

Appeal Decision

Site visit made on 30 August 2022

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2022

Appeal Ref: APP/U2370/W/22/3292447

Garden Centre Plants Ltd, Lancaster Road, Pilling, PR3 6SR

- 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 Mr Peter Andrews against the decision of Wyre Borough Council.
 - The application Ref 21/00713/FUL, dated 25 May 2021, was refused by notice dated 9 August 2021.
 - The development proposed is the “erection of replacement B8 storage building and associated infrastructure following demolition of existing B8 buildings”.
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Decision

1. The appeal is allowed and planning permission is granted for the “erection of replacement B8 storage building and associated infrastructure following demolition of existing B8 buildings at Garden Centre Plants Ltd, Pilling, PR3 6SR in accordance with the terms of the application, Ref 21/00713/FUL, dated 25 May 2021, subject to the conditions in the Schedule attached to this Decision.

Main Issues

2. The main issues are;
 - whether or not a fall-back position exists on the site,
 - whether or not the proposal is appropriate for its location,
 - the effect of the proposal on the character and appearance of the area,
 - the effect of the proposal on highway safety, and
 - whether or not there are any reasonably available alternative sites with a lower probability of flooding.

Reasons

Fall-back position

3. There is no disagreement between the parties that planning permission has been granted at this site for the conversion of the existing buildings to “B8 (storage and distribution).”¹ That planning permission, granted for three years in September 2020 was not subject to any conditions requiring discharge or approval prior to its implementation. As such, it remains extant.

¹ Application reference 20/00416/FUL, granted on 9 September 2020.

4. At the time of their decision, the Council had no evidence to suggest the permission had been implemented. In their appeal submissions, the appellant suggests that the permission has been implemented and name the occupier of the site. On my site visit, the site did not appear to be in active use, but there was evidence to suggest that works to allow the use to begin were in progress.
5. Nevertheless, there is an extant permission to use the existing buildings on the site for the use proposed in this appeal (albeit the appeal before me now proposes a smaller floor area and overall volume), and I have not been presented with any compelling evidence to suggest that the permission would not be or could not be implemented. Indeed, on the basis of the evidence of the appellant and my observations during my site visit, I consider that there is a greater than a theoretical possibility that the extant change of use might take place.
6. As such, I find that there is a fall-back position on the site, which is of significant weight in my decision making on the appeal before me. I also find that the proposal before me is not so materially different as to discount that fall-back position from my consideration of the other main issues in the appeal.

Location

7. The adopted Wyre Local Plan 2011-2031 (the Local Plan) defines the site as falling within an area of countryside. In such areas, development is strictly controlled having regard to the rural nature of such areas, their intrinsic character and beauty as well as the need to support the rural economy. Such support is qualified around expansion of existing businesses. In the opinion of the Council, the appeal site is not host to an existing business.
8. I note that the Council is concerned that the proposal would result in the creation of a stand-alone business. However, I agree with the appellant that there is nothing in the extant permission on the site which limits the use of the site to a single business, or to any particular business, only the use of the site as a whole.
9. Policies in the Local Plan also seek to ensure that new development is sustainable, particularly with regard to how it is accessed, with a strong presumption in favour of public transport and means other than the private car. As the site is in a relatively isolated location with no public transport, footways or indeed, street lighting, I agree with the Council that users of the proposal would be reliant on the private-car to access the site.
10. On its face, the proposal is not therefore appropriate for its location, contrary to Policies SP4, EP8, SP2 and CDMP6 of the Local Plan.

Character and appearance

11. The appeal site currently hosts a number of buildings, in a variety of forms and materials and lies immediately adjacent to a number of large glasshouses. The site is very well screened, with well-established hedging to the boundaries, restricting views into and out of the site, but for those possible through the access gates. In the largely flat, wider landscape there are a number of large buildings similar to the new building proposed, all of which are typical in terms of their scale, character and appearance for their location, the wider landscape and their apparent uses.

12. Indeed, many of those buildings are less well screened, and much more visible, particularly in long views, than the appeal proposal. Although I accept that if they are in agricultural use, then their acceptability or visual effects would be subject to different tests, their location, appearance and effect on the area nevertheless lends weight to my conclusion that the proposed new building would not appear unacceptably industrial or otherwise out of keeping with its location.
13. Although the proposed new building would be in a part of the site currently open, given the effectiveness of the boundary screening to the site, I do not consider that its location would represent an unacceptable encroachment into the countryside. I note also that the currently open part of the site does have hardstanding and evidence of former poly-tunnel installations. In addition, the effectiveness of the boundary screening leads me to conclude that the proposal would not diminish the open, rural and intrinsic character of the countryside.
14. As such, I find that the proposal would not harm the character and appearance of the area to the detriment of the open, rural and intrinsic character of the countryside. In this respect, it would comply with the aims of Policies SP4 and CDMP3 of the Local Plan, which seek, amongst other things, to protect the countryside and ensure a contextually appropriate high standard of design.

Highway safety

15. The appellant has submitted a drawing which demonstrates with swept path analysis that HGVs can enter and exit the site safely in both directions, and can turn within the site, such that entry and exit can be made in a forward gear. The Highway Development Control officer had no objection to the proposal subject to the provision of such a drawing. Both the Council and the appellant have suggested that the provision and retention of parking and turning areas be controlled by a condition requiring compliance with that submitted drawing.
16. In light of that, I do not consider that the proposal would have an unacceptable impact on highway safety, and as such, would not conflict with Policy CDMP6 of the Local Plan.

Flood risk

17. The site lies within Flood Zone 3, and the Strategic Flood Risk Assessment identifies it as low lying and flat, with risk of tidal and fluvial flooding. Both the appellant and the Council point to national and local policy (in the National Planning Policy Framework (the Framework), the Planning Practice Guidance (the PPG), and the Local Plan) which seeks to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk. The Framework in particular makes clear that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding.
18. Whilst I acknowledge the position of the Council set out in their reason for refusal, I must also acknowledge that the proposal seeks to replace buildings already on the site in the same use. As such, I agree with the appellant that a sequential test is not required, as identifying whether or not there are other sites available at lower flood risk serves no purpose in light of the fall-back position which exists given the specifics of this case.

19. The appellant has submitted a Flood Risk Assessment and Drainage Strategy (FRA) which establishes to my satisfaction that the proposal would be as safe from all sources of flooding as the existing development on site and in any event proposes mitigation measures. It also establishes to my satisfaction that the proposal would not increase flood risk elsewhere, and that surface water drainage can be appropriately managed.
20. In reaching these conclusions, I note that the Environment Agency no longer objects to the proposal and agrees that the FRA is appropriate, demonstrating that the proposal would be safe and would not increase flood risk elsewhere.
21. I therefore find that although the proposal has not demonstrated whether or not there are any reasonably available alternative sites with a lower probability of flooding, given the fall-back position, it would not increase the number of people and properties at risk of flooding, would not itself be at unacceptable risk of flooding and would not increase flood risk elsewhere. The proposal would therefore not conflict with the aims of guidance in the Framework, the PPG or Policy CDMP2 of the Local Plan.

Other Matters

22. I note third party concerns regarding the potential for harm to living conditions with specific regard to privacy, noise and disturbance, and hours of operation. I am satisfied that these matters can be appropriately controlled through the imposition of suitable conditions, including compliance with the submitted plans.

Conditions

23. The Council has suggested a number of conditions to be attached, should planning permission be granted. Having had regard to the requirements of the National Planning Policy Framework and the Planning Practice Guidance I have imposed standard conditions concerning commencement (1) and compliance with the submitted plans (2), in order to ensure the satisfactory appearance of the completed development.
24. The appellant has confirmed that they have no objection to the terms of the pre-commencement condition (3) proposed by the Council. It is necessary and reasonable that the information required by this condition be provided prior to the commencement of development, as drainage details are a matter which cannot properly or reasonably be addressed following the commencement of the development in this case.
25. Condition 4, restricting the use of the site is necessary as the acceptability of the proposal is closely linked to the fall-back position outlined above. Conditions 5, 6, 7 and 8 are necessary to ensure that the proposal does not cause harm to the amenity of the area or occupiers of adjoining properties. Condition 9 is necessary to ensure the satisfactory appearance of the completed development, and condition 10 is necessary to ensure that the development can be safely accessed without harm to highway safety.

26. I am therefore satisfied that the conditions I have imposed meet the tests in, and requirements of both the Framework and the Planning Practice Guidance.

Conclusion

27. For the reasons given above I conclude that although there are elements of the proposal which conflict with the development plan, notably the countryside location of the site, to my mind, the fall-back position outlined above is a material consideration of such weight to outweigh that conflict. In all other main issues, I have found that the proposal does not conflict with the development plan.

28. Taking all of that into account, I therefore find that that there are material considerations which indicate a decision be taken other than in accordance with the development plan and as a result the appeal should be allowed, and planning permission granted.

S Dean

INSPECTOR

Schedule of Conditions

1. The development must be begun before the expiration of three years beginning with the date of this decision.
2. The development shall be carried out, except where modified by the conditions to this permission, in accordance with the Planning Application received by the Local Planning Authority including the following plans/documents:
 - Site Location Plan - GA3303-LP-01A
 - Proposed Site Plan - GA3303 PL01B
 - Proposed Plans and Elevations - GA3303-PL02B
 - Flood Risk Assessment and Drainage Strategy prepared by REFORD Consulting Engineers (ref. 21.952, dated April 2021)

The development shall be retained hereafter in accordance with these details.

3. Prior to the commencement of development, a drainage scheme, which shall detail measures for the attenuation and the disposal of foul and surface waters, together with details of existing and proposed ground and finished floor levels to achieve the drainage scheme and any flood risk mitigation deemed necessary, shall be submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme shall be in accordance with the hierarchy of drainage options outlined in Policy CDMP2 of the Adopted Local Plan 2011-31 or any equivalent policy in an adopted Local Plan that replicates the existing Local Plan, with evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates to be submitted. For the avoidance of doubt, surface water must drain separate from the foul and unless otherwise agreed in writing by the Local Planning Authority, no surface water shall discharge to the public sewerage system either directly or indirectly.

No part of the development shall be occupied or brought into first use until the drainage works and levels have been completed in accordance with the approved scheme. Thereafter the agreed scheme shall be retained, managed and maintained in accordance with the approved details.

4. The premises shall be used for B8 Storage and Distribution only and for no other purpose whatsoever (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) without the prior express planning consent of the Local Planning Authority.
5. There shall be no deliveries or collections of goods (including waste) to or from the development site hereby permitted outside the hours of 08:00 - 20:00 Monday to Friday, 08:00 - 18:00 on Saturdays or at any time on Sundays, Bank Holidays and Public Holidays.
6. There shall be no external storage or display for sale of any materials, products or waste within the site.

7. The development hereby permitted shall be designed so that the level of noise emitted from the site does not exceed the following levels as assessed in accordance with British Standard 8233 (2014) and WHO guidelines (or any subsequent replacement national standards / guidance) when measured at nearby noise-sensitive premises:

LAeq 55 dB 16 hours - gardens and outside living areas, daytime (07.00-23.00)

LAeq 35 dB 16 hours - indoors, daytime (07.00-23.00)

LAeq 30 dB 8 hours - indoors, night-time (23.00-07.00)

LAFmax 45 dB 8 hours - indoors night-time (23.00-07.00)

LAFmax 45 dB 4 hours - indoors evening (19.00-23.00)*

*The evening standard LAFmax will only apply where the evening LAFmax significantly exceeds the LAeq and the maximum levels reached are regular in occurrence, for example several times per hour.

Alternative levels and monitoring locations may be used subject to the prior written approval of the Local Planning Authority.

8. No external lighting shall be erected within or around the application site or on the building.
9. The development shall be carried out strictly using those materials specified on the application form unless other minor variations are submitted to and approved in writing by the Local Planning Authority after the date of this permission and before implementation.
10. The development hereby approved shall not be brought into use until the parking / turning area(s) shown on the approved plan GA3303 PL01B has been laid out, surfaced and drained. The parking / turning area(s) shall thereafter be retained and maintained and not used for any purpose other than for the parking and manoeuvring of vehicles without express planning consent from the local planning authority first being obtained.

End of Schedule of Conditions