



Appeal Decision

Site visit made on 7 February 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 MARCH 2023

Appeal Ref: APP/L3625/W/22/3296694

The New Defence Anderson Way, Horley RH6 8SP

- 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 Mt King of DR Carpentry and Building Services against the decision of Reigate and Banstead Borough Council.
 - The application Ref 21/03133/RET, dated 7 December 2021, was refused by notice dated 18 February 2022.
 - The development proposed is a change of use of land from groundsman compound to builders' storage compound.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is retrospective with the builders' storage compound already in existence. Furthermore, the proposal also provides other additional structures at the appeal site including the siting of containers, scaffolding racks, fencing, gates, and the provision of sub-base material and a proposed acoustic fence. I have determined the appeal on this basis.

Main Issues

3. The main issues are i) whether the proposal would result in the loss of Urban Open Space (UOS); ii) impact on flood risk; iii) the effect on the character and appearance of the area; and iv) the effects on living conditions of neighbouring residents with specific regard to outlook, noise and disturbance.

Reasons

Urban Open Space

4. Policy OSR1 of the Reigate and Banstead Local Plan Development Management Plan adopted September 2019 (RBLP) seeks proposals to complement and enhance UOS. However, the policy also recognises that there may be exceptional cases where development in UOS could be permitted and sets criteria to be taken into account when assessing whether development is acceptable. Supporting paragraph 2.2.7 of the policy provides clarification and examples of exceptional circumstances, which include where land is no longer required.
5. The appeal site occupies a relatively small section of land to the northwest end of Horley Town Football Club (HTFC), adjoining a car park to the east and verdant open space to the west. The appellant highlights, the appeal site was

previously used as the groundsman's complex associated with HTFC, however other than a storage shed for equipment associated with the upkeep of the pitch, the site is now surplus to requirements. More recently the appeal site has been utilised as a storage facility for building supplies associated with the appellant.

6. The appellant contends that the site does not provide usable UOS. The appellant further contends that revenue made from the lease of the appeal site secures valuable funding for the recreational facility at HTFC.
7. The way the Policy OSR1 is drafted, means that where a development which would result in the full or partial loss of UOS is proposed there must be clear evidence to demonstrate that the site is surplus to requirements, and does not make a significant contribution to the recreational, community, ecological or amenity value of the area. Other than the appellants assertions, there is no substantive evidence before me to demonstrate that the site is surplus to requirements, for example, confirmation from HTFC that this is the case. Furthermore, notwithstanding the financial contributions to HTFC, there is insufficient information in respect to any exceptional circumstances to justify the loss of the UOS as a recreational or community use, or its ecological or amenity value. As such, I have adopted a precautionary approach.
8. Consequently, due to insufficient information regarding any exceptional circumstances, the proposal has resulted in the loss of UOS, in conflict with RBLP Policy OSR1, which seeks to protect the green fabric of the borough which often fulfils multiple purposes including recreation, biodiversity value and visual contribution.

Flood Risk

9. The appeal site is partially located in Flood Zones 2 and 3 which is at a higher probability of flooding¹, with the majority of the site in Flood Zone 1. The builders' storage compound is 'less vulnerable' to the effects of flooding². Nevertheless, all proposals for new development including minor development and change of use in Flood Zones 2 and 3 would require the submission of a site specific Flood Risk Assessment (FRA).
10. The appellant has submitted an FRA as part of the application. However, the Council raise concerns that an adequate sequential test has not been carried out and that a lack of flood data provides an FRA that is inconclusive. Whilst the proposal relates to a change of use, the scheme also includes the provision of other structures identified in the Preliminary Matters above. As such, the scheme would not meet the criteria under Paragraph 168 or footnote 56³ of the Framework and is therefore not exempt from either of the sequential or exception tests.
11. Paragraph 162 of the Framework is clear that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available

¹ Planning Practice Guidance, Paragraph: 078 Reference ID: 7-078-20220825

² NPPF Annex 3: Flood risk vulnerability classification

³ This includes householder development, small non-residential extensions (with a footprint of less than 250m²) and changes of use; except for changes of use to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate.

sites appropriate for the proposed development in areas with a lower risk of flooding.

12. The FRA highlights that the structures are located within the site that has been designated as Flood Zone 1, thus in an area at a lower risk of flooding. However, there is little information in respect to the appropriate catchment area used for the proposal other than the site itself. The area over which the sequential test is considered, is not fixed and it would be unacceptable to consider just land in control of, or owned by, the appellant. As such, without an assessment of potentially suitable and available alternative sites, I am not satisfied that there are no other sequentially preferable, suitable and available alternatives within an appropriate sequential test area.
13. As the development fails the sequential test there is no need to apply the exception test which, in part, seeks to ensure that the proposed development will remain safe over its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere.
14. Therefore, the appeal site is not a suitable location for the proposal, having regard to policies concerned with development in areas at risk of flooding. In this respect it would be contrary to RBLP Policy CCF2 and Policy CS10 of the Reigate and Banstead Core Strategy 2014 and guidance in the Framework which among other things seek to ensure flood risk is minimised and mitigated, and that residual risk is addressed.

Character and appearance

15. The surrounding area has a mixed use feel, with the appeal site adjoining the football ground occupied by HTFC consisting of an enclosed pitch with the main stand on the eastern side. The appeal site also adjoins a car park used in association with HTFC and Horley Leisure Centre, with residential properties fronting Lee Street backing onto the site and the car park. The appeal site also adjoins a small, wooded area beyond which lies the River Mole.
16. Given the functional nature of the car park and the adjoining HTFC grounds, the proposal is not out of keeping or represents an inappropriate form of development. The location has an ancillary feel to the main recreational use being previously occupied as the groundsman's complex. The developments are low level located amongst existing single storey built structures, which benefit from adequate screening through the existing and proposed fencing, and the proximity to existing well-established trees.
17. Given its relatively remote and isolated location, the appearance and use of the area as a builders' storage compound conforms to the general pattern of development and does not appear unduly dominant or out of place. In my view, the proposal does not have an adverse impact on the local character.
18. The Council have raised concerns in regard to the replacement of the existing fence and provision of a 3m acoustic fence along the whole northern and parts of the eastern and western boundaries. It is acknowledged that the height would be in excess of standard fence panels and would have a cantilevered edge unlike domestic fences. Nevertheless, the solid, continuous timber appearance would be mainly screened from public views, given the sites isolated location and siting among the existing and established vegetation to the north and west boundaries. This would soften views of the fence, which in

turn would screen the facility itself from other public views. Furthermore, given the prevalence of fences and enclosures surrounding HTFC, Horley Leisure Centre and the car park, the provision of an acoustic fence would not be out of keeping given the utilitarian appearance of the locality.

19. The proposal would not therefore harm the character and appearance of the surrounding area. As such, it would accord with the principles of Policies DES1 and EMP3 of the RBLP which amongst other things, require all new development to reinforce local distinctiveness and respects the character of the surrounding area. The proposal would also comply with the guidance in Paragraph 130 c) of the Framework insofar as it requires development to be sympathetic to local character.

Living conditions of neighbouring residents

20. The Council has raised concerns in relation to the noise and disturbance likely to be associated with the processes involved with the builders' storage compound, as well as the comings and goings of vehicles.
21. The appellant highlights that the number of vehicles accessing the site is relatively low, with daily traffic movements of vans and small heavy good vehicles consisting approximately 3-5 arrivals in the mornings and repeated in the evening. These vehicles would be typically loading and unloading materials with skip removal occurring once a month. The County Highways Authority has raised no objection to the proposal.
22. At the time of my site visit, the car park was quiet, and I observed that many of the spaces were unoccupied. Whilst only a snapshot in time, it is likely that the car park would only experience high levels of traffic during matchdays and events held at the leisure centre. Given the location adjoining the car park a degree of vehicular movements is to be expected. As such, I conclude that in respect to the vehicle movements associated with a builders' storage compound, this would not be excessive in this location.
23. In respect to noise and disturbance associated with the use, the appellant has provided a Noise Impact Assessment (NIA) which found the average background noise level was 46 dB. The NIA highlights that the operational noise level for commercial activities should be at least 5 dB below typical background sound levels at the nearest noise-sensitive receptor (NSR). In this case, these are the residential properties located in Lee Street to the north of the site. Thus, for this site an overall noise limit of 41 dB at the nearest NSR would be appropriate.
24. To provide a robust 'worst-case' assessment, the NIA modelled typical activities all occurring within a maximum of 3 events per hour. However, in practice it is likely that these noisy activities would most likely occur at different moments across the day. The typical activities included opening and closing containers; loading and unloading vehicles; skip dumps and general yard activities. These are calculated as an average of 68 dB at 2 metres from the monitoring position, although individually the skip dump provided the greatest noise at 79 dB. When account is taken of the distance from the monitoring position to the nearest dwellings, a noise level of 47dB at the nearest dwellings was calculated. This is 6dB in excess of the overall noise limit of 41 dB.

25. In order to mitigate against the noisiest activities, the NIA suggests the erection of a 3m acoustic fence across the northern boundary, along with parts of the western and eastern boundaries to limit the impacts of noise from the proposed activities. The Councils noise consultant indicated the noise barrier proposed in the NIA would serve to limit noise impacts from site activities assuming the predicted level of activities is maintained. However, the character of the noise events together with their unpredictable pattern serve to make them additionally noticeable and intrusive compared to the ambient noise in the locality.
26. I have no information before me to suggest that there would be any further increase in levels of activity associated with the site as a result of the proposal. Furthermore, whilst I acknowledge the concerns in regard to the uncharacteristic and unpredictable noise occurrences as a result of activities like the skip dumps, these would be limited. Also, the activities associated with the development appear on the whole relatively small scale, given the size and location of the site. As such, these could be controlled through the conditions proposed by the Councils noise consultant.
27. The Council also raise concerns in respect to the visual impact of the proposed acoustic fence on the adjoining occupiers' gardens. As stated above, the positioning of the fence would be located amongst well-established vegetation and would replace an existing fence. Whilst the height and appearance would differ from a domestic close board fence, given the separation distances between the closest properties and length of gardens it is unlikely to result in an overbearing or dominating impact to the living conditions of the adjoining occupiers.
28. Consequently, I conclude that the proposal would not harm the living conditions of the occupiers of the neighbouring residential properties in Lee Street with particular regard to noise and disturbance. Nor would there be overbearing and dominating effects on neighbouring gardens. Subject to the provision of suitable conditions, I find no harm to the amenity protection aims of RBLP Policies DES1 and EMP3 and the Framework.

Conclusion

29. Bringing together my conclusions on the main issues, I have concluded that the proposal would not unacceptably harm the character and appearance of the area, nor would it harm the living conditions of the neighbouring occupiers subject to conditions. Nonetheless, the absence of harm in these regards does not carry positive weight in favour of the development. As such, neither these nor any other matters provide clear and convincing justification to outweigh the harm identified above in respect to the loss of UOS and flooding risk to justify allowing the appeal.
30. For the reasons given above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR