



Appeal Decision

Site visit made on 4 July 2022

by Julie Dale Clark BA (Hons) DipTP MCD DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022.

Appeal Ref: APP/W1905/W/22/3291257

Lea Motors, Fieldings Road, Cheshunt, Hertfordshire EN8 9TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Domenico Padalino, DPA (London) Ltd against the decision of Broxbourne Borough Council.
 - The application Ref 07/21/1013/O, dated 16 August 2021, was refused by notice dated 1 November 2021.
 - The development proposed is demolition of existing buildings and erection of a four storey building consisting of flexible commercial units on the ground floor and 8 x 2 bed flats 1 x 3 bed flat on the upper floors with associated parking, landscaping and bin storage.
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Decision

1. The appeal is dismissed

Procedural Matter

2. The application is for outline permission with all matters reserved although it is specific in its description regarding the scale of the development, the ratio of commercial to residential and the form of residential units. The appellant also states that he is applying for the principles of land use, amount, scale and massing but states that appearance, landscaping, layout, scale and access are reserved for later determination. Scale is mentioned as being both applied for and reserved. The appellant has indicated that the submitted plans are illustrative only and so I have considered them as such. However, I have considered the proposal on the basis of the principle of demolishing the existing buildings and the erection of a new building comprising both residential and commercial uses. The appellant has stated that the intended commercial uses would comprise of Use Classes E, B2 and B8¹ to be applied flexibly across 226m² of the ground floor of the proposed building.

Main Issues

3. I consider that the main issues are the effect of the proposal: -
 - on employment land;
 - on the living conditions of future occupiers of the residential units.

¹ The Town and Country Planning Act (Use Classes) Order 1987 (Amended).

Reasons

Employment Land

4. The appeal site is located on the northern side of Cadmore Lane, on the corner with Fieldings Road. It is within a wider area where there are various industrial uses clearly identifiable on the Local Plan Proposals Map a being within an area designated in the Local Plan² as an Employment Area. Policy ED2 establishes that such areas are reserved for employment use and other uses which are wholly compatible with this designation. It lists further criteria for development in Employment Areas.
5. The proposal includes a mixed development comprising flexible commercial units on the ground floor. This description is not specific but as referred to above the appellant intends this to include flexible opportunities for Use Classes E, B2 and B8. Policy ED2 makes reference only to B1 and B2 uses although it pre-dates the introduction of Use Class E which includes the now superseded B1 in part and includes a range of commercial uses including retail and office uses. The policy states that any retail element must be ancillary to the main business use. The application form indicates that the existing industrial floorspace (Use Class B2) of 300m² would be replaced by 226m² of the proposed flexible uses. Given the mix of uses proposed, it would not easily fall within the objectives of Policy ED2.
6. Policy DSC7 promotes comprehensive urban regeneration. This site falls within a designated employment area but is not an area benefitting from an agreed master plan. The Council has explained that the development of the site to the south, Cheshunt Lakeside, arises from a major development site allocated in the Local Plan and planned as a comprehensive strategic development where the uses complement each other. A separate Local Plan Policy CH1 applies to the development of Cheshunt Lakeside. The appeal site lies outside that area and is within a separate employment area. Policy ED2 establishes that development should be for employment uses or other uses which are compatible with its designation. Outside areas subject to a master plan, Policy DSC7 still promotes comprehensive regeneration where appropriate. The proposal is for only a part of the wider employment area and so would represent only a piecemeal development which, given the mixed development proposed, I consider that it could have implications for the wider future development of the area.
7. I accept that the proposed redevelopment of the site could generate new jobs which could exceed the number of jobs currently employed. Whilst policy ED2 indicates that B2 uses would be acceptable on the site as would potentially B8 as well as the former Use Class B1 (now partly incorporated in Cass E), introducing residential would undermine the purpose of an Employment Area.
8. The proposal includes residential units on three floors above the ground floor mixed commercial use and I note that there are existing residential properties to the west of the site on Cadmore Lane and in Stains Close, off Cadmore Lane but this is an established arrangement and whilst some houses are close to the industrial area, they are not actually within it. The proposed dwellings would be.

² Borough of Broxbourne – Local Plan 2018 – 2033 – The Broxbourne Local Plan – A Framework for the Future Development of the Borough, June 2020,

9. The large development site to the south, Cheshunt Lakeside, referred to above, includes residential and non-residential development. Construction has started on land at the southern end of the site, presumably Phases 1 and 2, with the area identified as falling within Phase 4 being closest to the appeal site, i.e. on the opposite side of Cadmore Lane. From the information submitted, Phase 4 includes a development of residential over non-residential uses.
10. Whilst the Cheshunt Lakeside development includes a mix of commercial and residential it is part of a comprehensive master plan in accordance with Policy CH1. The appeal site is on an employment site and the proposed employment uses, especially B2 and B8 uses, could be compromised by the potential conflict between those future users and the residential properties above them. This could erode the functioning of those employment uses and conflict with criterion IV of Policy ED2 which requires development not to prejudice the continued operation and viability of the Employment Area.
11. I consider that the proposal would conflict with Policy ED2. Whilst it would represent a positive investment in the area, the advantages of creating the potential for more job opportunities would be undermined by the introduction of residential in this mixed use scheme. I therefore find this unacceptable and harmful to the objectives of the designated Employment Area. Added to this, I am also concerned about the piecemeal development of a part of the employment site and the impact on any future wider regeneration for employment purposes of this designated area.

Living Conditions

12. The occupiers of the proposed residential units would have commercial and/or industrial uses below them and to the north and east. Whilst restrictions could be imposed on the proposed ground floor uses in terms of hours of operation and noise etc, as far as I'm aware, there are no restrictions on the established employment uses on the rest of the industrial area.
13. Criterion V of Policy ED2 indicates that permission could be permitted for alternative employment uses subject to further considerations including (a) where the proposal would not significantly affect the amenities enjoyed by occupiers of properties adjoining the employment area. Residents living in this development would be within the employment area and I consider that there would be the potential for any effect to be harmful.
14. Local Plan Policy EQ4 requires new development that emits noise levels noticeably above background levels or on a consistent or periodic basis to be located away from noise sensitive land uses; these include residential accommodation. The policy also requires noise sensitive development to be sited away from existing lawful noise generating sources in order to avoid prejudicing the continued operation of the existing noise generating use. The policy indicates that design, material, landscaping, construction methods and noise insulation should be used where appropriate.
15. I note that the appellant's Acoustic Consultants consider that noise should not provide an overriding constraint to development. However, whilst noise levels within the residential units could be minimised by appropriate glazing and ventilation, this would mean occupiers could not open their windows and the amenity space provided by balconies would be unusable or at the very least, they would not be particularly pleasant places to use.

16. I note that the appellant states that the area is not especially noisy during the day when the various business are operating and even quieter during the night. Whilst this may be the case at various snapshots in time, it fails to recognise that the area is an industrial one and it would not be unreasonable for noise generating activities to locate here, some of which could be noisier than those occupying the industrial units at this point in time.
17. The Council also considers that there would be limited opportunity for soft landscaping. It points out that it considers that this is harmful to the living conditions of future occupiers due to their otherwise poor outlook. I appreciate that details such as layout, and therefore the location of windows to habitable rooms, and landscaping, would be subject to later determination and the submitted plans are for illustrative purposes only. However, they indicate that to achieve the proposed level of commercial floorspace and the residential units it is evident that there would be limited amenity space or scope for structural landscaping. Whilst this is a matter for later determination, given the specifics of the proposed description of development, this matter adds to my concern regarding the introduction of residential units on this site. It also adds to my view that Policy ED2 would be compromised by this development.

Other Matters

18. The Housing Delivery Test (HDT)³ indicates that the Council only delivered 72% of its assessed housing need. In accordance with the National Planning Policy Framework⁴ there is therefore a presumption in favour of allowing new residential development.
19. The Council do not dispute that there is a shortfall between the delivery of new housing and that required within the Borough. However, it explains that this situation has been affected to some degree by the relatively recent adoption of the Local Plan (2020) and the effects of the covid pandemic on the disruption to the construction industry. The Council is therefore positive in its attitude that performance will improve.
20. It is evident that new housing development is taking place, most notably on the Cheshunt Lakeside development, and the Local Plan was only approved in 2020. Whilst the HDT and the Framework clearly indicates a presumption in favour of new residential development, the concerns that I have about the location of these units and the conflict with the objectives of Policy ED2 weigh heavily against the proposal. In balancing these matters, I consider that the harm that I have identified, not least to the future occupiers of the proposed dwellings, outweighs the Borough wide requirement for new housing.
21. I have considered all other matters raised including the location of the site within Flood Zone 2, highways matters and all other matters raised. None of these alter my conclusion.

Conclusion

22. For the reasons set out above, and having considered all aspects of the Framework, I conclude that the proposal would have a harmful effect on employment land and on the living conditions of the future occupiers of the

³ Housing Delivery Test: 2021 measurement.

⁴ Ministry of Housing, Communities and Local Government National Planning Policy Framework, 2021 (the Framework).

residential units. It would conflict with Policy ED2 and EQ4 and to some extent DSC7. The appeal therefore fails.

J D Clark

INSPECTOR