



Appeal Decision

Site visit made on 18 January 2023

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2023

Appeal Ref: APP/C1760/W/22/3304473

Upper Yard, Dunwood Fruit Farm, Salisbury Road, Sherfield English, Romsey, Hampshire SO51 6FF

- 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 Mark Earle against the decision of Test Valley Borough Council.
 - The application Ref 21/02358/FULLS, dated 6 August 2021, was refused by notice dated 3 February 2022.
 - The development proposed is retrospective application for storage and distribution (B8 Use) and parking (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I observed on my site visit that the change of use involved in this appeal has already occurred. Consequently, it is a retrospective application and I have dealt with the appeal on this basis.
3. During the course of the appeal the Council indicated that it was no longer pursuing reason for refusal number 4 included in the Council's decision notice. This is reflected in the main issues, below.

Main Issues

4. The main issues are:
 - whether the site is suitable for the uses, having particular regard to the Council's spatial strategy and the need to promote sustainable transport;
 - the effect of the uses on the character and appearance of the area; and
 - the effect of the uses on the character and accessibility of the local Rights of Way network.

Reasons

Location

5. The appeal site comprises a yard area set-back from Salisbury Road, to the rear of the appellant's dwelling, within Sherfield English. Woodland is present towards the north-west, with fields to the east. The site, which is located outside of a defined settlement boundary and which for planning policy

- purposes is located in the countryside, is presently used for storage, distribution, and parking.
6. Policy COM2 of the Test Valley Borough Revised Local Plan DPD: Adopted Local Plan 2011-2029 (adopted 2016) (Local Plan) sets out the settlement hierarchy for the Borough and provides that, amongst other things, development outside the boundaries of settlements in the hierarchy will only be permitted if a) it is appropriate in the countryside as set out in certain Local Plan policies; or b) it is essential for the proposal to be located in the countryside.
 7. In this regard, the main parties have focussed on Policies LE16 and LE17 of the Local Plan. Policy LE16 relates to the re-use of buildings in the countryside. However, part c) of Policy LE16 requires the proposed use to be restricted primarily to the buildings whereas the appeal before me relates to a change of use covering the whole site. Therefore, the proposal does not comply with part c) of Policy LE16, which is an essential requirement of the policy, meaning that Policy LE16 does not provide support for the proposal in the context of the provisions of Policy COM2.
 8. Policy LE17 relates to employment sites in the countryside. The Certificate of Lawful Existing Use¹ referred to by the main parties was for the siting of containers, rather than a change of use, and therefore does not confirm that a lawful employment site exists. Moreover, although the appellant has claimed that the site has been effectively operating as an employment site for many years, few details have been provided to demonstrate that this usage has been lawful. Hence, on the basis of the evidence before me, I can only conclude that the proposal does not comply with part a) of Policy LE17, which provides that the redevelopment, extension of buildings or erection of new buildings on existing employment sites for employment use will be permitted provided that it is contained within the lawful employment site.
 9. It follows that the operations involved in this appeal do not accord with the Council's spatial strategy for the Borough. In this regard, contrary to the opinion expressed by the Inspector in appeal decision Ref APP/C1760/W/20/3246112 in relation to the overarching functions of Policy COM2 and the relevance of a technical breach of that policy, in my view uses in a location which is in direct conflict with the Council's spatial aspirations for the area is a matter which can be given significant weight, given that paragraph 15 of the National Planning Policy Framework (the Framework) emphasises that the planning system should be genuinely plan-led. Therefore, appeal decision Ref APP/C1760/W/20/3246112 does not change my findings on this matter.
 10. Few details have been provided to demonstrate that the operations undertaken on site meet local business and community needs, in the terms of paragraph 85 of the Framework which provides that, amongst other things, planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.
 11. Indeed, the administrative offices for Abbey Grab Bag are located in Nursling, several miles away from the site, and therefore arguably beyond the local area pertaining to the appeal site. Nevertheless, paragraph 85 of the Framework does not mandate that all sites in rural areas situated beyond existing

¹ 12/02753/CLES

settlements must always meet local business and community needs. Rather, the requirements of paragraph 83 of the Framework has greater relevance to the type of operations undertaken on site. Paragraph 83 provides that, amongst other things, planning decisions should recognise and address the specific locational requirements of different sectors, including making provision for storage and distribution operations at a variety of scales and in suitably accessible locations.

12. In this regard, the retrospective nature of the application means that it is necessary to analyse the existing vehicular movements to and from the site, in light of the need to promote sustainable transport. With respect to the operations currently undertaken on site, the submitted Highway Statement² states that going forward the site would generate a daily total of approximately 26 two-way traffic movements. Given that the appellant's proposed hours of use condition would restrict vehicles leaving on Mondays to Saturdays, a 6-day working week is proposed, potentially resulting in a total of approximately 156 traffic movements per week.
13. The site is not located immediately adjacent to any major settlements, but it is directly connected to the A27, which offers main road connections to Salisbury, Southampton, and Winchester. The A27 is unlit and without a footway in the vicinity of the appeal site, making access to the nearest bus stop treacherous on foot. Additionally, I note that, due to the nature of the work of the drivers of Abbey Grab Bag's vehicles, early start times and variable finishes make public transport usage difficult. Nevertheless, although the total level of vehicle movements to and from the site in the context of site's rural location is not insignificant, in my view the site is not so far removed from major transport connections as to be considered contrary to sustainable transport objectives, bearing in mind the nature of the storage, distribution, and parking uses currently undertaken on site.
14. Considering the above, and the size of the site as a whole, I also consider that the operations on site do not fall within the definition of 'significant development' in the terms of paragraph 105 of the Framework which provides that, amongst other things, significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
15. As such, based on the evidence before me, and taking account of Policies SD1 and T1 of the Local Plan which collectively provide that, amongst other things, development will be permitted provided that provision is made to support and promote the use of sustainable transport, I consider that the site as it currently operates does not adversely affect the need to promote sustainable transport to a materially harmful degree. This does not however alter the conflict found above with the Council's spatial strategy in the context of the plan-led system.
16. Taking all of the above into account, I find that the site is not suitable for the uses, having particular regard to the Council's spatial strategy. In relation to this main issue, the proposal conflicts with Policy COM2 of the Local Plan, the relevant parts of which have been set out above.

² Nick Culhane Highway Consultant (August 2022)

Character and Appearance

17. The site is set back from the A27, to the rear of the appellant's dwelling and a large block of cattery buildings. Hedgerow and trees surround much of the site. Although views of some parts of the site are possible from nearby footpaths, a planning condition relating to soft landscaping could be imposed if the appeal were to be successful, which would ensure that, in the long-term, views of the site from public vantage points would be limited.
18. The site is situated in a pleasant countryside location. It is adjacent to a former HCC Chipping Depot and other sites undertaking large-scale commercial operations operate in the wider area. Considering this, and that the uses involved in this appeal do not presently generate significant numbers of vehicle movements, I find that the uses have an acceptable effect on the character and appearance of the area. Whilst reference has been made to the Hampshire Minerals and Waste Plan: Partial Update – Draft Plan (October 2022) due to the early stage of preparation of the emerging plan I have given this matter limited weight, and it does not change my findings on this main issue.
19. As such, in relation to this main issue, no conflict arises with Policies E1 and E2 of the Local Plan which collectively provide that, amongst other things, development should make efficient use of the land whilst respecting the character of the surrounding area and neighbouring uses. No conflict arises with paragraph 130 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character.
20. As Policy COM2 of the Local Plan, referred to in the Council's decision notice, relates to the settlement hierarchy, it is not directly relevant to this main issue, and it does not change my findings.

Rights of Way

21. A Public Right of Way (PROW) runs through the site (Footpath 39), although this legal route has been obstructed by development within the site. No evidence of a Public Path Order made under either the Highways Act 1980 or the Town and Country Planning Act 1990 has been provided. As such, although a nearby long-standing alternative footpath exists with a fingerpost and waymarkers which the appellant claims were established by Hampshire County Council, the evidence does not demonstrate that the official PROW has been extinguished.
22. Parts of the official PROW are currently inaccessible and the nature of the uses undertaken on site are incompatible with its function and safety for the general public. I therefore find that the uses have an unacceptable and harmful effect on the character and accessibility of the local Rights of Way network. Conflict arises with part d) of Policy T1 of the Local Plan which provides that, amongst other things, development will be permitted provided that it does not have an adverse impact on the function, safety and character of and accessibility to the rights of way network.
23. The uses also conflict with paragraph 100 of the Framework which provides that, amongst other things, planning decisions should protect and enhance public rights of way and access. As Policy COM2 of the Local Plan, referred to in

the Council's decision notice, relates to the settlement hierarchy, it is not directly relevant to this main issue, and it does not change my findings.

Other Matters and Planning Balance

24. The finding on the second main issue, above, that the uses have an acceptable effect on the character and appearance of the area, is a neutral matter, which does not weigh in favour of the proposal. The guidance issued by the Traffic Commissioner indicates that Vehicle Operators Licences can only be objected to on certain specific grounds. As these grounds are not directly relevant to the main issues in this appeal, the fact that Vehicle Operators Licences have been granted in connection with the uses on site is also a neutral matter.
25. The Hampshire Countryside Service have mentioned that the situation with regards to the PROW is anomalous. It has been suggested that the issue could be remedied by a diversion application being submitted under the Highways Act 1980. Romsey Ramblers Group have mentioned that they could be supportive of an application, through the appropriate channels, for the adoption of the alternative route as the definitive route for the PROW. As such, whilst the outcome of such a statutory process would not be certain and no doubt would be subject to the scrutiny of the relevant evidence, on a balance of probabilities there appears to be a reasonable likelihood that such an application might be successful.
26. According to the planning application form, the site supports 1 full-time employee and 7 part-time employees. Additionally, the uses on site serve to support the operations of Abbey Grab Bag, and it has been said that if planning permission were to be refused this business would potentially need to find another location to relocate to. Mention has also been made of the site being used for dropping off and picking up vehicles in conjunction with a mechanical repair business, and for other miscellaneous parking and storage uses.
27. However, few details have been provided to quantify the scale of the site's economic contribution in the context of the totality of Abbey Grab Bag's operations (stated to currently employ 8 staff). Similarly, few details have been provided to illustrate the site's contribution to the local or wider economy in quantitative terms. Hence, on the basis of the evidence before me, it appears that the site's contribution towards providing job opportunities in the local area and the wider rural economy is modest.
28. Moreover, the site's contribution to making an efficient use of land, promoted by both the Framework and the Planning Practice Guidance, and ensuring that a range and choice of employment sites are available (as advocated by the Local Plan), must be seen in the context of the total site area, stated to be less than half a hectare.
29. The above-mentioned considerations would be in compliance with a number of the Council's development plan policies, and relevant paragraphs of the Framework. In particular, paragraph 81 of the Framework emphasises that, amongst other things, planning decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

30. In this regard, given the size of the site and that it has not been shown that the site supports a significant number of employment opportunities or provides an extensive contribution to the rural economy, all the benefits mentioned above offer modest support for the uses. Cumulatively, including the potential for the issue with the PROW to be resolved through the appropriate channels, I attach no more than moderate weight to all the benefits of the uses.
31. As found on the first main issue, above, the site is not suitable for the uses, having particular regard to the Council's spatial strategy, and as found on the third main issue, above, the uses have an unacceptable and harmful effect on the character and accessibility of the local Rights of Way network. Considering that paragraph 15 of the Framework provides that, amongst other things, the planning system should be genuinely plan-led, and that paragraph 100 of the Framework provides that, amongst other things, planning decisions should protect and enhance public rights of way, collectively I ascribe substantial weight to these harms.
32. Setting the substantial weight of these harms against the moderate weight I afford to the benefits I have found, it is clear that the harms would outweigh the benefits, meaning that the appeal cannot succeed.

Conclusion

33. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR