



Appeal Decision

Site visit made on 14 February 2023

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2023

Appeal Ref: APP/V1260/W/22/3292405

Penton Securities Ltd, 79A Sterte Avenue West, Poole BH15 2AL

- 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 Steve Egford (Penton Motor Group) against the decision of BCP Council.
 - The application Ref APP/20/01441/F, dated 7 December 2020, was refused by notice dated 18 August 2021.
 - The development proposed is redevelopment of previously developed land by means of new showroom together with access and car parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the appeal site is a suitable location for the proposal, having particular regard to its impact upon designated employment land;
 - The impact of the proposal upon the living conditions of the occupiers of 75 Sterte Avenue, with particular reference to outlook impacts;
 - The impact of the proposal upon the living conditions of the occupiers of 75 Sterte Avenue, with particular reference to overshadowing impacts; and
 - Whether the appeal site is a suitable location for the proposal, having particular regard to flood risk.

Reasons

Location

3. The site comprises a flat, rectangular-shaped parcel of land, which is hardsurfaced and currently used for parking/storage of cars. Vehicular access is from Sterte Avenue West via an existing adjacent car dealership premises to the northwest of the site, which is also under the appellant's ownership.
4. The site lies in the Sterte area of Poole, to the east of Holes Bay and north of the town centre. The locality is predominantly commercial in nature, and the appeal site lies within an area designated as an 'Existing Employment Area' within the *Poole Local Plan* (2018) (the LP). Accordingly, LP Policy PP16 requires land and premises in such areas to be safeguarded for uses which

- generate employment, in addition to being appropriate to the location as a result of meeting one of four listed criteria. Policy PP16 also states that proposals should not compromise the activities and vitality of the employment area.
5. There are benefits in protecting this wider designated area for employment, including facilitation of functional links between businesses and the development of groups of specialist industries. Also, allowing non-industrial uses in such areas could potentially weaken the employment area as a whole and encourage applications for further non-industrial uses in the designated area. Moreover, the employment area is well-located in respect of factors such as good transport connections and proximity the town centre and a resident workforce.
 6. However, whilst Policy PP16 seeks to maintain the area primarily for activities falling within Classes B1, B2 and B8, this in itself does not preclude other uses which provide employment, and could be deemed suitable for location within a designated existing employment area, in accordance with criteria (a), (b) (c) or (d) of Policy PP16.
 7. The appellant's adjacent site currently includes two showrooms on behalf of two car dealerships, Citroen and Peugeot. The appellant's stated intentions are that the appeal scheme would comprise an extension of the existing car dealership business, so that there would not be an additional unrelated car showroom, and both sites will continue to be operated by the appellant under the umbrella of the Penton Motor Group.
 8. The need for expansion onto the appeal site is confirmed as relating to the amalgamation of the manufacturers of Citroen, Peugeot, Ds and Vauxhall (PSA), which are currently sold from the adjacent site, with Fiat, Jeep, Alfa and Arbat. As such, the appellant seeks to expand in order to accommodate sales of these additional brands.
 9. The proposal would comprise a new showroom building with parking to the front, both of which would be served by new vehicular and pedestrian accesses from Sterte Avenue West. The appellant has confirmed that the appeal scheme would share facilities with the existing adjacent site, including workshop, storage and valeting facilities, resources and staff. Notwithstanding the proposed additional vehicular access, which would facilitate convenient parking close to the new building, the proposed removal of existing boundary fencing, together with the proposed siting of the new showroom, would enable effective access between the new and existing buildings, and the use of land between them for car display and off-street parking.
 10. The Council is concerned that, due to its form and layout, and having regard to verbal comments made by the appellant in a meeting with the Council on 20 May 2021, the proposal could potentially operate independently of the adjacent showroom premises. Having regard to the existing car storage use of the site, the appellant's stated intentions, and the close proximity of the neighbouring car showrooms, and in the absence of any substantive evidence to the contrary, I find that the appellant has provided reasonably sufficient evidence to justify a need for the proposal to be located within the existing employment area due to close associations with the existing neighbouring business as required by criterion (b) of Policy PP16.

11. In coming to this view, I have taken account of the existing connection between the appeal site and the neighbouring car dealership premises, whereby the existing car storage use of the appeal site currently operates as an ancillary function to the appellant's adjacent car showrooms. Moreover, this connection, together with acceptance that outside car storage comprises a B8 element of the use, has previously been accepted by the Council, as confirmed in the Officer Report in respect of an approved planning application¹ for a new valet and storage building ancillary to the existing motor showroom and workshop.
12. I have also taken into account that the appeal site has a history of non B1, B2 and B8 use. Prior to its demolition, the appeal site had previously accommodated a building which was used as a car showroom/preparation workshop. The Council has drawn my attention to its initial objection to that scheme, and the subsequent granting of a personal-to-applicant permission in 2002². That consent was subject to a Section 106 Agreement linking its operation to that of a car showroom on the opposite side of the road, in the interests of securing the stated commercial and economic benefits associated with the shared enterprise that had justified approval of a Sui Generis use on a designated employment site under the previous local plan policies.
13. There are similarities between the policy considerations relating to the 2002 scheme and the current proposal, and there is no legal agreement before me to secure the linking of the appeal scheme with the appellant's existing adjacent car dealership site.
14. Moreover, the evidence before me is that the 2002 scheme was approved in large part, due to an exceptionally high level of employment that it would generate, whereas in the case of the current scheme, the use of the appeal site for safeguarded B1, B2 B8 uses could potentially secure greater on-site employment opportunities than the appeal scheme.
15. However, the 2002 permission predated the approval³ and subsequent implementation of the appellant's car showroom use on the adjacent site. In granting that permission, the Council recognised employment sites to be appropriate locations for car dealerships due to having requirements and effects that are akin to those of 'B' Use Classes. These include a requirement for large buildings and car display areas, and the incorporation of workshop and storage facilities which incorporate elements of B2, B8 and former B1 uses.
16. I agree with the above assessment. Moreover, I note that the adjacent site has been operating for a number of years, with associated employment and economic benefits, and that the Council has also previously accepted its subsequent expansion onto neighbouring land through the aforementioned valet and storage building consent in 2016⁴.
17. In the case of the appeal scheme, the appellant's statement of case confirms that that at least 15 full time and 2 part time jobs are likely to be generated by the proposal. Whilst this figure differs from that indicated on the application form of 8 FT and 2 PT jobs, and no detailed breakdown of new jobs has been

¹ Ref APP/16/00019/F

² Ref APP/02/11468/C/028

³ Ref APP/14/00278/F – Redevelopment of previous developed land to provide motor dealership together with access, car parking and circulation areas.

⁴ Ref APP/16/00019/F

provided, I do not doubt that the proposal would create some additional employment opportunities, in accordance with this aspect of Policy PP16.

18. With the above in mind, and having regard to the existing and proposed use of the site in connection with the adjacent car dealership premises, I find that the proposed intensification of the use of the appeal site would not compromise the activities and vitality of the Sterte employment area.
19. The appellant has not provided an assessment to demonstrate that there are currently no available alternative suitable vacant sites for the appeal scheme outside designated employment areas in accordance with criterion 1(d) of Policy PP16, nor specifically addressed criterion 1(c) in respect of potential harm arising from other more sensitive locations. However, I find that further consideration of these elements of the policy is not required, having regard to my above reasoning as to why I conclude that the proposal accords with criterion 1(b), and the wording of Policy PP16, which does not require compliance with all of criteria (a) – (d).
20. For the above reasons, I therefore conclude that the appeal site is a suitable location for the proposal, having regard to its impact upon designated employment land. As such, the appeal scheme would accord with LP Policy PP16, in so much as this policy aims to safeguard Poole's existing employment areas and ensure that development proposals do not compromise the activities and vitality of such areas.
21. For similar reasons, the appeal scheme would accord with Policies of the *National Planning Policy Framework 2021* (the Framework) which support a strong, competitive economy as set out in Chapter 6.

Living conditions

22. The occupiers of the adjacent dwelling/guest house at 75 Sterte Avenue West have raised no objection to the proposal in respect of outlook and overshadowing impacts. Notwithstanding this, or the location of that property adjacent to an industrial estate, having regard to the Council's second reason for refusal, these are matters that are before me for consideration as part of my determination of this appeal.

Outlook

23. There is a difference of opinion between the main parties in respect of the overall height of the proposed building. Even taking into account the appellant's lower figure, and the proposed set back of the building 1.5m from the site boundary with No.75, the proposal would result in a building of considerable size being sited within close proximity of almost the entire length of the rear garden of No.75.
24. Due to its combined height, width, scale and proximity to the site boundary, the new building would create an overbearing, oppressive and enclosing impact on the rear garden of No.75. A resulting unduly harmful impact on the outlook from that property would be compounded by the proposed solid, blocky and dark clad design of the south elevation of the building, with no upper floor glazing or relief to a proposed solid, parapeted wall.
25. As such, the scheme would present an unduly large and blocky structure when viewed from the neighbouring property. These outlook impacts would be

experienced from the rear garden of the neighbouring site, which comprises the principal area of outdoor living space for the property and includes a decked area leading directly off the rear of the building, and from the rear elevation principal windows, which include large areas of floor to ceiling windows/patio doors looking out towards the garden.

26. I have taken account of the planning history of the appeal site, whereby a substantial commercial building was previously approved⁵ and constructed on the land, subsequent to the existence of No.75. However, the building details are not directly comparable to those of the appeal scheme, including in respect of orientation, height, and length immediately adjacent to the garden of No.75. As such, the impacts of that building upon the living conditions of the neighbouring residents would have been less significant. Moreover, that building has long been removed from the appeal site.
27. Also, the appeal site benefitted from an outline permission, granted in 2014 for B1, B2 and B8 uses⁶, which included an illustrative layout showing a substantial building in a similar location to the proposed new building. However, that application was made in outline, with access the only matter under consideration, so that details of the siting, design and external appearance of the buildings were not approved. Moreover, this permission was not implemented and has expired.
28. For the above reasons, I therefore conclude that the proposed development would materially harm the living conditions of the occupiers of 75 Sterte Avenue West, with particular reference to outlook impacts. As such, the development would not accord with LP Policy PP27(1)c, in so much as it aims to ensure that development proposals are compatible with surrounding uses and do not harm the living conditions of local residents having regard to whether the development is overbearing or oppressive.
29. This is generally consistent with Paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Overshadowing

30. The Council's view is that, due its proposed siting and height, the new building would result in significant overshadowing of the garden of No.75 from the early afternoon. The appellant has refuted this with shadow drawings to demonstrate that the proposal would only cast shadow over No.75 in the evening. As such, the appellant contends that the Building Research Establishment (BRE) guidelines⁷ have been met, since No.75 would have in excess of 50% of the garden in sun for 2 hours or more on the Spring Equinox of 21 March. Moreover, the appellant's shadow diagrams of the existing and proposed shading situation on that day indicate that there would not be a significant difference at 6pm.
31. The Council has questioned the accuracy of the appellant's evidence in this respect. However, it has provided no alternative substantive evidence of its own to counter the appellant's evidence. The proposed positioning of the new building approximately to the northwest of the neighbouring property is such

⁵ Ref APP/02/11468/C/028

⁶ Ref APP/14/00340/P

⁷ Site Layout Planning For Daylight and Sunlight: A Guide to Good Practice (BR209)

that any overshadowing impacts would reasonably be likely to occur in the evening only. Moreover, whilst the BRE guidelines are not mandatory, they comprise a widely recognised established tool for the purposes of measuring overshadowing impacts arising from planning proposals.

32. For the above reasons, and in the absence of any substantive evidence to the contrary from the Council, I am not persuaded that the proposal would amount to a materially harmful impact on the living conditions of the occupiers of 75 Sterte Avenue West, having regard to overshadowing impacts. As such, the appeal scheme would accord with LP Policy PP27(1)c, in so much as it aims to ensure that development proposals are compatible with surrounding uses and do not harm the living conditions of local residents having regard to levels of sunlight and daylight.
33. For similar reasons, having regard to this matter, the proposal would accord with Paragraph 130 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

Flood risk

34. Whilst the appeal site currently lies within Flood Zone 1, the Council's Strategic Flood Risk Assessments (SFRAs) have identified that, in future, the site will be at risk of coastal flooding as a result of future sea level rise associated with climate change.
35. The Framework is clear that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, so that new development is steered towards areas with the lowest risk of flooding. It confirms that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
36. This advice is reiterated in the national Planning Practice Guidance (PPG) which confirms that it is only where the developer can demonstrate, by undertaking a Sequential Test (ST), that there are no reasonably available sites in Flood Zone 1, that decision makers should take into account the flood risk vulnerability of a proposal and consider reasonably available sites in Flood Zones 2 or 3.
37. The first part of the Council's third reason for refusal refers to the appellant's failure to undertake a ST. The appellant has drawn attention to the wording of LP Policy PP38 on managing flood risk, which states that, for sites outside of the town centre sequential test area, proposals which would result in a net gain in residential units within future the Council's future flood risk zones, will only be permitted where they have been subject to a ST which demonstrates that there are no reasonably available appropriate alternative sites in areas at lower risk of flooding within Poole.
38. However, the aforementioned Framework and PPG advice in this respect is not limited to residential development proposals only. Moreover, notwithstanding a specific reference to residential development within Policy PP38, the supporting text to this policy also refers to the Framework advice in respect of the ST being applied in the interest of directing development to areas of lower risk of flooding.

39. The Council's SFRA (2017) also confirms that development proposed outside of the Town Centre and Twin Sails regeneration ST study area, within areas at future risk of flooding by 2133, which include the appeal site, must apply the ST in accordance with guidance set out within the PPG, and that the area for the application of the ST is the former administrative area of the Borough of Poole area of BCP Council.
40. The appellant's supporting Flood Risk Assessments (FRAs) by Glanville Consultants (February 2014) and R Elliott Associates (REA) (January 2021) and FRA Addendum Technical Note (FRAATN) by REA (January 2022), address the matter of the ST.
41. The February 2014 FRA, whilst containing a detailed ST analysis, is based upon a different development proposal, superseded development plan policies and national planning policy guidance relevant at that time. As such, I consider it to be out of date in respect of its consideration of the ST in respect of the current appeal scheme.
42. In respect of the ST, the REA reports conclude that it would be impractical to suggest that there are more suitable alternative locations for the development elsewhere than the appeal site, given that the appellant intends to extend its adjacent existing car showroom enterprise onto adjacent land within its ownership. As such, the appellant is of the view that the potential location of the appeal scheme is limited to sites within the immediate vicinity of the existing building.
43. On this basis the appellant has not provided detailed evidence that any other alternative potential suitable and available sites within the former Borough of Poole boundary and outside of future Flood Zones 2 and 3, have been considered. In order to fully apply the ST, it is reasonable to expect the appellant to provide more detailed information in respect of how a search for alternative undeveloped or previously developed sites outside flood risk areas has been carried out, the potential availability of any such alternative sites, and, if available, why they are not suitable for the appeal scheme.
44. Such information would reasonably include an explanation of the evidence base used for identification of such sites, the criteria against which they were considered, and justification as to why they are not suitable, having regard to factors such as location or availability for development.
45. The appellant acknowledges that there are alternative sites with lower flood risk allocated within the Poole Local Plan, but has not provided any substantive evidence in respect of why they are not suitable. Neither is there any information before me in respect of the existence or otherwise of other showroom premises operated by the appellant with the ST area, which could be appropriate for its expansion plans.
46. I am mindful that the PPG advises a pragmatic approach to undertaking the ST, including in respect of proposed extensions to existing businesses, and that the proposal would operate under the umbrella of the appellant's existing company, sharing facilities such as workshop, offices, storage and parking, with the existing business.
47. However, I do not consider that this, in itself, justifies a lack of consideration of the potential availability of more suitable sites elsewhere, having regard to

future flood risk. Moreover, the PPG confirms that such lower risk sites do not need to be owned by the applicant to be considered 'reasonably available'.

48. The appellant states that the Council did not seek a ST in respect of previous applications relating to the appellant's existing car showroom premises and later extensions to it. However, these applications pre-dated the adoption of the current local plan in 2018 and the 2017 SFRA, and, having regard to current Framework and PPG advice, I am satisfied that a ST is required in respect of the appeal scheme. The proposal does not comprise any of the categories of development precluded from the requirement for sequential and exceptions tests as set out in footnote 56 of the Framework.
49. For the above reasons, I therefore conclude that there is insufficient substantive evidence before me to conclude that the ST has been passed. As such, the appeal site would not be a suitable location for the proposal, having particular regard to flood risk. The proposal would therefore conflict with LP Policy PP38, which aims to ensure that future development has regard to flood risk, and that, through the application of the ST, development is directed to areas of lower risk of flooding.
50. For similar reasons it would be contrary to the advice of the Framework, which has similar objectives (Paragraph 162).
51. Having regard to the above conclusion, there is no need for me to consider further the second part of the Council's third reason for refusal, in respect of whether the proposal can safeguard the building with regards to flood risk mitigation for the lifespan of the development, since this matter is not determinative to the outcome of this appeal.
52. This is because the Framework is clear that where a ST is required, this is a two-stage test, and that it is only when the ST is passed and development is necessary, that an exception test should be carried out to demonstrate that the development can be made safe without increasing flood risk elsewhere. The PPG states that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the ST still needs to be satisfied.

Conclusion

53. I have not found harm in respect of the impact of the scheme upon designated employment land, nor upon neighbouring living conditions, having regard to overshadowing. However, the harm I have identified in respect of outlook impacts on neighbouring occupiers and flood risk would outweigh the employment benefits of the scheme, and are sufficient reasons to dismiss the appeal.
54. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR