
Appeal Decision

Site visit made on 28 September 2023

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

Appeal Ref: APP/F1040/W/23/3317999

Land adjacent to First Fence Ltd, Kiln Way/Woodhouse Street, Woodville, Swadlincote DE11 8EA

- 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 V Kotecha, First Developments Holdings Ltd against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2022/0360, dated 10 March 2022, was refused by notice dated 9 September 2022.
 - The development proposed is the change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 47no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use to existing land and turning head resulting from the development of the Kiln Way Link Road for the creation of 47no. car parking spaces, including 24no. electric vehicle charging points, erection of 10no. cycle spaces, staff seating area and landscaping on land adjacent to First Fence Ltd, Kiln Way/Woodhouse Street, Woodville, Swadlincote DE11 8EA in accordance with the terms of application Ref DMPA/2022/0360, dated 10 March 2022, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr V Kotecha, First Developments Holdings Ltd against South Derbyshire District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

4. The site occupies an area of approximately 2225m² of land located immediately to the east of a recently constructed roundabout junction between Swadlincote Road and Kiln Way. It lies within the National Forest. The surrounding area comprises predominantly industrial units and residential properties with an area

of woodland to the north-west. Immediately to the east is a large industrial unit that appears to be occupied by First Fence Ltd.

5. The site comprises a relatively open area with some tree planting that formed part of the highway works landscaping scheme. It includes a disused section of former highway and turning head created from Woodhouse Street which was 'stopped up' as part of the roundabout construction works. This former highway is used for car parking and at the time of my site visit there was a high demand for parking spaces. The Appellant's evidence suggests that there is a significant degree of parking pressure in the locality with employees of local businesses having to use this part of the former highway for parking. I have no other contrary evidence to suggest that such car parking pressure may be overly inflated by the Appellant.
6. Although the site has a relatively open appearance, the recently planted trees do not yet make a significant contribution to the local landscape. Consequently, the industrial unit and the parked cars are quite dominant in views in the vicinity of the site.
7. The proposal would involve the formation of a new access road formed from the current junction of the disused part of Woodhouse Street with Swadlincote Road and the provision creation of 47 car parking spaces for use by First Fence Ltd and adjacent businesses. The parking spaces would be provided on both sides of the new access road with an area of proposed landscaping retained immediately to the east of the roundabout. The scheme proposes that 24 of the car parking spaces would be provided with Electric Vehicle Charging Points and would also include a dedicated secure cycle storage area for 10 cycles.
8. The Council indicates that the scheme would erode the current open landscaped area by approximately 362m² and result in the loss of two trees. The proposed landscaping scheme would include the retention of 11 established trees on the site and the provision of a further 15 trees. In addition, hedgerow planting is proposed in the proximity of the north-western boundary of the site with the roundabout highway boundary and along the north-western edge of the proposed parking bays. The Appellant indicates that there would be an increase in hedgerow planting from 42m to 157m on the site.
9. Although the appeal site has a relatively open appearance, in my view, it does not make a significant contribution to the localised urban character of its surroundings. I consider that the existing landscaping is fairly minimalistic and the site displays no notable features or characteristics to suggest that it plays any important gateway role. Consequently, the presence of the significant ad-hoc car parking and the relatively stark cladding of the industrial unit have the effect of drawing the eye and dominate the appearance of the site.
10. The proposal would provide an opportunity to efficiently regularise the parking areas with interspersed landscaping. A considerable part of the open aspect in the vicinity of the roundabout would be retained with a large portion of the proposed car parking areas being partially screened by hedgerow planting. The proposed hedgerow planting around the flank of the highway on the Kiln Way and Swadlincote Road flanks of the roundabout, supplemented by the additional tree planting, would have the effect of providing a more defined 'green' frame around the appeal site and the roundabout and screen the proposed railings.

11. Overall, I consider that the proposal provides an opportunity to increase the amount of landscaping on the site and regularise, and partially screen, the current ad-hoc parking. In the longer term, the maturity of proposed landscaping would make a more prominent visual contribution to the character of the local area. It would assist in providing a green corridor in the approach to the woodland area to the north-west and provide a degree of 'softening' to the industrial unit.
12. I have taken into account the concerns of the National Forest Company that the existing landscaping was intended to mitigate the visual impact of the new highway and that the appeal scheme would result in some of this being replaced by car parking. However, in my view, the proposed landscaping scheme would be of a high standard and increase the number of trees and hedgerows on the site which to some extent would reflect the aspirations of the National Forest. In this regard, I note that the Council's Landscape Architect raised no objections to the proposals and that Derbyshire Wildlife Trust welcomed the proposed tree and hedgerow planting.
13. My attention has been drawn to the fact that the Council declared a Climate Emergency in 2019 in which it committed to strive to achieve carbon neutrality across South Derbyshire before the Government target of 2050. The proposed introduction of the 24 electric charging points and the provision of secure cycle storage would present an opportunity to encourage more environmentally sustainable forms of travel with less dependency on fossil fuelled vehicles. I have attached moderate weight to these benefits in my determination of this appeal.
14. For the above reasons, I conclude that the proposal would not have a significant detrimental effect on the character and appearance of the surrounding area and would provide an opportunity to encourage more sustainable forms of transport in the longer term. As a result, there would be no conflict with Policies BNE1 or BNE4 of the South Derbyshire Local Plan Part 1 (2016). These policies, amongst other things, require new development to be sensitively and carefully designed to respect their context, embrace the principles of sustainable development and possess a high standard of landscaping quality with the incorporation of woodland planting.

Other matters

15. The Appellant has drawn my attention to a planning application that was submitted to the Council on 7 February 2023 (Ref: DMPA/2023/0177). The application sought permission for parking on the land that is subject to this appeal and, in addition, an extension to a workshop and offices. The Appellant indicates that the application was to be considered by the Council's Planning Committee on 19 September 2023. However, I have no information to indicate the outcome of the Council's decision on the application. Furthermore, I have no evidence to indicate how that proposal may impact on the appeal scheme before me. Consequently, I have attached no weight to the planning application and I have determined the appeal scheme on its own individual planning merits.
16. I have also taken into account the concerns of a number of local residents that the appeal site should remain open and be retained as a public amenity space. Whilst I recognise that the highway scheme that provided the roundabout showed this area to be retained with some tree planting and wildflower

seeding, for the reasons set out above, I consider that the appeal scheme would provide visual enhancement in the longer term. Whilst I understand the concerns of local residents, I have no evidence to suggest that the appeal site has been dedicated as a public amenity area.

Conditions

17. I have considered the proposed planning conditions, including a number of pre-commencement conditions, that have been provided by the Council. I have considered these against the advice given in paragraph 56 of the National Planning Policy Framework and the guidance contained in the section on 'Use of Planning Conditions' in the Planning Practice Guidance. Where necessary I have amended them in the interests of clarity, precision, conciseness or enforceability.
18. In addition to the standard time limit, I have imposed a condition (No. 2) relating to the approved plans in the interests of certainty. In order to protect the character and appearance of the area, I have imposed conditions requiring the submission and implementation of details of landscaping, the provision of a Landscape and Ecological Management Plan and specification of external facing elements (Nos. 3, 4 and 5).
19. A condition is necessary to ensure that any works do not interfere with the bird nesting season (No. 6). In the interests of protecting the living conditions of nearby residents during the construction period, conditions are necessary that set out working hours and the submission and implementation of a Construction Environmental Management Plan (CEMP) (Nos. 7 and 11). However, I have deleted the working hours element from the CEMP as this duplicated the working hours already prescribed by condition No. 7.
20. In the interests of highway safety, conditions are necessary requiring a Stopping Up Order to be obtained to remove any remaining highway rights subsisting on the disuse section of Woodhouse Street, the retention of parking and manoeuvring space free from and impediment preventing their use as such, restrictions on the use of the site to light vehicles only and the setting back of the proposed gates at least 5m into the site from the highway boundary (Nos. 8, 9, 10 and 12). However, I have amended suggested condition No. 10 to provide for the submission of a scheme to demonstrate how HGV's would be prevented from accessing the site. Finally, a condition is necessary requiring investigation and remediation of any potential ground contamination in order to ensure the safe occupation of the development and to protect the environment (No. 13).

Conclusion

21. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

- 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:
 - 222-30-01 – Survey of Existing
 - 222-30-03 – Location Plan
 - 222-30-12d – Proposed Parking
 - 222-30-13d – Comparison of Solid Surface Areas
 - IA-222-30-21 – Existing Non Permeable Area and Landscaping Plan
 - IA-222-30-22e – Non Permeable Area and Landscape Comparison Plan
 - BXMW/AP_Apollo_2018 – Apollo Cycle Shelter
 - EVQRO-V06-R5 Quantum EV Range - Overview Sheet – EV Charging Details
- 3) Notwithstanding the information submitted, prior to commencement of development a full schedule of all hard and soft landscape and planting works shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the National Forest Company and Cadent Gas. The schedule shall include, but not limited to:
 - a) Details of all existing trees and hedgerows on the site and indicating whether they are to be retained;
 - b) Planting plans and sub grade details, written specifications (including cultivation and other operations associated with plant and grass establishment),
 - c) Schedules of plants/trees noting species, plant sizes, maturity, crown size; and,
 - d) A detailed implementation programme outlining the phasing of the planting;

The approved landscaping schedule shall be carried out in the first planting and seeding season following commencement of operation of the development or the completion of the development whichever is the sooner. If within a period of 5 years from the date of the planting, any tree or plant (including retained hedgerows and trees) is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.
- 4) Prior to the commencement of the development a Landscape and Ecological Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall cover a period of 40 years and include the following:
 - a) Description and evaluation of features to be managed;
 - b) Ecological trends and constraints on site that might influence management;

- c) Aims and objectives of management, including mitigation and enhancement for species identified on site;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions;
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a twenty-year period);
- g) Details of the body or organisation responsible for implementation of the plan, along with funding mechanism(s) for that body or organisation;
- h) Ongoing monitoring and remedial measures, including where monitoring shows that conservation aims and objectives of the LEMP are not being met.

The approved plan shall be implemented in accordance with the approved details.

- 5) Prior to the erection of the following elements of the development hereby approved the colour, specification and external facing finishes shall be submitted to and approved in writing by the Local Planning Authority: fencing; gates, any CCTV equipment, cycle storage and EV chargers. These listed elements of the development shall be implemented in accordance with the approved details.
- 6) All clearance, conversion and demolition work in association with the approved scheme shall be carried out outside of the bird nesting season which runs from March to September inclusive. If it is necessary for work to commence in the nesting season then a pre commencement inspection of the vegetation for active bird nests should be carried out. If vegetation cannot be clearly seen to be clear of bird's nests then an experienced ecologist shall be called in to carry out the check. Only if there are no active nests present shall work be allowed to commence.
- 7) No construction or related activity shall take place on the site outside the following hours: 0800 to 1800 Monday to Friday; 0800 to 1300 on Saturdays; and at no time on Sundays or Bank Holidays with the exception of work needed during an emergency.
- 8) No works shall commence on site until such time as a Stopping Up Order to remove all highway rights subsisting on the section of Woodhouse Street enclosed within the red outline of the application site has been granted and all highway rights have been successfully removed. For the avoidance of doubt, this must take place prior to the commencement of the development to comply with statutory requirements.
- 9) Prior to the commencement of the use of the development, the parking and manoeuvring space within the site shall be laid out in accordance with application drawing No. 222-30-12 rev D and shall be maintained throughout the lifetime of the development free from any impediment to its designated use.
- 10) Prior to the commencement of the use of the proposed parking and manoeuvring space, a scheme shall be submitted to and approved in writing by the Local Planning Authority that provides details of measures to ensure that access to the site is restricted to light vehicles only and to

prevent access and turning manoeuvres by HGV's. The development shall be undertaken in accordance with the approved scheme and any measures identified therein shall be retained for the duration of the use of the development.

- 11) Prior to the commencement of the development a Construction Environmental Management Plan (CEMP) for the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall provide details of how demolition and construction works are to be undertaken and include:
- a) The identification of stages of works;
 - b) The parking of vehicles of site operatives and visitors;
 - c) The erection and maintenance of security hoarding including external safety and information signage, interpretation boards, decorative displays and facilities for public viewing, where appropriate;
 - d) Details of all plant and machinery to be used during preparatory and construction stage, including an inventory of all Non-road Mobile Machinery (NRMM);
 - e) Details of community engagement arrangements and complaints procedure;
 - f) Details of any acoustic hoarding on the boundary of the site;
 - g) Details of mitigation measures on protected species identified on site;
 - h) Details for avoiding vegetation clearance during the bird nesting season;
 - i) A temporary drainage strategy and performance specification to control surface water runoff and Pollution Prevention Plan (in accordance with Environment Agency guidance);
 - j) Details of external lighting demonstrating no unacceptable impact on wildlife;
 - k) Details of noise, dust and air quality monitoring and compliance arrangements, including provision for monthly attendance at the Parish Council Meeting where necessary; and,
 - l) Details of measures to remove/prevent re-colonisation of non-native species.

The proposed development shall only be carried out in accordance with the approved CEMP.

- 12) Any gates shall be set back at least 5m into the site from the highway boundary and open inwards only.
- 13) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy has been submitted to the Local Planning Authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the Local Planning Authority. Thereafter, the remediation strategy shall be implemented as approved.