



Appeal Decision

Hearing held on 13 July 2023

Site visit made on 14 July 2023

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2023

Appeal Ref: APP/K3415/W/22/3313721

Bromley Hayes Garden Centre, Shaw Lane, LICHFIELD, WS13 8HW

- 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 Land and Water against the decision of Lichfield District Council.
 - The application Ref 22/01126/FULM, dated 22 July 2022, was refused by notice dated 9 December 2022.
 - The development proposed is Demolition of existing building consisting of a retail garden centre (Class E) and redevelopment of the site to provide a mixed use of offices, storage and ancillary industrial uses.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Lichfield District Council against Land and Water. This application is the subject of a separate decision.

Preliminary Matters

3. The emerging development plan is at an early stage and at the hearing, the Council confirmed its position that given the plan's current status, it attracts little weight in my consideration of the appeal. I have no reason to take an alternative view and have treated the emerging plan accordingly.
4. The appellant has submitted a signed Unilateral Undertaking (UU) that provides for a contribution towards biodiversity in the event that I allow the appeal.

Main Issues

5. The main issues are:
 - whether the appeal site is a suitable location for the proposed development
 - The effects of the proposal on the character and appearance of the area
 - whether it would preserve or enhance the character or appearance of the Trent and Mersey Canal Conservation Area
 - the effects of the proposal on the living conditions of nearby residential occupiers with regard to noise
 - its effects on highway safety
 - its effects with regard to flood risk including drainage
 - its effects on biodiversity

Reasons

Location of development

6. Core Policy 1 of the Lichfield District Local Plan Strategy (2015) (the Local Plan) sets out, amongst other things, that growth will be located at the most accessible and sustainable locations in accordance with the Local Plan Settlement Hierarchy. The policy is clear on which areas development will be directed to. These do not include the area in which the appeal site is located, and which is classed as 'other rural' in the settlement hierarchy. The policy also expresses an expectation that development proposals will make efficient use of land and prioritise the use of previously developed land (PDL).
7. A new access into the site would be formed from the A515, whereas currently it is from Shaw Lane. The A515 is a main arterial route through the district and is well connected to the strategic road network. It is therefore easily reachable from other parts of the district. I note that the towpath along the adjacent canal appears to have been relatively recently resurfaced along some of its south-eastern section. In theory, this would provide for travel by means other than the car but given that the site is a very considerable distance from any significant settlements, it is very unlikely that this route would provide a viable alternative for most of the appellant's employees to get to work. I have not been made aware of any further proposed surfacing works along other parts of the towpath. Moreover, periods of inclement weather and during the winter months when the days are shorter and darker would discourage use of this alternative route. Consequently, it is logical to conclude that the vast majority of employee journeys would be made by private motorised transport, against the aims of Core Policy 1 and the National Planning Policy Framework (the Framework).
8. The Council asserts that there has not been any search for alternative sites undertaken by the appellant. However, there is nothing within the Local Plan policies relevant to this appeal that requires that course of action. Core Policy 1 seeks to direct employment development to Lichfield and Burntwood and also sets out that Fradley is to be the focus for strategic employment development. However, the policy does not say 'all' development must take place in those areas and therefore, there is no definitive bar to a development of the type proposed on the former garden centre site.
9. Core Policy 3 seeks to encourage the use of PDL in sustainable locations. The Framework defines PDL as land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. The Framework sets out a number of exclusions to this but as the site's former use was for retail horticulture, it is not excluded from the definition of PDL and much of the site is therefore falls within that category. Nevertheless, the proposal would significantly extend the site area to the south, beyond its current boundary into an area that is not PDL. Although 'encourage' does not seem to me to place a specific requirement for the use of PDL in this case, the proposal would run counter to the overall locational requirements of Core Policy 1.
10. It would also fail to accord with the broad sustainable development objectives encompassed in Core Policy 3 or the more specific sustainable travel objectives in Core Policy 5 and Policy ST1. Amongst other things, Core Policy 7 seeks to support economic development proposals where they do not conflict with other Local Plan policies. Given the described discord between the appeal scheme and a range of other relevant Local Plan policies, the proposal cannot accord with the whole of Core Policy 7. In its decision, the Council referred to Policy NR1. Whilst the appellant considers the first part of the policy, which values the countryside as an asset, to be relevant to this main issue, the policy is clearly related to considerations of very different types of development to that before me. Policy NR1 is therefore of little relevance to my considerations on this specific main issue.

11. I recognise that there are potential benefits to reusing/re-purposing existing buildings and that this may outweigh the effects of certain developments in less sustainable locations. The Council refers to this as 'environmental capital'. However, there is no clear evidence that such an approach in this case would meet those objectives. I have not been made aware of any environmental qualities of the existing buildings and how they would provide a more sustainable option than a purpose-built modern structure. I do not find that the proposal would run counter to the Local Plan in this specific regard.

Character and appearance

12. The site is currently occupied by the disused buildings related to its former use as a garden centre. The grounds surrounding these buildings are extensive and predominantly overgrown. The site is mostly surrounded by trees and hedgerows, save for a gap in some of this vegetation alongside a stretch of the A515 and there are clear views of some of the existing buildings on the site. Such views are transient, given the nature of that main road. There are no other significant views into the site or of the current buildings from public vantage points. The existing buildings have little visual impact in this context.
13. The proposal would introduce a building of substantially greater height than currently exists on the site. In addition, there would be a very large area for the outdoor storage of plant along with parked cars. This would result in a change to the character of the site. Whilst it would not be visible in the wider area or for prolonged periods for those travelling Along the A515, it would nonetheless have a far more strident presence.
14. There would also be some opening up of views from the A515 resulting from the construction of the proposed access and the sense of there being a large development of industrial character within what is a distinctly rural area would be very apparent. I acknowledge that the proposed building would substantially reduce the footprint of built form on the site. However, combined with the vastly increased amount of hardstanding encroaching on currently undeveloped land, overall, the appeal scheme would result in a detrimental effect on the local landscape.
15. I have given consideration as to whether a landscape scheme, secured through a planning condition, could mitigate these effects to an acceptable degree. However, it would take many years to establish and, in any case, the sense of there being a very large industrial development would remain. Consequently, there would be long-term residual harm to the character and appearance of the area.
16. The proposal would not accord with Policy BE1, which seeks, amongst other things, to ensure new development carefully respects the character of the surrounding area. Neither would it accord with the similar and complementary local distinctiveness objectives of Core Policies 3 and 14. It would also run counter to the broad objectives of protecting the countryside in Policy NR1. Core Policy 3 seeks to encourage the reuse of buildings and the proposal would therefore also conflict with this policy.

Trent and Mersey Canal Conservation Area (the CA)

17. The CA is a designated heritage asset and thus any proposal that may harm it, including through a detrimental effect on its setting requires clear and convincing justification. The Council suggests that the proposal would lead to less than substantial harm to the significance of the CA whilst the appellant argues that there would be no measurable harm to it.
18. At my site visit, I took the opportunity to walk along the canal towpath between bridges numbered 54 and 55 and found that it was not possible to see the existing site or the land between its southern boundary and the canal at any point along that section. Even taking into account the proposed increase in site area compared to the existing one, the height of the tallest of the proposed buildings and the plant stored on the site, there is no clear

evidence that it would result in any measurable diminishment of the appreciation of the CA's character or appearance.

19. The very extensive area for the storage of plant cannot readily be viewed as in any way characteristic of the locality and it is not clear from the evidence, as to how much plant would be in-situ on the site at any one time. This is because of the nature of the appellant's business whereby plant may be off site on hire for weeks or even months on end. Nevertheless, given the level of available screening, it seems clear that even at full storage capacity, the plant would remain adequately out of view in views from the CA.
20. There would not be any harm to character or appearance of the CA and the proposal would therefore preserve the significance of this designated heritage asset. It therefore accords with the relevant part of Core Policy 3 and with Core Policy 14 which seek to safeguard the historic environment. It would accord with Policy BE2 of the Site Allocations (2019) which also broadly reflects that aim and with the Framework.

Living conditions

21. There is a small collection of residential dwellings just beyond the northern boundary of the site. The Council is satisfied that the proposal would not result in harm to these neighbouring occupiers, and I have no evidence that leads me to alternative view. However, the nearby marina has residential moorings. There is an undetermined application to increase the number of these but given it's status, I do not give any meaningful weight to it. Nevertheless, those currently using the marina are residents for the purposes of their visits and for however long they are there.
22. The appellant has provided an Environmental Noise Assessment carried out in October 2022, which assesses the likely effects on nearby residential receptors. It assesses the likely effects on the immediate neighbours to the north of the site but does not go as far as assessing those on the residents of the marina. Whilst it provides some information based on a radius, the Noise Model within the report does not address the site's proximity to the marina and any effects on its residents.
23. At my site visit, I observed the relative peace and tranquillity of the stretch of the canal close to the site and the marina. The proposed area of hardstanding with its concomitant storage would be much closer to the marina than any of the [more low-key] operations that previously took place on the site. Given this close juxtaposition of very different uses, there is significant potential for noise disruption from the unloading of plant, the tracking of vehicles and their reversing alarms.
24. I have considered whether this matter could be addressed by a planning condition. It would be possible to control noise on the site boundary to an acceptable level by means of a condition. Noise levels could also be monitored to ensure long-term compliance as part of that condition. Consequently, the effects on neighbouring residents are capable of meeting the residential amenity objectives of Policy BE1 and Core Policy 3 in the event that planning permission is granted.

Highway safety

25. The A515 is a busy 60mph road. Unlike access to the former garden centre from Shaw Lane, there would be a new access directly off the A515. According to the appellant's December 2020 Transport Statement, there would be 53 daily arrivals at the site wherein large vehicles would bring in plant (i.e. 106 daily movements to and from site by these vehicles). This would include occasional abnormal loads albeit that the intention would be for their arrival/departure to be outside peak hours. There would be adequate controls in place in consultation with the Police for the transport of abnormal loads. In addition, there would be daily arrivals and departures by employees.

26. No substantive, compelling evidence has been advanced to indicate that the proposed access would be inadequate. I acknowledge that there would be very large vehicles arriving and leaving the site. The Transport Statement considered the trip generation of the site's former use against the appeal proposal and presents a worst-case scenario. Whilst that Transport Statement was provided as part of the previous application and so is not specific to the scheme before me, the type of vehicles arriving at and leaving the site would essentially be the same. The proposal would not be materially different in terms of transport matters compared to the previously permitted scheme.
27. The evidence tells me that there was one accident, classified as 'serious' within a 300m radius of the site, in the five years previous to the date of Transport Statement's production. It occurred in 2016 some distance to the north of the site on the A515. There does not appear to be any relationship between the cause of the accident and the site. I do not have any up-to date quantified evidence of accidents that may have occurred since the Transport Statement as produced.
28. Having said that, visibility along the A515 where it passes the site is good in both directions and adequate visibility splays would be provided as part of the formation of the proposed access. Drivers would therefore be aware sufficiently in advance of vehicles manoeuvring into and out of the site. I have no clear evidence to lead me to a conclusion that, the additional trips generated by the proposal would, in the parlance of the Framework, result in an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. For these reasons there would not be conflict with the transport infrastructure objectives of Local Plan Policy ST1 or with the Framework.
29. Concern has been raised by interested parties that large vehicles would access the site via the nearby villages of Yoxall and Kings Bromley. The A515 runs through both settlements so this is indeed a likely scenario. However, whilst there may be some increased inconvenience to those who live in these places, it does not mean that the proposed development would necessarily result in unacceptable highway safety impacts on the sole basis of an increase in the number of vehicles using the A515.

Flood risk

30. Various parts of the site fall within Flood Zones 1, 2 and 3. The appellant has provided a technical report dated December 2022 that aims to address concerns raised by the Lead Local Flood Authority. Notably, all built development would be within Flood Zone 1 although the wash bay and hire machine inspection bay would sit in Flood Zones 2/3. The technical report asserts that because of this, the flood plain would not be compromised and that the proposed development is appropriate in flood risk terms.
31. The Framework says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. A Sequential Test should be applied when any part of the site is at risk of flooding.
32. Paragraph 23 of the Planning Practice Guidance (PPG), explicitly states firstly, that the Sequential Test "means avoiding, so far as possible, development in current and future medium and high flood risk areas considering all sources of flooding including areas at risk of surface water flooding", and secondly, that "Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. I am not aware of a Sequential Test having been undertaken.
33. The appellant has provided drawings within the technical report detailing a drainage strategy which is based on the infiltration information gathered on site. An appendix to the report confirms that flooding does not occur on-site during the 1-year, 5-year, 30-year and

100-year events, with minimal flooding of swale (1) only during the 1 in 100-year + 40% climate change event. Other details include a cross section of the pond that would be located in the north-western part of the site. However, the drawings state that these details are indicative. Moreover, there is no information relating to the other pond located in the south-western part of the site or any clear details of a comprehensive drainage network.

34. I therefore conclude that the evidence related to this main issue is not sufficiently comprehensive to give adequate certainty that the proposed development would not increase flood risk. It therefore runs counter to the sustainable drainage objectives of Core Policy 3 and with the Framework.

Biodiversity

35. There is credible evidence that bats are resident on the site. Bats are European Protected Species (EPS) and work that would disturb them or destroy their habitat requires a licence from Natural England (NE).
36. The appellant has provided a Preliminary Ecological and Further Surveys report dated October 2021, which has concluded that only four of the existing buildings currently support a bat population. Common Pippistrelle and Soprano Pippistrelle bat species were found including a likely maternity roost related to the Soprano Pippistrelles in one of the buildings. The Council assert that Brown Long Eared bats are also present on the site, but I have no compelling evidence that this is the case. Nevertheless, further survey work might highlight that this species is present.
37. Notably the appellant's report goes on to say that in the event of a licence being applied for after May 2022, further survey work will be required. Consequently, in order to obtain a licence, there needs to be a mechanism to secure that further work as part of any grant of planning permission that might result from my determination of the appeal. However, Circular 06/2005 advises that a planning condition requiring further survey work should only be used in exceptional circumstances. I do not consider such circumstances arise in this appeal. Given the date of the survey before me, it seems clear that such further work would necessitate going beyond simply a 'final check' survey that could be appropriately secured by condition. Consequently, there is no appropriate mechanism to ensure that the likely effects on EPS are adequately able to be identified and mitigated, thus placing the proposal at odds with the biodiversity objectives of Core Policy 3 and Policy NR3.
38. The submitted UU provides for a financial contribution for biodiversity net gain to be delivered off-site amounting to three biodiversity units. This is based on the Council's updated calculations. The appellant's Biodiversity Net Gain Statement identifies an area located in the northern part of the site for grassland enhancement and this could be the subject of a suitably worded condition. However, it says that there will be a net loss of 3.07 habitat units on site, with a score of -7.79%. On the basis that grassland is enhanced in accordance with the Biodiversity Net Gain Statement, the loss of biodiversity would be reduced to a score of -4.02%. It goes on to say that off-setting elsewhere within the site boundary would adversely affect retained habitats thereby resulting in a negative impact greater than the benefits that might be gained through attempting to meet more of the off-setting on the site. Taking into account the area that would be covered by the proposed buildings and hardstanding in relation to the baseline situation, I find that to be a tenable proposition.
39. I am therefore satisfied that the mitigation hierarchy has been adhered to and that the appropriate way to provide biodiversity net gain is through off-site means. The UU would provide for this and in that respect the proposal would not run counter to Core Policy 3 or Policy NR3.

Planning obligations

40. I have taken into account the provisions of the submitted UU. However, as I am dismissing the appeal for other substantive reasons, I do not consider this matter further.

Other Matters

41. The appellant has previously secured planning permission for a development of the type proposed in this appeal albeit utilising the existing buildings rather than demolishing them and constructing new ones. To my mind, this clearly establishes the principle of the type of development now proposed on the site. The appellant has put forward a case that the two schemes would have similar effects.
42. However, there are material differences between the two schemes. Whilst the appeal proposal would result in a reduction in the overall footprint of built development, the new building would be much taller and more strident. There would also be significant increases in the area of hardstanding. Consequently, the appeal proposal would have a more harmful effect on the character and appearance of the area, and I have also found there to be a lack of compelling evidence that it would safeguard the noise environment for those residing at the marina or that it would be acceptable in relation to flood risk and some aspects of biodiversity.
43. The argued 'fallback' position therefore represents a better scenario than the one in this appeal. It would be less harmful and in more general accordance with the Local Plan as a whole. Consequently, it cannot be ascribed positive weight in providing justification for a development which is significantly materially different and would result in unacceptable harms in comparison.

Conclusions

44. I have found that some aspects of the proposal would cause harm whilst others would not. The identified harms are sufficient to weigh very heavily against the proposal going ahead.
45. For the above reasons, the appeal does not succeed.

H Baugh-Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Chris Whitehouse
Neil Warren

FOR THE LOCAL PLANNING AUTHORITY:

Karen Bentley
Clare Saint
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Simon Hill
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INTERESTED PARTIES:

Councillor Richard Cox
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