



Appeal Decision

Site visit made on 21 August 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/L3815/W/22/3305923

Cockleberry Farm, Main Road, Chichester, West Sussex PO18 8PN

- 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 and Mrs A Brown against the decision of Chichester District Council.
 - The application Ref CH/21/02361/FUL, dated 25 May 2021, was refused by notice dated 14 July 2022.
 - The development proposed was originally described as 'demolition of existing lawful industrial and warehouse buildings, B8 container storage, residential caravans/park homes and stables on a previous developed site and their redevelopment for a residential development of 10 no. dwellings and associated works including landscaping and access alterations'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the Council's decision the proposal was amended to 9 dwellings. As a result, and notwithstanding part of the Council's reason for refusal (RfR) 3, the main parties agree that affordable housing provision is not required. I have no reason to find otherwise and have determined the appeal on this basis.
3. With the appeal the appellant included a revised site plan¹. The Council considers that it confirms the position of a drainage ditch outside the site, next to a proposed 1.5m undeveloped buffer on the site. The Council has suggested conditions to secure the buffer for future access and maintenance of the ditch. On this basis it has withdrawn RfR2.
4. During the appeal the appellant submitted an executed unilateral undertaking dated 24 January 2023 (the UU). It relates to a financial payment that the Council considers would mitigate the recreational impact of the proposal on the Chichester and Langstone Harbours Special Protection Area (the SPA). Also, the Council entered into a s106 legal agreement dated 21 December 2022 with a landowner for a scheme to provide 'nitrate credits' (the s106). Allied to a suggested condition, the Council considers that this measure would mitigate (off-set) the impact of the proposal on water quality and habitat in the SPA due to nitrates. On this basis it has withdrawn RfR3.
5. The Government published a new National Planning Policy Framework on 5 September 2023 (the Framework). The changes to national policy are not relevant to this appeal.

¹ Drawing number 2119-05V

Main Issue

6. The main issue in this appeal is whether the proposal would result in the unjustified loss of an existing employment site.

Reasons

7. The site is a salient of land behind or next to existing or permitted residential development along the north side of the A259, outside a defined settlement boundary in the countryside. On it are buildings and shipping containers with planning permission or lawful use for what was Class B1(c) light industrial, now within Class E(g), or Class B8 storage use²; additionally, four dwellings³ and some horse stables. The proposal would demolish or remove all the existing buildings and structures on the site and redevelop it with 9 houses.
8. I am informed that a previous Inspector found that some buildings on the site (rather than the site as a whole) were in sui generis mixed use, so permitted development rights to change them to dwellings did not apply⁴. In this current appeal, the site is in a mixed use insofar as the planning application red line has been drawn on a plan.
9. On this basis the appellant suggests that this planning unit is not an employment site. However, Policy 26 of the Chichester Local Plan 2014-2029 (the LP) does not insist that an employment site must be, or can only be, a site entirely in employment use. Broadley speaking, the residential uses are at one end of the site, the stables and most of the shipping containers at the other end with a main central swathe of industrial or storage buildings. So, while the site is not exclusively in employment use, by any measure a substantial part of it contains employment land and buildings. As such, in my view, this part of the site (and the shipping containers) is an existing employment site.
10. The appellant has considered the viability of redeveloping the site with speculative office and unspecified industrial new build schemes (ie E(g) or B2 general industrial). However, there is no evidence to suggest that a named end user would be exposed to the same financial considerations as a speculative developer. Over the last few years office floorspace in or at Chichester, or in the District, has declined with currently low rental values and it has been the slowest sector to recover after the Covid-19 pandemic. But this is not a forecast or longer term outlook on the need or demand for offices.
11. It is not clear what specific industrial uses are said by the appellant to be part of a 'substantial quantum' of existing local commercial property (ie E(g) or B2); or, therefore, whether they are comparable to the employment uses at the site. But even if they were, this stock does not equate to existing or forecast unmet need or demand. The Council has suggested a supply shortage of warehousing and industrial space and a strong demand in or at Chichester, or in the District, but it has not specified if E(g) or B2 industrial uses. Neither main party has been very specific about the size of office or industrial premises relied on.
12. Nevertheless, the prevailing overall impression is of a limited supply and a tangible local demand for industrial or warehouse space, including by existing tenants and for affordable 'starter units' and some smaller offices at or in the

² Town and Country Planning (Use Classes) Order 1987 (as amended)

³ Residential caravans and park homes

⁴ Circa 2017, no appeal reference provided

vicinity of Chichester. Thus, and albeit to a modest extent, within the sphere of influence of the site and on the face of it not incompatible uses for the site.

13. Amongst other things, LP Policy 26 engages LP Appendix E. This sets out at E.1 that proposals for redevelopment of existing employment sites need to be accompanied by robust and credible evidence that adequate marketing has occurred to show that a site is actually no longer required for employment use. It is a distinctly different and separate additional exercise to the appellant's commercial viability report.
14. I have not been informed that any building on the site, or the site in whole or in part, has been marketed for employment use, let alone comply with the Council's marketing requirements set out in E.2 to E.6. As there has been no practical scrutiny by this means, I cannot be reasonably certain that there is no potential interested party for any of the buildings or the site offered for sale or rent for E(g) or B8 use. Including, for example, over what period marketed, whether at a reasonable price and reasons why any apparent interest from speculative or named users did not proceed further. There is, therefore, no objective evidence in this respect that there is 'little prospect' of the buildings or site remaining in E(g) or B8 uses or being redeveloped for these uses.
15. The structure and fabric of some, mostly older, buildings on the site has not been well-maintained, some were designed for agricultural use and some incorporate hazardous materials. For whatever reason, some of the buildings are not currently audited in the Valuation Office Agency rating list.
16. However, and even if some of the buildings or shipping containers are currently in 'hobby' or seasonal use, there are some more substantial modern portal framed buildings in good condition visually and in active employment use with staff on site. All the buildings are an integral part of the Council's most recent Employment Land Audit, some are in its Business Rates database and some are registered businesses at Companies House. According to the 'existing building areas' schedule⁵, even if current activity on the site only supports a relatively small number of jobs, the E(g) or B8 buildings and this land is nevertheless a notable, flexible stock of up to or around 1,000m² floor area or about 0.23 hectares of smaller scale, lower cost employment buildings or land.
17. There is no structural engineer, energy efficiency or environmental report, nor outline scheme of works and costings, to objectively confirm that existing buildings cannot be repaired, extended or upgraded and comply with relevant regulatory requirements or standards that have been outlined to me. There is therefore also no apparent reason why at least some of the buildings could not remain in employment use substantially as they are. Consequently, it has not been shown that they are incapable of any reasonably beneficial employment use, including associated works to remove hazardous materials or remedy any actual or perceived shortcomings with the layout of the site for employment use, such as access and parking (there is no highway engineer report).
18. The appellant suggests that some existing uses on the site would fall within B2 use or are already in lawful B2 use. On this basis, that these or other B2 uses are, or would be, detrimental to the residential amenities of the occupiers of nearby dwellings. However, I have not been informed about any planning permission or certificate of lawful use or development that the permitted or

⁵ Drawing number 2119-26A

lawful industrial E(g) and B8 uses have been abandoned or permanently replaced by non-employment uses. Nor that there is any authorised B2 use at the site. The Council has planning enforcement and statutory nuisance powers. In these circumstances there is no fall-back position in either respect.

19. There is no acoustic report or other objective evidence that more intensive use of the site in the existing or replacement employment buildings would cause materially increased noise or disturbance and adversely affect residential amenity at nearby properties. In any event, E(g) industrial and (in this case, small-scale) B8 uses, as opposed to B2 use, are not innately incompatible in a residential area, including associated vehicle movements. The Council would have development management powers to consider the suitability of a proposal for B2 use, including with regard to residential amenity.
20. Covid-19 has also influenced flexible working patterns. It is, though, widely reported in the public domain that staff are now required or encouraged to return to a place of work rather than work exclusively from home. There is, anyway, no guarantee that occupiers of the proposed houses would work from home and by their proximity support local facilities and services. But even if they did, there is no evidence that this would have materially, or any, greater benefit to the local economy than would employees in commercial buildings on the site using the same facilities and services.
21. The Council's decision to refuse planning permission was taken by Members against an officer recommendation to grant permission. The Council has substantiated its RfR1 with reference to relevant local and national planning policies and an appeal statement which of necessity, in these circumstances, presents a different explanation of these matters. That is not unusual or unexpected. I have determined the appeal on its individual planning merits.
22. Taking all the above into account, I am not satisfied that the appellant has demonstrated that part of the site is no longer required, or is unlikely to be re-used or redeveloped, for suitable employment uses. The proposal would, therefore, result in the unjustified loss of an existing employment site, contrary to LP Policy 26 which aims to retain existing employment sites to safeguard their contribution to the local economy. It is also contrary to Policy LP1 of the Chidham & Hambrook Parish Council Neighbourhood Plan September 2016. This policy supports residential development on small windfall sites, subject to the suitability of the site judged against the development plan taken as a whole, including therefore LP Policy 26. As such, there is no conflict between these development plan policies in this case, noting that the legal opinion that I have been referred to as suggesting otherwise did not concern LP Policy 26.

Other Matters

23. A boundary of the Chichester Harbour Area of Outstanding Natural Beauty (the AONB) runs along the south side of the A259. This part of the AONB has a main aspect to the south, towards the coast over mostly open countryside with sporadic development and is locally distinctive. The narrow appeal site is to the north of the A259 and the part that would be most developed is set well back, with intervening buildings and trees or hedgerow. As such, the proposal would not have a harmful effect on the setting of the AONB or therefore detract from the landscape or scenic beauty of the AONB.

24. Bosham Inn public house is a Grade II listed building (the LB). Its significance includes its design, use and siting next to the A259 road corridor which are individually and collectively of intrinsic architectural and historic interest. It therefore makes a positive contribution to the townscape and appearance of the area. The proposal would be a significant distance from the LB, behind a belt of intervening trees and some buildings, so not interject into or erode the mainly open immediate setting of the LB or interfere with the way in which the LB is experienced. Consequently, there would be no harm to the significance of the LB and this neutral effect would preserve the LB.
25. The site is in Flood Zone 1 so not at significant risk of flooding. Subject to conditions the proposal would be acceptable in details including layout, siting, design and external appearance, and having regard to the living conditions of existing occupiers of nearby dwellings and future occupiers; also, in means of access and traffic generation. The absence of harm in these respects is a neutral factor in my decision.

Planning Balance

26. The main parties agree that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites, with a 4.74-year supply. Consequently, the development plan policies most important for determining the appeal are out-of-date and Framework paragraph 11(d) is therefore engaged. The starting point is that planning permission should be granted.
27. The Council did not object in principle to the location of the proposed dwellings in the countryside, outside of the AONB, and they would be accessible by modes of transport other than the private car, including to local facilities and services. The proposal would make effective use of previously-developed 'brownfield' land to help meet identified needs for housing and small windfall sites can often be built out quickly. This would be aligned with objectives of the Framework to significantly boost the supply of homes. The development would bring about employment at construction stage and generate a Community Infrastructure Levy payment as well as Council Tax and New Homes Bonus receipts and also result in landscape and biodiversity enhancements. While notable these modest social, economic and environmental benefits from a net gain of 5 dwellings have moderate weight in favour of the proposal.
28. On the other hand, the development plan seeks to achieve effective use of the existing stock of employment land. Despite the housing land supply position, this aim is broadly consistent with objectives of the Framework to support economic growth taking account of local business needs, opportunities for development and locational requirements, including all types of businesses in rural areas by conversion of existing buildings or well-designed new buildings. The loss of employment use would be small in this case in relation to overall employment in the Council's District. Nonetheless, unjustified redevelopment of the site would be at odds with these local and national planning policies. Once developed for housing, and in the absence of any evidence to the contrary about relocation, these employment buildings or land resource at the site and jobs would be permanently lost. In my view, these economic considerations therefore have significant weight against the proposal.
29. In this appeal the application of policies in the Framework that protect some areas or assets of particular importance (the AONB and the LB) do not provide a clear reason for refusing the development. As the competent authority in this

appeal, it would ordinarily be necessary for me to undertake Appropriate Assessment with respect to the SPA. However, I consider that the adverse impacts of granting planning permission in the circumstances outlined above would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Consequently, the presumption in favour of sustainable development does not apply in this case.

30. Since I intend to dismiss the appeal, even if the proposal did not adversely affect the integrity of the SPA, so not provide a clear reason for refusing the development in this respect, there is no need for me to consider the SPA any further because it would not affect my decision or alter the outcome of the appeal.

Conclusion

31. The proposal does not accord with the development plan taken as a whole and conflicts with relevant provisions of the Framework. There are no other material considerations which override these findings. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR