I have no substantive evidence to conclude that this would be the case, or that it would prejudice surrounding land if a residential allocation or proposals were to come forward. As such, I do not have sufficient evidence to concur that the appeal site should be considered as a whole.
20. Furthermore, I acknowledge that the Council's business and Economy consultation, supports the proposal being a logical extension to the existing business park. The proposal would relate well to the character of the locality and the existing industrial estate (B2 Uses). It would provide a sufficient buffer to the rest of the land, of which is within different ownership. There would also be no adverse impact on sensitive receptors, including nearby residential properties and suitably worded conditions could address noise disturbance and operating hours for the proposed Uses.
21. Moreover, given that the proposal is in outline it appears that a layout and design could be achieved in which access into the remaining area of land owned to the west could be obtained. There are also alternative routes to access the surrounding land including from Lumb Lane and Old Road.
22. Therefore, for these reasons, I conclude that the principle of the proposed development would be acceptable. Even if, I was to consider the proposal against any conflict with Saved Policy E4, it is acknowledged that given the site's location directly adjoining an existing industrial estate, the non-suitability for a mixed-use at the site including site levels, national planning changes for flexibility in Use Classes and promoting economic development, would justify the acceptability of the principle of the proposal in this case.

Highway safety

23. The Framework at paragraph 110, requires that in assessing sites for specific applications for development, it should be ensured that b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and d) any significant impacts from development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.
24. Mill Lane is a minor road which connects to the wider highway network of the A647 Boothtown Road to the east by a priority junction. Mill Lane has a 30mph speed limit with the connecting Hall Street North reduced to 20mph. It has acceptable lighting, but pedestrian footways vary in width or are absent in places along the roadway. There are a number of advisory traffic signs along Mill Lane. These include where Mill Lane narrows at the point with Hall Street North, adjacent to the existing access point serving the industrial units and one with a directional arrow on the opposite side of the road.

25. This signage advises that the roads are '*unsuitable for heavy goods vehicles*'. At the point of Hall Street North a further directional sign for large goods vehicles directs '*all routes*' back down Mill Lane and directs those along Crown Road, which leads back onto Boothtown Road. A further exit route sign is also lower down Mill Lane near to Grantham Road, directing lorry's 'Exit Route' to Crown Road.
26. In the vicinity of the appeal site, I observed this to be a busy part of the highway network with a range of vehicle types and sizes utilising the streets for access to the existing industrial estate, commercial buildings, residential properties and the wider area. It was apparent, from observations at the time of the site visit those larger vehicles did not follow the advisory signs along Mill Lane for the suitable exit route and used Hall Street North.
27. In addition, given the width of the roads two vehicles could not pass at the point of the two junctions with Boothtown Road from Mill Lane and Hall Street North without causing obstructions on the free flow of traffic in the area. These junctions were further constrained by third party land and buildings. There were also limited pedestrian footways on Hall Street North and Mill Lane to safely access the appeal site on foot, without having to navigate into the carriageway or take a route around the residential blocks on McBurney Close.
28. The proposal would result in the access from Mill Lane which currently serves the existing industrial units to the north closed off and a new single access to be formed. This would incorporate access in the form of a simple priority T-junction, including pedestrian and cycle access to serve the proposal and provide access for the existing industrial units. There are no concerns regarding the visibility proposed for this new access point and would be an improvement by closing the unsuitable existing access.
29. The indicative site layout reflects that the proposal would create a significant amount of employment use. Thus, resulting in a number of additional vehicles frequenting Mill Lane to access the proposed units, whilst provision for up to 87 parking spaces would be within the site.
30. The Council determined the proposal on the basis of plan SCP/190223/P01 (P01), which shows mitigation works to Mill Lane. This would make a section of Mill Lane and to the east with Hall Street North one-way entry, with only entry for vehicles from Boothtown Road. It further provides alterations to the junction of Hall Street North with Boothtown Road with improvements to visibility, including the lowering of the wall and vegetation to provide the necessary visibility splays.
31. The application was supported by a Travel Plan² which reviewed existing transport facilities and identified measures for sustainable transport modes. It clearly establishes that the appeal site is served well by local public transport with nearby bus stops and cycle networks. I have no reason to disagree that the site is not within a sustainable location. However, the travel plan is based on the assumption that the majority of staff will live in the local area and frequently use public transport with the onus of delivering such sustainable travel methods for staff of the units being placed on a travel plan co-ordinator. In addition, it does not address the concerns raised over safe pedestrian access

² SCP Travel Plan, Doc Ref: AS/190223/TP/1, dated October 2019

- to and from the site if utilising other modes of transport other than private vehicles.
32. A Transport Assessment³ (TA) was provided which incorporated a traffic count undertaken and estimated trip generations for the proposal on the basis of TRICS data. This estimates that there would be 43 vehicle trips two-way in the AM peak hour and 40 vehicle trips two-way in the PM Peak hour, equating to a vehicle trip every 1-2 minutes and that any residual cumulative impact of the development should not be considered as 'severe'. However, the assessment does not set out the proposed mitigation plan P01 that accompanied the application or reference to a Traffic Regulation Order (TRO).
33. The TA significantly underestimates vehicle movements to the appeal site from Boothtown Road as this would undoubtedly be a shorter and more convenient route than utilising the A629, Ovenden Road. Although, identified as a more attractive route there would be no guarantee that vehicles would opt for this direction. The TA concludes that there have been no personal injury road traffic accidents in the immediate vicinity of the proposed site access points, or no accident clusters on the approaching network in the last 5 years. This does not necessarily mean that a junction or site is safe, or that other incidents have not been recorded by the police involving personal injuries. Figure 2.3 of the TA does identify though that a serious accident occurred between the junction of Boothtown Road and Mill Lane as a result of a vehicle turning right.
34. At the Hearing the Council set out they would not support a one-way system and in particular this would not address the substandard vehicle and pedestrian access from Mill Lane and Hall Street North. A TRO, which has to follow a statutory process would be required for the one-way system, and this would have to rely on no objections from local residents, businesses and relevant stakeholders. Given the evidence before me, I agree that it is unlikely that such a TRO would succeed. In such circumstances the Planning Practice Guidance⁴ advises that such conditions (Grampian) as suggested by the appellant should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
35. Furthermore, it appears that a one-way system would place undue strain on existing properties and businesses which have a range of access/entry points along this part of Mill Lane and Hall Street North. Including a significant large, gated access further up Mill Lane leading to the rear of the existing B2 industrial units. This appears to provide a further point of access, not addressed in the TA or TAA and is utilised for access and additional parking. It would also likely result in heavy goods or large vehicles trying to navigate turning onto a substandard and acutely angled road from Boothtown Road.
36. There is no swept path analysis to support the TA or TAA, other than the internal site layout and that all vehicles could be accommodated at these junctions, or even demonstrate that this could be achieved safely. The proposal lacks in detail to clarify that it would not result in vehicles obstructing the carriageway on Boothtown Road. There are also no topographical surveys or vertical dimensions, which would be expected given the topography of the area and that the approach to the junctions are clearly not level ground to ensure

³ SCP Transport Assessment, Doc Ref: MC/190223/TA/1, dated October 2019

⁴ Paragraph: 009 Reference ID: 21a-009-20140306: Revision date: 06 03 2014

that suitable visibility is achieved for all vehicle types and sizes at the Hall Street North junction, in line with the guidance set out in MfS⁵.

37. I acknowledge the mitigation plans 'SCP/190223/SK04 and SK05' in the TAA, which removes the need for a TRO. However, SK04 lacks in detail on the wall height and consideration of the changes in levels or third-party land constraints in and around this junction. SK05 only provides the same detail of visibility as P01. Therefore, again, there are no details of how larger vehicles could safely navigate such a constrained and narrow access road. Particularly as Hall Road North is already restricted in width, has a 90-degree bend and both junctions are unable to accommodate two vehicles at any one time. As such these considerations on mitigation would not be in the best interests of highway safety for all road users in the immediate and wider vicinity of the site.
38. The further mitigation proposals put forward in the TAA are subjective on assumptions from the emerging local plan or the imposition of a management plan, directing traffic from the A629. Neither do these on their own merits address the concerns raised about the proposal on highway safety and the intensification of the number of vehicles that would occur from the proposals. It is also unclear regarding the legal implications and how such improvements would be secured relating to the wider transport network.
39. In addition, they do not form part of the red line of the appeal site or are even within the ownership of the appellant. Although, the Council did not refuse the application on the basis of the TAA. I am satisfied from the evidence presented, that the Council considered and gave due weight to those alternative mitigations prior to the decision which were put forward and discarded in the best interests of highway safety.
40. Moreover, the fact that surrounding the site, the roads are not too modern design and already used by a considerable number of vehicles for the unrestricted industrial premises does not justify adding further significant numbers of vehicles to the unsuitable highway network. Which would be to the detriment of highway safety. There is no substantive evidence that the nearby school would generate a large amount of local traffic, in particular consistently throughout the day along Mill Lane. The number of vehicles, including cars, vans, lorries and HGVs would be increased by the proposals resulting in an unacceptable intensification on the roadway network that would serve the site and the proposal.
41. The appellant has referred to the previous application⁶ at the site and the highway officer's comments. That application was refused by the Council and is not the proposal before me. Nonetheless, it appears that concerns were raised initially on the impact on the highway network and shortfalls have been clearly identified repeatedly. It also appears from copies of correspondence provided in the written evidence by both main parties, that although there were delays in responses these have been forthcoming from the Council.
42. In regard to the spine road, it appears that this forms part of a future development strategy for improving network connectivity and wider access for emerging housing sites that may come forward within the area. The road proposals were put forward as part of a wider allocation of those surrounding

⁵ Manual for Streets, published 2007

⁶ 19/01315/OUT

sites identified within the emerging local plan. From the evidence presented, it appears that at this present time until the local plan is forthcoming there is no realistic prospect of this coming forward. I am also not aware of any such planning application, consent or forthcoming TRO.

43. Therefore, this appears to be a long-term aspiration of the Council in the provision of providing future housing in an area with unsuitable local roads to facilitate such developments. I am satisfied that the Council did adequately address the proposal on its own merits and did not dismiss the proposals in preference for the use / deliverability of a spine road. It would be a future matter for the appellant if it would be made available to them, and not one which I would conclude on.
44. Considering all of the above, the proposal would have a severe impact on the existing road network capacity, in terms of the generation of additional vehicle movements that would arise from the proposal, and on existing substandard roads to the detriment of its safe and efficient operation. The mitigation which has been put forward is not individual or cumulatively acceptable to overcome the significant harm the proposal would have on this or highway safety, for all road users in and around the existing highway network.
45. Therefore, I conclude that the proposal would cause significant harm to the safe and efficient operation of the highway network in the vicinity of the appeal site. Consequently, it would be in conflict with Saved Policy BE5, insofar the design and layout of accesses should ensure the safe and free flow of traffic in the interests of highway safety. It would also be in conflict with the aims of the Framework, particularly paragraph 110, b, c and d as set out above.
46. Moreover, the proposal would be contrary to paragraph 111 of the Framework, which requires development to be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

47. The appeal site is in close proximity to a number of Grade II listed buildings, 3 Hall Street North, 14A and 21-25 Hall Street. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the special interest of the building and its setting.
48. Given the location of the appeal site and nature of the proposal, including that the properties are currently surrounded by a mix of commercial, residential buildings and the west is of limited quality in terms of its rural nature. The proposal would have no adverse impact on preserving the heritage assets and the significance of their setting. As such the proposal would accord with the heritage aims of the Framework and Policy BE15 of the RCUDP.
49. The appeal site forms part of the Calderdale Wildlife Habitat Network (CWHN) as it touches upon the edges, where it further follows the nearby river side. It is identified as neutral grassland. The proposal would also require the removal of a single tree within the site. The application was accompanied by a preliminary ecological appraisal and biodiversity net gain assessment, and a brief tree report. I am satisfied with the conclusions of the ecological report,

including biodiversity net gains, also the loss of the tree would not cause harm to the amenity of the area.

50. Matters relating to those protected species set out in the mitigation and compensation sections, other enhancements and the agreement of a biodiversity plan for a minimum period of 30 years, could be dealt with by suitably worded conditions. Moreover, detailed landscaping for the site, has been reserved as a future matter. The proposal would therefore comply with Policies NE17 and N21 of the RCUDP.
51. I note that local residents have expressed additional concerns about the proposed development including living conditions and air/noise pollution. The indicative plans set out that an acoustic screen could be placed along the western boundary, that levels would provide a buffer between the nearest residential receptors and could be dealt with by those reserved matters and suitably worded conditions to prevent harm to living conditions. The area is also typical of noise pollution given that there are existing industrial and commercial premises.
52. Any effects from the construction period would be short-term and could be mitigated by careful construction management. Land contamination, ground conditions, sustainable drainage and flooding, operating hours and operations of loading and unloading of goods vehicles or other machinery and equipment could be dealt with by suitably worded conditions. However, all these matters do not outweigh the significant concerns I have found on the impact of highway safety and the safe and efficient operation of the highway network in the vicinity of the appeal site.

Planning Balance and Conclusion

53. I recognise that the economic, social and environmental benefits including biodiversity of the proposal are considerable, and the principle use of such development is acceptable, and in that respect the proposal would broadly accord with policies of the RCUDP and the Framework.
54. However, the harm to highway safety and that the safe and efficient operation of the highway network in the vicinity of the appeal site would be compromised to a significant degree, resulting in a fundamental conflict with the Framework, and the development plan taken as a whole. In the overall planning balance, although considerable, the benefits of the proposal are not sufficient in this case to outweigh the harm I have identified and the conflict with the development plan and the Framework.
55. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan and the Framework.
56. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Steele	Appellant
Robin Steele	Appellant
Marilyn Brichard	Planning Consultant Marilyn Brichard Ltd
Tommy Brichard	Planning Consultant Marilyn Brichard Ltd
Mark Devenish	Highways Consultant SCP Transport

FOR THE LOCAL PLANNING AUTHORITY:

Anita Seymour	Senior Planning Officer Calderdale Metropolitan Borough Council
Andrew Dmoch	Highways Officer Calderdale Metropolitan Borough Council
Dean Taylor	Highways Engineer Calderdale Metropolitan Borough Council

DOCUMENTS SUBMITTED AT/AFTER THE HEARING

1. Map Extract – Extent of the 20mph zone in the surrounding area
2. Verbal Cost Application (subject of a separate decision)
3. Verbal Rebuttal Cost Application (subject of a separate decision)