



Appeal Decision

Site visit made on 26 September 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/P0240/W/21/3283061

Land off Boscombe Road/Porz Avenue, Houghton Regis LU5 5UL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Option Two Development Limited against Central Bedfordshire Council.
 - The application Ref CB/20/00757/FULL, is dated 28 February 2020.
 - The development proposed is erection of 19 No. B2 industrial units with associated parking, access and landscaping and upgrading of public rights of way.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for reasons relating to the principle of development and its effect on trees, highway safety and biodiversity.

Main Issues

3. In view of the above, the main issues are:
 - whether the location of the site accords with local policies that guide the location and nature of new employment development;
 - the effects on the biodiversity interests of the site and surrounding area, including the Dog Kennel Down County Wildlife Site;
 - the effects on green infrastructure and trees; and
 - whether the highway layout would be adequate and capable of maintaining the free flow of traffic on adjoining roads.

Reasons

4. The appeal site is located adjacent to the roundabout at the junction of Boscombe Road/Arenson Way/Foster Avenue and Porz Avenue, to the north-east of Dunstable. It is sandwiched between two parts of the employment area known as Woodside Industrial Estate. The surrounding area is generally characterised by big commercial buildings, wide, engineered highway layouts and deliberate tree planting which has established and helps soften the effects of the preponderance of large buildings within this relatively flat landscape.

5. The long, narrow appeal site extends to around 1.3 hectares of undeveloped land, the middle and rearward parts of which are dominated by overhead electricity pylons and wires. It is enclosed on its sides and rear by belts of trees. A public right of way (PROW) also runs along its north-eastern boundary. The main part of the Dog Kennel Down County Wildlife Site (CWS) is located to the west, but the site itself is a narrow finger of land linked to it and also falling within part of the same.
6. The appeal proposal seeks permission for the construction of 19 general industrial units (B2 Use Class¹) with associated parking, access from the roundabout, landscaping and upgrading of the PROW. The development would take a largely linear form, closely lining the south-western boundary with the internal road and upgraded PROW on the opposite side, and only four units at a right-angle to this formation at the far end of the site where a turning area would also be located.

Location of development

7. The development plan for the area includes the Central Bedfordshire Local Plan (Local Plan), adopted in 2021. Policy EMP1 of the Local Plan seeks to protect a number of existing and allocated employment areas for additional employment development and guard against changes of use to retail purposes. The site is undeveloped land between two areas of Woodside Industrial Estate. It lies outside of the areas designated by Policy EMP1 as shown on the Local Plan inset map. It does, however, lie within the defined settlement envelope for Dunstable/Houghton Regis.
8. Where sites lie outside of an area allocated by Policy EMP1, they are to be assessed against *Policy EMP3: Employment Development on Non-Allocated Sites*. The Council allege two specific conflicts with Policy EMP3 under (b) and (g). EMP3 (b) requires that in order for development to be approved, there should be “...no comparable existing or allocated sites, or comparable existing buildings that are available, suitable, achievable and viable within the Settlement Envelope or within another closely related settlement”. Criterion (g) states that proposals can be supported where: “...any identified adverse impacts on the historic and natural environment, including designated sites and landscapes, can be appropriately mitigated”. As the effects of the proposal on the natural environment, more specifically on the trees and CWS, are addressed in the separate main issues below, I first deal with the assessment of alternative sites under Policy EMP3 (b).
9. The appellant advances many points about the site’s location within a major service centre and prime business location, as well as the manner in which the development would represent a logical infill addition to the industrial offering in the locality. It is also claimed that the development would provide a range of smaller units to complement the typically larger units found locally, allowing for business start-ups and expansions to occur.
10. Whilst I do not doubt the validity of these points, and I note that the scheme has the support of the Council’s Business Investment Manager, this falls short of the expectations of Policy EMP3 (b) that some consideration will be given to the availability of alternative sites. Though it may be inferred that no sites would be as suitable to deliver the appeal scheme than the one under

¹ B2 Use Class falling under the Use Classes Order 1987 (as amended)

consideration, in the absence of robust evidence of such, I cannot reach such a conclusion.

11. In view of the above, the scheme fails to address the requirements of, and thus conflicts with, Local Plan Policy EMP3 (b).

Biodiversity / County Wildlife Site

12. The CWS appears to have been selected for its interests as a calcareous and neutral grassland with scrub hedges and mature trees. It is largely publicly-accessible, save for the appeal site, which other than the PROW, forms an inaccessible narrow corridor of land that extends away from the main body of the CWS. Though the CWS is a non-statutory designation, it is afforded protection under Local Plan Policy EE3, which, amongst other things, requires that proposals should be designed to prevent any adverse impacts thereupon.
13. Local Plan Policy EE2 says that proposals will be permitted where they avoid negative impacts on biodiversity and, where unavoidable, impacts must be mitigated or compensated for to deliver biodiversity net gain through means such as onsite features and maximisation of links between ecological networks.
14. The submitted Ecological Appraisal (WYG, June 2019) (EA) shows a picture of the site with bare ground cover following an earlier soil scraping. It appears that whilst the EA was undertaken within the main vegetation growing season, the scraping had significantly limited the possible range and quality of habitats, with the remnant vegetation and brash piles indicating that prior to that, the site would have supported a mosaic of scrub, tall ruderal grasses and other grassland types. The Updated Ecological Appraisal undertaken in 2021 indicates that the soil scraping regime had been maintained in the intervening period, which appears to have prevented any meaningful reestablishment of vegetation.
15. I have considered the conclusions of the EA and note the range of mitigation and enhancement measures that could be secured by planning conditions to address potential effects on bats, birds, invertebrates and badgers. A construction working method statement is recommended as one such measure to minimise the effects on the nearby areas of the CWS. However, the appeal site is itself also part of the CWS which has already been compromised through soil scraping, and the design of the scheme would not prevent adverse impacts upon it. Rather, the relevant part of the CWS would be permanently lost to a tightly-packed commercial development.
16. I note that there is a concern that the site has been designated as part of the CWS without the landowner's consent. However, the process of formalising such a non-statutory designation and whether or not landowner consent should be given is not before me as part of this appeal.
17. Consequently, in my view, the proposals would not result in a proportionate mitigation or enhancement of the biodiversity interests of the site or CWS, contrary to Local Plan Policies EE2 and EE3.

Green Infrastructure / Trees

18. Given the narrowness of the site and established linear tree features, the site appears to form a green corridor which links the urban area with other green spaces forming part of the CWS. The application was submitted with an

Arboricultural Impact Assessment (AIA) (Aspect Arboriculture, February 2020). From this, it is apparent that the trees present on site have evolved from intermittent ornamental plantings on the boundaries which have a colonised scrubby understorey and some self-set Norway Maple trees. The treed boundaries have some density to them, but overall, the linear belt on the south-west embankment is denser and more cohesive. The AIA categorises the collective amenity contribution of many of the trees to a 'B' value², with some individual trees worthy of a lesser 'C' categorisation.

19. The AIA indicates that 33 of the trees categorised as 'B' trees would be removed, as would 5 category 'C' trees, along with two partial tree groups. It goes on to state that the proposals would include replacement boundary trees alongside internal ornamental trees to offset the losses, though no indication is given that the quantum and likely amenity value of any replacements would be comparable to those lost.
20. In my view, the scheme would remove a substantial number of trees, fragmenting the more established and denser south-western boundary which has the greater amenity value. By virtue of the siting of the units hard against the embankment with a retaining wall, there would be too little meaningful space for a coherent linear form of trees to be re-established. Additionally, I consider that the internal ornamental planting would be predominantly located within compromised spaces, such as directly adjacent to and overhanging the internal road, which would limit its chance to fully establish and provide a comparable amenity value to the more robust species that would be lost. Whilst these effects would be less apparent from the publicly-accessible part of the CWS, the tree losses would still be apparent from the public realm and the site's value as a linking green corridor would be undermined.
21. For the above reasons, the proposal would be harmful to the area's green infrastructure and trees, contrary to Local Plan Policies EE1 and EE4. Amongst other things, these Policies seek to secure high quality, multifunctional green infrastructure and to ensure that developments are designed to integrate trees, reinforce treed boundaries, and justify and replace any removals.

Highways and parking

22. Policy T2 of the Local Plan requires that developments must not have a detrimental effect on highway safety, must have appropriate access and have regard to the Council's *Highway Construction Standards and Specifications Guidance* (2019) (Specifications Guidance). Policy T3 requires that developers of new residential, commercial and other trip generating developments, must have regard to the parking standards set out in the *Design Guide*³ and *Parking Strategy*⁴, including for cycle and lorry parking/facilities.
23. The proposal would have an access from the Boscombe Road/Arenson Way/Foster Avenue/Porz Avenue Roundabout and a linear internal access road which would terminate at a turning head towards the rear of the site and which the appellant envisages would remain unadopted. It appears that the details of the access onto the roundabout itself are generally acceptable, subject to conditions. There would be dedicated parking spaces for 101 vehicles, including

² Categorised with reference to BS 5837: Trees in Relation to Design, Demolition and Construction (2012)

³ Design in Central Bedfordshire: Design Guide (2014)

⁴ Central Bedfordshire Local Transport Plan: Appendix F Parking Strategy

disabled bays, and 37 cycle parking spaces. However, there would be no specific parking or delivery bay provision for any larger commercial vehicles. Rather, it is expected that any commercial deliveries will be made by vehicles temporarily parking on the road.

24. Whilst there appears to be no issue with the capacity of the Roundabout or surrounding highway network to accept the traffic that would be generated by the development, the view offered by the Council's highway consultee is that the internal road would be too narrow. The Council's Specification Guidance indicates that the only road type suited to commercial use is a 'Collector Street' which should be designed with a typical carriageway width of 6.5 to 7.3 metres. After an initial c.65 metres in length from the Roundabout junction, the road would narrow to around 5.5 metres before widening marginally again towards the turning head end of the site.
25. There would be some parallel parking spaces alongside the road of 2 metres in width. The Council's highway consultee suggests that these spaces would have insufficient lateral clearance with likely encroachment onto the running lane of the internal road. For the combination of this issue with the absence of parking for commercial vehicles and narrow road width overall, conflicts between road users within the site and hazards from vehicles reversing onto the Roundabout are envisaged. It is also suggested that as the proposal is for 19 separate units, there can be no overarching management of deliveries or other Heavy Goods Vehicle movements to avoid such conflicts.
26. In my view, the absence of any areas of sufficient size for larger vehicles to attend the units without obstructing the road, combined with the constrained road width for the majority of its length, particularly noting the proximity of Units 1 and 2 to the same, suggests that there has been too little regard to the Council's Specification Guidance and Parking Strategy to create a highway environment that would operate safely and efficiently. In this instance, the layout would not be adequate to suit the intended use of the site or number and range of vehicle types, to the detriment of the safety of its users and users of the adjoining highway.
27. Though I have had regard to the offered condition to ensure that gates shall not be provided anywhere on the access road, this would not satisfactorily address the concerns I have with the scheme. Though these effects would be unlikely to be 'severe' under the terms of the National Planning Policy Framework (the Framework), there would nonetheless be an unacceptable impact on highway safety which brings the scheme into conflict with it and the development plan.
28. For the above reasons, the proposal conflicts with Policies T2 and T3 of the Local Plan which seek to ensure that new developments do not have a detrimental effect on highway safety and patterns of movement. The proposal would also fail to adhere to the Council's Highway Construction Standards and Specifications Guidance, Design Guide and Parking Strategy.

Planning Balance

29. The development plan is the starting point for consideration of the proposal as enshrined under s38(6) of the Act⁵.

⁵ Planning and Compulsory Purchase Act 2004, as amended

30. Numerous harms have been identified, such as a loss of trees and part of a County Wildlife Site, but also in respect of a compromised highway design and lack of consideration of alternative sites. The environmental harms weigh against the scheme, bringing it in to conflict with Policy EMP3 (g), which along with the conflicts under EMP3 (b), brings the scheme into conflict with the Policy taken as a whole. Taken together, the totality of harms brings the scheme into conflict with the up-to-date development plan, taken as a whole.
31. In terms of the public benefits of the scheme, I note that the scheme would deliver a range of smaller units in an area which would be well located for such and where there is extant demand. These factors, in addition to the potential 145 new jobs that would be created by the scheme, attract considerable weight in the overall planning balance. The economic input from the temporary construction phase also attracts a limited degree of additional weight.
32. However, on balance, my finding is that the public benefits do not form a consideration of sufficient materiality to outweigh the identified harms and, thus, there is no reason to determine the proposal other than in accordance with the development plan.

Conclusion

33. For the foregoing reasons, the appeal is dismissed and planning permission is refused.

Hollie Nicholls

INSPECTOR