



Appeal Decision

Site visit made on 29 August 2023

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/M1520/W/23/3317601

30 Linden Road, Thundersley, Benfleet, Essex SS7 4BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Steve Thornton (High-Tech Membrane Roofing Ltd) against the decision of Castle Point Borough Council.
 - The application Ref 22/0566/FUL, dated 13 July 2022, was refused by notice dated 1 February 2023.
 - The development proposed is described as "Change of use of the site to accommodate hardstanding for storage and parking associated with the adjoining commercial use".
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Decision

1. The appeal is allowed and planning permission is granted to extend hardstanding and use for storage and additional parking for the existing commercial use at 30 Linden Road, Thundersley, Benfleet, Essex SS7 4BA in accordance with the terms of the application, Ref 22/0566/FUL, dated 13 July 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: MA174.01.01 Rev B Existing and Proposed Block Plan/Location Plan.
 - 3) No development shall take place until details of the hardstanding, including arrangements for the drainage of surface water, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 4) No development above ground shall take place until details of boundary treatments have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details, which shall be implemented in full prior to first use of the storage and additional parking facilities hereby permitted and shall be retained thereafter.
 - 5) Machinery shall be operated, processes shall be carried out, vehicles shall be moved, and deliveries shall be taken at or despatched from the site only between 0800 and 1800 hours on Mondays to Fridays, 0800 and 1300 hours on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.

Preliminary Matters

2. The description in the heading is taken from the original planning application form, dated July 2022. There is written agreement between the Council and the

appellant to change the description of development, and this was used by the Council in its determination of the application. I have also used this revised description in my decision above.

3. Revised plans (MA174.01.01 Rev B) and a revised planning application form were submitted during the Council's consideration of the application. The revisions related to the number of parking spaces existing and proposed. The Council determined the application based on the revised plans. I have considered this appeal on the same basis.
4. I have noted the appellant's argument that the area of the appeal site that is proposed to be developed has planning permission for use as a hard surface for industrial and warehouse premises granted by the Town and Country Planning (General Permitted Development) (England) Order 2015. However, this is not a matter for me to determine in the context of an appeal made under section 78 of the Act. It is open to the appellant to apply to have the matter determined under section 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal. I have considered the appeal on its merits.

Main Issues

5. The main issues are:

- i. The effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.
- ii. The effect of the proposal on the supply of land for housing.

Reasons

Living conditions

6. The new area of hardstanding would be located to the rear of Nos 32A and 32B Linden Road, at the bottom of their back gardens. It would also share a boundary with part of the garden of No 34 Linden Road and with the bottom of the garden of No 21 Waverley Road.
7. Noise from parking would be likely to include the sounds of vans being loaded, engines starting, vans pulling in and out and voices. Noises from the working yard area would vary depending on the nature of activity at different times of day. There would therefore likely be some increase in unavoidable noise with some potential to disturb the occupiers of these neighbouring houses.
8. The appellant states the business would only use the new hardstanding area during business hours. He has also offered to erect fencing around its perimeter, where it borders residential gardens. Subject to approval of further details of the fencing, I consider these measures are necessary to help reduce the potential adverse impacts resulting from noise and disturbance caused by the proposal, and they can be suitably secured by condition. Any hours of use condition would need to be drafted in site-wide terms in acknowledgement that a different business could theoretically operate from the site in future.
9. There would nonetheless likely be some residual increase in noise and disturbance, particularly to the occupants of Nos 32A and 32B Linden Road, given their relatively short gardens. However, noise of the type envisaged already occurs on the main part of the appeal site, which is itself close to the affected dwellings, and the increase in area to be used is relatively modest.

There are other industrial and storage uses nearby on both Linden and Waverley Roads, such that a local noise environment influenced by commercial activity would not be completely new or unfamiliar to the occupants of premises close by. Nos 32A and 32B Linden Road would still have a residential neighbour on one side. In addition, the new on-site parking spaces would help alleviate disturbance to residents from the vans that currently park along Linden Road, given the shortage of parking space on the appeal site at present.

10. Taking all this together, I find the likely increase in noise and disturbance to neighbouring occupiers, once mitigation measures are put in place and adhered to, would be limited and thus acceptable.
11. Concerns have been raised about fires, dirt and an increase in the range of activities taking place on the appeal site, leading to further disturbance to neighbours. However, there is little evidence to substantiate these suggestions.
12. For the above reasons, I conclude the proposal would not have an unacceptably harmful effect on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. Accordingly, I find no conflict with Policy EC3 of the Castle Point Borough Council Local Plan 1998 (CPLP), which resists development that would have a significant adverse effect on the residential amenity of the surrounding area. I also find no conflict with the National Planning Policy Framework (the Framework) where, at paragraph 185, it requires planning decisions to mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development.

Land for housing

13. The Council states the site is allocated for housing. Nonetheless, there is no site-specific allocation for the site on the Policies Map and no site-specific policy for the site is before me. There was a previous planning permission¹ for residential use of the site, but that permission was not implemented and has expired.
14. There is no access to the part of the appeal site proposed to be developed other than through the main part of the site at No 30 Linden Road. Therefore, the area of the site in question in this appeal could not be developed for housing in isolation. Given the appellant's intention to continue operating his business from the site, it is unlikely the whole site would become available for residential use in the short to medium term, even if planning permission for change of use were granted. Taking all this together, I find the likelihood of housing delivery on the site is currently low.
15. For the above reasons, I conclude the proposal would not have a harmful effect on the supply of land for housing. Accordingly, I find no conflict with Policy H2 of the CPLP, which seeks to retain land allocated for residential purposes primarily for that purpose. I also find no conflict with the Framework, where it seeks to increase the supply of housing and gives great weight to the benefits of using suitable small sites within existing settlements for homes.

Other Matters

16. The Council acknowledges its development plan is past its end date and a replacement has not been adopted. However, it considers the policies most

¹ Application reference 17/0659/FUL

important for determining the appeal are broadly consistent with the Framework. These are Policies EC3 and H2 of the CPLP. As set out above, I agree that these policies, insofar as they are relevant to the determination of this appeal, are broadly consistent with the Framework. Therefore, for the purposes of this appeal, which does not relate to the provision of housing, these policies are not out of date. Consequently, paragraph 11 d) of the Framework is not engaged.

17. The proposal would enable an existing business to continue trading efficiently and expand, thereby supporting economic growth and productivity. I give this consideration significant weight, as set out in paragraph 81 of the Framework.
18. The risk of surface water flooding on the site and adjacent sites would be mitigated by use of a permeable surface. Approval of details and implementation of this measure can be secured via condition. This would be a pre-commencement condition because the hardstanding is the principal element of the proposal, so development cannot start until details have been agreed.
19. There is little evidence to support concerns about security. Concerns have also been raised about displacement of foxes and badgers. Foxes are not a protected species. Even if badgers have been seen on the site, there is little evidence to suggest it provides a suitable habitat for sett building or foraging. In any case, the provisions of the Protection of Badgers Act 1992 would apply, irrespective of the grant of planning permission.
20. Whilst I note some previous applications for development on the site have been refused, each application and appeal must be considered on its individual merits. The particular circumstances relating to the appeal proposal would be unlikely to be repeated elsewhere in the neighbourhood. Therefore, concerns about precedent are not a significant consideration.

Conditions

21. I have considered the condition put forward by the Council and have amended the wording where necessary in the interests of clarity and simplicity. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty. I have also added conditions related to boundary treatments and hours of operation, for reasons that are set out above.

Conclusion

22. For the above reasons the proposal accords with the development plan, when read as a whole. Material considerations, including the Framework, do not indicate that a decision should be taken other than in accordance with the development plan. I therefore conclude the appeal should be allowed.

C Carpenter

INSPECTOR