The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Appeal Ref: APP/P5870/W/22/3297165
Brook House, 5 Kimpton Road, Sutton SM3 9QL

- 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 New Yard Services against the decision of the Council of the London Borough of Sutton.
- The application Ref DM2021/00104, dated 14 January 2021, was refused by notice dated 26 October 2021.
- The development proposed is the demolition of the existing buildings and erection of new enclosed waste management and waste transfer facility with changes to vehicular access and parking.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by New Yard Services against the Council of the London Borough of Sutton. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. The Council's decision notice referred to policies of the 2012 South London Waste Plan ("SLWP"). This was replaced on 21 November 2022 when a new SLWP was adopted. I have accordingly given the main parties the opportunity to comment on the new policies, and where relevant in my reasons below I refer to the policies of the 2022 SLWP rather than the superseded 2012 policies.

4. The Government published a revised National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the version from July 2021. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the September 2023 version.

5. The description of development in the banner heading above is taken from the planning application form, as is usual. Planning permission was granted on 14 March 2018 for a development described as "demolition of existing office and industrial warehouse (B2 & B8 use) and erection of new storage

warehouse"[1]. The Planning Statement for the proposed development before me described the built form of the two schemes as being "virtually indistinguishable". The Council confirmed to the appellant on 26 March 2021 that the earlier permission has been implemented, and the appeal statement indicated that the appellant's intention is now to complete the warehouse allowed by the 2018 permission. The dispute between the main parties is therefore essentially about the proposed (change of) use of the future building on the site for waste management and waste transfer purposes, rather than the demolition and replacement of the existing Brook House building. As none of the evidence before me indicates that I should do otherwise, I have confined my consideration in this appeal to these areas of disagreement.

Main Issues

6. The main issues are:

- Whether the proposed development would provide an additional waste and recycling facility, or additional capacity, and, if so, would such a provision comply with relevant development plan policies;
- Whether the site is an appropriate location for the proposed development, having regard to it being within a designated Strategic Industrial Location; and
- Whether the development should make financial contributions towards carbon offsetting, travel plan management, and in respect of biodiversity protection and enhancement and, if so, whether such a contribution can be secured.

Reasons

Capacity

7. The appeal site is an area of land of just under 0.22 hectares, enclosed by a steel palisade fence and situated on the south side of the junction of Kimpton Road and Sandiford Road. It contains a part one- and part two-storey building, currently in use as a warehouse with ancillary office space at first-floor level, which has a footprint of approximately 674m^2. Within the site, there are areas of hardstanding on the west, south and east sides of the building, with vehicular access from Sandiford Road at the western end and Kimpton Road at the eastern end. The site is within the designated Kimpton Strategic Industrial Location ("the SIL").

8. The appellant company currently operates a waste transfer, recycling and management facility at Unit 12 Sandiford Road (hereafter simply "Unit 12"), a very short distance from the appeal site. Unit 12 handles household, commercial and industrial (HCI) and construction and demolition (C&D) waste; the 2022 SLWP describes it as having a maximum throughput of 4,036 tonnes per annum (tpa) and a licenced capacity of 75,000tpa. The appellant's stated aim is that all the waste operations currently conducted at Unit 12 would be "relocated" to the new building at the appeal site; Unit 12 would then be used for the storage of mobile plant, skips and so on, relating to the appellant's operations.

[1] LPA Ref: A2017/78367

9. The 2022 SLWP covers four boroughs; as well as Sutton, these are the London Borough of Croydon, the Royal Borough of Kingston upon Thames, and the London Borough of Merton. Policy WP1 of the 2022 SLWP sets out the strategic approach to HCI waste, while Policy WP2 addresses other types of waste, including C&D waste. Both policies seek to eliminate the need for additional waste capacity in the area, on the basis that the four boroughs have sufficient waste management capacity for both HCI waste and C&D waste to meet their target in 2037[2] (the end of the SLWP period). They aim to achieve this by safeguarding existing waste sites – though not all existing waste sites are safeguarded – and by encouraging the intensification of these sites "as appropriate". Both policies also state that new waste sites will not normally be permitted other than in limited circumstances; the first of which is where they are for "compensatory provision". Policy WP4 of the 2022 SLWP sets out the approach to compensatory provision, among other things requiring such provision to be located on sites "safeguarded for waste, including waste transfer stations, or within Strategic Industrial Locations or Locally Significant Industrial Locations".

10. The appellant has explained that the proposal to develop Brook House as a waste management and waste transfer facility has been put together on the basis that the use of Unit 12 for those purposes would cease. This would also mean that the current Environmental Permit ("EP") for Unit 12 would be surrendered, and a new EP required for the appeal site. It is therefore the appellant's assertion that the allowing the appeal scheme would not lead to an increase in waste processing capacity within the area; rather the scheme is intended to lead to an increase in quality, rather than quantity, of waste processing. None of the evidence which has been put to me casts doubt on the appellant's intentions in this respect. However, the functioning of the EP regime falls outside my consideration of the issues in this appeal and, as things stand, there is nothing before me, such as a unilateral undertaking ("UU") which, in planning terms, would prevent the appeal site and Unit 12 simultaneously being used as waste management and transfer sites.

11. The possibility of using a UU or other planning obligation for this purpose is recognised in the appellant's statement, and had been raised in earlier correspondence with the LPA[3]. However, nothing along these lines has been submitted. Without such a mechanism, the proposed development would result in there being an additional waste and recycling facility, as there is no way of securing it as compensatory provision. The proposal would therefore conflict with Policies WP1 and WP2 of the 2022 SLWP, the principal relevant provisions of which I have set out above. The development would also conflict with Policy SI 8 of the London Plan 2021, which requires proposals for new waste sites to be considered in the light of local need.

12. I find no conflict with Policy 14 of the 2018 Sutton Local Plan ("the SLP") on this matter; although that policy was cited in the decision notice it does not specifically address matters of waste management capacity (though I return to it in the next main issue). In the absence of any mechanism linking the proposal to the appellant's other site) the proposal cannot strictly be considered as "compensatory provision", and therefore does not fall within the

[2] These targets are set by the Mayor of London
[3] E-mails on behalf of appellant to LPA dated 9 and 24 November 2021, Appendices A.012 and A.012 to appeal statement

scope of Policy WP4 of the 2022 SLWP. I find no conflict with Policy SI 9 of the London Plan 2021, which addresses existing waste sites, nor with Policy SI 7 of the London Plan 2021 which addresses waste reduction. A lack of conflict with these policies does not, however, mitigate the other conflict I have found.

Appropriate location

13. Policy 14 of the SLP states that "within Strategic Industrial Locations and Established Industrial Areas, the council will grant planning permission for B1(b) (research and development), B1(c) (light industrial), B2 (industrial and manufacturing) and B8 (storage and distribution) uses or other similar industrial uses only". Policy WP4 of the 2022 SLWP identifies SILs as being among the appropriate locations for compensatory waste processing and transfer activities.

14. The northern part of the Kimpton SIL (which does not include the appeal site) was identified in the 2012 SLWP as being suitable for waste facilities, the 2022 SLWP describes it as "no longer needed". Reading the development plan as a whole, while in my view Policy 14 of the SLP cannot be taken as excluding waste management uses from SILs across the borough as a matter of absolute principle, there is also nothing which suggests that the Kimpton SIL is considered an appropriate location for an additional waste management facility. The Council has also noted that the demand for industrial (non-waste) land within the area exceeds supply; it therefore wishes to protect its supply of such sites. That said, of course, an appropriately-worded UU or other planning obligation could link the use of the appeal site for waste management purposes to the cessation of those activities at Unit 12, such that the proposal would not lead to any overall change in the balance of activities within the SIL. Again though, there is no such mechanism to that effect before me.

15. I note the disagreement between the main parties on the extent to which other "non-industrial" uses (notably units with some extent of retail or "trade counter" provision) may have become prevalent within the Kimpton SIL in recent years. However very little detail was put before me on this point, and I note that the only specific example cited (by the Council) related to a scheme allowed prior to the adoption of the current local plan. During my site visit I saw several other units in the area with "trade counter" type facilities, though there is no substantive evidence before me to indicate either how long such uses have been in place, or the extent to which they may have supplanted "genuine" industrial or warehouse uses.

16. Policy 15 of the SLP was also referred to in the Council's officer report (though not the decision notice, and no conflict with that policy was suggested); it aims to secure improvements to the functioning and attractiveness of the Kimpton SIL. The existing building on the appeal site is not in a good condition; its replacement would be likely to improve the appearance of the area. However, this could already be achieved by the 2018 permission (which has been commenced), and there is nothing before me which indicates this improvement would be dependent on the use proposed in this appeal.

17. I conclude that the appeal site is not an appropriate location for the proposed development. The proposal therefore conflicts with Policy 14 of the SLP, the principal relevant provisions of which are set out in paragraphs 13 and 14 above, and with Policies WP1 and WP3 of the 2022 SWLP, which seek to avoid the development of additional waste management facilities. The development

would also conflict with Policy SI 8 of the London Plan 2021, which requires proposals for new waste sites to be considered with regard to their location.

18. For the same reasons as with the preceding main issue, I find no conflict with Policy SI 9 of the London Plan 2021, though again this does not outweigh the other conflict which I have found.

Contributions

19. The Council's 2014 *Planning Obligations* Supplementary Planning Document ("the SPD") sets out its expectations in respect of developer contributions. It covers a range of issues including those which are of concern to the Council in this case: carbon offsetting contributions, a travel plan and monitoring, and biodiversity enhancements. The appellant has argued that "such obligations are considered only to apply to the originally intended inclusion of erection of a new building" and, as construction of the new building allowed by the 2018 permission has commenced the scheme "could not conceivably attract obligations never considered necessary for the consented warehouse use".

20. The SPD provides a clear rationale for requiring contributions on the three themes identified by the Council. It is entirely plausible that a different use to that already permitted on the site could have greater impacts in one, two or all three respects. However, there is nothing before me to demonstrate how or why this would be so. I cannot therefore be satisfied that such contributions would be necessary in this case, nor that they would be directly related, and reasonably related in scale and kind, to the proposed development.

21. As such, I cannot find that the development should make financial contributions towards carbon offsetting, travel plan management, and in respect of biodiversity protection and enhancement. I therefore conclude that the proposal does not conflict on this matter with Policy 38 of the SLP, nor with Policy DF1 of the London Plan 2021; these policies seek to secure planning obligations to ensure that development makes an appropriate contribution to the provision of infrastructure and other mitigation when necessary.

Conclusion

22. It has not been demonstrated that the proposed development should make financial contributions towards infrastructure and other mitigation. However, the proposal would lead to the establishment of an additional waste management facility, in an area which is not considered suitable for such development.

23. The proposal therefore conflicts with the development plan taken as a whole. There are no material considerations, including those of the Framework, that indicate the proposal should be determined other than in accordance with the development plan.

24. I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector