



Appeal Decision

Hearing held on 10 January 2024

Site visit made on 10 January 2024

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2024

Appeal Ref: APP/N1730/W/23/3327771

Guidion House, Rye Close, Fleet GU51 2UY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Caudwell Properties (102) Ltd against Hart District Council.
- The application Ref 22/03029/AMCON is dated 21 December 2022.
- The application sought planning permission for demolition of an existing office building and erection of new industrial units for flexible uses falling within Research and Development (Use Class E(g)(ii)), light industry (Use Class E(g)(iii)), general industry (Use Class B2) and storage and distribution (Use Class B8) with ancillary offices without complying with conditions attached to planning permission Ref 21/02894/AMCON, dated 1 June 2022.
- The conditions in dispute are Nos 7, 15 and 16 which state:
 - Condition 7: Notwithstanding Condition 2, prior to occupation of the development hereby approved, a Noise Management Plan for the control of noise emanating from the site shall be submitted to and approved, in writing, by the Local Planning Authority. The Plan shall include details of:
 - a) White noise reversing sounders;
 - b) External fixed plant noise control criterion;
 - c) Break out from buildings noise control criterion;
 - d) Measures to minimise noise from site employees and visitors;
 - e) Measures to require vehicles loading and unloading at the facility to turn off engines and refrigeration units whilst loading and unloading and whilst stationary at the site;
 - f) Contact details and procedures for site occupiers for any noise related queries from local residents or businesses.The operation of the development hereby approved shall take place in accordance with the Noise Management Plan.
 - Condition 15: No Heavy Goods Vehicles, i.e., those over 7.5 tonnes Gross Weight, shall operate from the site between the hours of 20:00 and 06:00 hours Monday to Friday and between midnight and 08:00 hours on Saturday and no movements shall take after 12:00 hours on Saturday, nor on Sundays and Bank Holidays.
 - Condition 16: Heavy Goods Vehicles, i.e., those over 7.5 tonnes Gross Weight, shall only access the site from a westerly direction via Ancells Road, Harvest Crescent and Rye Close from the Minley Road roundabout and shall only egress the site in a westerly direction via Ancells Road to the Minley Road roundabout. No HGV's shall enter or leave the site to the east along Ancells Road.
- The reasons given for the conditions are:
 - Condition 7: To protect the amenity of nearby residential occupiers and to satisfy Hart Local Plan (Strategy and Sites) 2032 Policy NBE11 and Hart District Local Plan

- (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006 Saved Policy GEN1
 - Condition 15: To protect the amenity of nearby residential occupiers and to satisfy Hart Local Plan (Strategy and Sites) 2032 Policy NBE11 and Hart District Local Plan (Replacement) 1996- 2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006 Saved Policy GEN1.
 - Condition 16: In the interests of highway safety and neighbouring amenity and to avoid any potential conflict between HGV's and vulnerable users of the Ancells Children's Playground and surrounding public open space.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of an existing office building and erection of new industrial units for flexible uses falling within Research and Development (Use Class E(g)(ii)), light industry (Use Class E(g)(iii)), general industry (Use Class B2) and storage and distribution (Use Class B8) with ancillary offices at Guidion House, Rye Close, Fleet GU51 2UY in accordance with the terms of the application, Ref 22/03029/AMCON, dated 21 December 2022 without compliance with conditions numbers 7, 15 and 16 previously imposed on planning permission Ref 21/02894/AMCON, dated 1 June 2022, and subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Caudwell Properties (102) Ltd against Hart District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted for demolition of an existing office building and erection of new industrial units for flexible uses falling within Research and Development (B1b), light industry (B1c), general industry (B2) and storage and distribution (B8) with ancillary offices under reference 19/02871/FUL in December 2020 (The original application).
4. The permission was subsequently amended under reference 21/02894/AMCON (the first variation). This permission allowed a reduction in the footprint of unit 1A, elevational changes and reorganisation of parking arrangements to allow regular HGV access. Permission was granted in June 2022. This permission has been implemented and is the permission that this application seeks to vary. At the hearing it was agreed that, for clarity, the description of development should reflect the description from the original application and this has been included in the banner heading.
5. During the consideration of this appeal the revised National Planning Policy Framework (2023) (the Framework) has been published. The parties had the opportunity to comment on the relevance of this document at the event.

Main Issue

6. The main issue is the effect of the proposed development on the living conditions of nearby occupiers with particular regard to noise.

Reasons

7. The proposed development seeks to introduce HGV movements overnight, to remove HGV routing requirements and allow these vehicles to travel east along Ancells Road and proposes specific noise management controls for noise emanating from the site which would apply overnight.
8. The site is within an area of mainly employment uses. However, Oak House is a residential apartment building opposite the site. Zenith House is also nearby. It has permission to be converted to residential use. I was informed that details had been submitted to discharge one of the requirements of this permission. I therefore consider it likely that the permission will be implemented and consequently I have considered the effect on future occupiers of this building.
9. Ancells Road connects the site with the wider road network. On the opposite side of the road is mainly housing. The houses in this area front the smaller residential roads, and dwellings generally do not face Ancells Road. The Ancells Children's Playground and surrounding public open space adjoin the road. The main open area is not fenced and is separated from the road by low wooden stakes and a pavement. On the same side of the road as the appeal there are mainly employment uses, and there is open space and housing to the southern end of Ancells Road. Overall, the road has the character of a through route, adjacent to a residential area. The background noise in the vicinity of the appeal site is dominated by the nearby M3 and this traffic noise was clearly audible at my site visit.
10. I am provided with detailed evidence from the Appellant's professional advisors. This includes a consideration of an increase in ambient noise levels across the night as a result of the proposed development. Whilst these baseline figures were originally measured in 2019, they were considered again in 2022. Considering that the measurements are averaged across the 8 hour nighttime period, these figures represent a suitable baseline.
11. The supporting information includes a consideration of the noise to Oak House and Zenith House on the basis of 3 HGVs leaving the site in a 1-hour period. This is equivalent to 24 pass by events across the night. The supporting transport information indicates that the total number of movements would be expected to be at this level, although in some hours there may be 4 vehicle movements. However, I am also provided with detail for 7 HGV pass by events in one hour. Taking the figures with the greatest difference, the difference between the lowest noise level at Oak House and the highest noise level predicted at Zenith House with 7 pass by events, this would result in an increase in ambient noise level of 1.8dB.
12. It was agreed at the hearing that the Institute of Environmental Management and Assessment (IEMA) Noise Impact Effect Descriptors are a suitable method of assessing the impact. This change would fall into the category of None/not significant. Furthermore, the report goes on to state that in order to exceed the next category of moderate/slight there would need to be in excess of 250 vehicle movements in the 8 hour period, and that on the basis of the predicted vehicle movements, this category would not be exceeded for any properties within 1300m of the M3.
13. In addition to these average figures across the night, information about the maximum noise level that would occur when an HGV passes has also been

submitted. The source location for vehicle noise is taken at a point 3.5m from the edge of the kerbside. This is taken from the guidance in the 'Calculation of Road Traffic Noise' and, considering that the main source of the noise may be located away from the kerbside, I have no substantive evidence that an alternative location would be a more appropriate measure.

14. Taking into account the World Health Organisation (WHO) Night Noise Guidelines where there is unlikely to be sleep disturbance, that people are likely to sleep with open windows, and that within 3db noise would subjectively sound no louder, the main parties agree that an external noise level of 59db or under would be acceptable in this regard. For these reasons I consider this would be an appropriate indicator.
15. The figures presented indicate that for Zenith House, at the point where it is closest to the road, the noise levels would be on the threshold where sleep disturbance may occur with open windows. However, it is below the threshold in the WHO night noise guidelines which would be likely to result in waking. It follows that both for Oak House and properties with side windows onto Ancells Road which are further from the road, the effect would be lesser and beneath the threshold where there would be likely to be any sleep disturbance.
16. Concerns have been raised about occupiers' subjective response to this noise. There is not a simple relationship between noise levels and the impact on those affected. However, as well as the level of noise, the time of day, the existing ambient noise levels and the number of noise events have been considered above. Taking into account all of these factors, the noise levels are not predicted to result in disturbance to nearby occupiers.
17. In addition, modified wording relating to on site noise including from loading and unloading has been suggested which would specify the controls required. They would be required between 2300-0700hrs on any day and additionally between 0700-2300hrs on Sundays and Bank Holidays only. These measures would suitably control the noise from the site during the times when people are more sensitive to noise including when they are trying to sleep, which would be appropriate. Requirements of external fixed plant and break out from building noise control criterion and measures to minimise noise from site employees and visitors have been removed. However, conditions are recommended which include details of loading bays, set noise levels of noise from plant, machinery or equipment and prevent sound reproduction equipment which is audible outside the site, which would appropriately control these matters.
18. The modified wording of this condition, alongside the other conditions referred to above, would continue to ensure that appropriate controls of on site noise are included, and would prevent duplication of other conditions. However, it was agreed at the hearing that the suggested requirement that no public address (PA) systems shall be used outside of the approved buildings duplicates the requirements of suggested condition 13 and therefore this has not been included.
19. Therefore, the development for which permission is sought would not result in noise levels which are likely to have an unacceptable effect on the living conditions of nearby occupiers. Consequently conditions 15 and 16 are not necessary, and the original wording for condition 7 was overly onerous and unreasonable in this regard. As such, they would not meet the tests set out in the Framework.

20. Policies GEN1 and GEN6 of the Hart Local Plan (Replacement) 1996-2006 Saved Policies (2002) (LP) and Policy NBE11 of the Hart Local Plan (Strategy and Sites) 2032 (2020) (LPSS) have been drawn to my attention. Together these policies require that development should not give rise to unacceptable levels of pollution, should avoid any material loss of amenity to existing residential uses by virtue of noise and should not have a serious adverse effect on the amenities of existing housing, and noise abatement measures should alleviate any material loss in amenity. Given the direct relevance of these aims to this matter, these policies are most important for determining this main issue. Their aims are broadly consistent with the requirements of the Framework that development should result in a high standard of amenity for existing users and should avoid noise giving rise to significant adverse effects on health and the quality of life in this regard.
21. Therefore, for the reasons set out above, the proposed development would have an acceptable effect on the living conditions of nearby occupiers with particular regard to noise. As such it would be in accordance with Policies GEN1 and GEN6 of the LP and Policy NBE11 of the LPSS, the aims of which are set out above.

Other Matters

22. Concerns have been raised relating to highway safety, with particular regard to vulnerable users of the play area and recreation ground. The proposed development would result in an increase in HGVs using this road. However, HGVs currently use Ancells Road to access other destinations and there is no substantive evidence that there is an existing safety issue in this location. Furthermore, the Appellant's transport consultants and the Council's technical advisors at the Highways Authority do not identify a concern in this regard. As such, based on the detailed evidence before me, I am satisfied that the proposed development would not have an unacceptable effect on highway safety.
23. I have not found harm in relation to noise or highway safety. Nor am I presented with substantive evidence of any other harm which would amount to a cumulatively harmful effect on the living conditions of nearby occupiers.

Deed of variation

24. A deed of variation has been submitted. The main parties agreed that this has the effect of ensuring the planning obligations associated with the original permission and the first variation would apply to any new planning permission and I am satisfied that this is the case.
25. The planning obligations associated with the original permission and the first variation would secure a green infrastructure contribution in order to mitigate the loss of trees, and a travel plan and associated fees were required in the interests of promoting sustainable transport modes. I have sufficient evidence in this case that these are necessary, relevant and related in scale and kind in order to mitigate the impacts of the proposed development in these respects.

Conditions

26. In addition to the consideration of the disputed conditions above, for clarity, this decision sets out all of the conditions imposed on the new permission, and restates the conditions imposed on earlier permissions that continue to have

effect. The suggested conditions were discussed at the event and I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. Modified versions of some conditions have been suggested, which secure implementation of details which have previously been approved and these relevant documents have been agreed by the main parties.

27. In the interests of certainty, a condition to define the plans with which the scheme should accord has been attached, however development has commenced and so the standard implementation condition is not necessary.
28. Implementation in accordance with a demolition and construction plan and lighting details are required in the interests of the living conditions of nearby occupiers. I have amended the condition relating to lighting to include a maintenance clause, which was included on the first variation. Conditions restricting sound reproduction, limits on sounds emitted from plant machinery or equipment and implementation in accordance with loading bay details are required for the same reason and as set out above.
29. The development is also required to take place in accordance with landscape details and details of materials, and a condition restricting storage on site is required in order to protect the character and appearance of the area. Details of a refuse storage and collection management plan are required in order to ensure high quality design and accessible refuse facilities.
30. A condition specifying the permitted uses of the site is recommended and there is suitably clear justification in this case that this is required in order to safeguard the supply of employment sites. Further clarity around retail uses permitted is required in the interests of the effect on the operation of the highway. A condition relating to the ongoing use of car parking areas is required in order to provide adequate off street parking in the interests of the operation of the highway network and the character of the area. Implementation in accordance with drainage details is required to reduce the risk of flooding.

Conclusion

31. For the reasons given above I conclude that the appeal should succeed, and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without some of the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

H Miles

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be carried out in accordance with the following plans and documents:

Plans and documents from this application and application reference 21/02894/NMMA:

- Location Plan – drawing no 19203 P0001 B
- Site Layout – drawing no 19203 P0005 G
- Transport Note (DYA Transportation Limited), Acoustic Design Note (AAD, ref: 19179/007/js/a), Acoustic Design Note (AAD, ref: 19179/008/js/a) dated 12th July 2023.

Plans and documents from 21/02894/AMCON and 21/02894/NMMA:

- Proposed Building Plan – drawing no P1001 Rev C
- Proposed Unit 1a Office Layouts – drawing no P1002 Rev C
- Proposed Unit 1b Office Layouts – drawing no P1003 Rev C
- Unit 1c - Office Layouts – drawing no P1004 Rev C
- Proposed Elevations & Sections – drawing no P1005 Rev F
- Proposed Roof Plan – drawing no P1006 Rev C
- Proposed External Finishes – drawing no P0006 Rev D
- Cycle Shelter and Bin Store Layout/Elevations – drawing no P0008 Rev D
- Illustrated Landscape Strategy Proposals Plan – drawing no 773-LA-P-01 Rev B
- Tree Retention Scheme – drawing no SK0004 Rev C
- Proposed Tracking Layout – drawing no SK0005 Rev C
- Proposed Site Accesses with Visibility Envelopes – drawing no TPHS/188/DR/001 Rev A
- External Lighting Layout – drawing no DR-E-600 P1
- External Light Spill Luxplot – drawing no DR-E-601 P1
- Proposed Drainage Layout – drawing no 21056-BGL-XX-XX DR-S-00210-C2
- Proposed Flow Exceedance Plan – drawing no 21056-BGL-XX-XX DR-S-00211
- Design and Access Statement (umc architects, 27.10.2021)
- Landscape Strategy (Bradford-Smith, Dec 2019)
- Transport Assessment (November 2021)
- HGV Trip Generation Review (David Tucker Associates, 13.07.2020)
- Servicing & Access Considerations (TPHS)
- Flood Risk Assessment and Drainage Strategy (Burrows Graham 03.11.21 Ref. 21056-BGLXX-XX-RP-D-0001)
- Noise Assessment (AAD, 28 October 2021)
- External Lighting Assessment Report (Silcock Dawson & Partners, October 2021)
- Aboricultural Planning Report (Tracey Clark Tree Consultancy, October 2021)
- Letter (Brown+Co Planning, 15.04.2020)
- Framework Travel Plan (November 2021)
- Demolition Phase Health and Safety Plan/Outline Methodology Q0021 V2)
- Demolition Programme
- Aerial Site Map

- Construction Management Plan (by Marbank Construction Ltd)
 - Drainage Maintenance Plan (Burrows Graham dated 17.08.2021)
 - SW01 (Burrow Graham 18.08.2021)
 - SW01 (Burrow Graham 18.08.2021)
- 2) Prior to first occupation of the development hereby approved, a Refuse Storage and Collection Management Plan shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter be operated in accordance with the approved Refuse Storage and Collection Management Plan.
 - 3) All works shall take place in accordance with the approved Demolition and Construction Management Plan in association with the Demolition Phase Health and Safety Plan/Outline Methodology Q0021 V2, Demolition Programme, Aerial Site Map and the Construction Management Plan (Marbank Construction Ltd) approved under application 21/02894/AMCON.
 - 4) All works shall take place in accordance with the approved Water Drainage Scheme in the Flood Risk Assessment and Drainage Strategy (Burrows Graham Ref. 21056-BGL-XX-XXRP- D-0001), Drainage Maintenance Plan (Burrows Graham dated 17.08.2021), SW01 (Burrow Graham 18.08.2021), SW02 (Burrow Graham 18.08.2021), 21056-BGL-XX-XX DRS- 00210 - Proposed Drainage Layout C2 and 21056-BGL-XX-XX DR-S-00211-P2-Proposed Flow Exceedance Plan approved under application 21/02894/AMCON.
 - 5) The development shall take place and be installed, operated and maintained in accordance with the External Lighting layout (3456/E01) and External Lighting Assessment by Silcock Dawson & Partners (210114, dated 27th October 2021) approved under condition discharge application 21/02894/CON.
 - 6) The development shall take place in accordance with the Loading Bay Details (1136-002) approved under condition discharge application 21/02894/CON.
 - 7) The development shall take place in accordance with the Landscape Management Plan, Landscape Specification (Rev A), Detailed Planting Plan and Schedule (733-PP-P-01 Rev A), Detailed Planting Plan and Schedule (733-PP-P-02 Rev A), Typical Tree Pit (733-DOC- 01) and Typical Tree Pit (733-DOC-02) approved under condition discharge application 21/02894/CON.
 - 8) The development shall take place in accordance with the Loading Bay Details (1136-002) and Acoustic Report by Applied Acoustic Design (19179/001/js/c, 2nd November 2021) approved under condition discharge application 21/02894/CON.
 - 9) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be as shown on drawing nos. Proposed Elevations & Sections P1005 Rev F and Proposed External Finishes P0006 Rev D as approved under application 21/02894/AMCON.
 - 10) Notwithstanding any information submitted with this application, operation activities between 2300 hrs - 0700 hrs on any day and between 0700 hrs - 2300 hrs on Sundays and Bank Holidays in external areas of

the development hereby approved shall strictly follow the requirements below:

- i) The loading/unloading of any goods that may occur should take place within designated internal loading bays only, with any goods being transferred directly between vehicles and the buildings.
 - ii) The engines to any vehicles that come into the site shall be switched off, particularly those loading/unloading or when waiting to carry out such activities.
 - iii) Any vehicle-mounted refrigeration units shall be switched off whilst loading and unloading or when waiting to carry out such activities.
 - iv) Drivers shall use smart broadband noise reversing alarms.
 - v) The use of forklift trucks and any other machinery relating to the loading and unloading of goods is prohibited.
 - vi) All roller shutter doors shall be kept closed when not in use.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the development hereby approved shall only be used for the following uses of the Town and Country Planning (Use Classes) Order 1987 (as amended):
- Class E(g)(ii) - research and development of products or processes
 - Class E(g)(iii) - industrial processes, being a use which can be carried out in a residential area without detriment to its amenity
 - Class B2 - general industrial, use for industrial process other than one falling within class E(g) (previously class B1); and
 - Class B8 - use for storage or as a distribution centre.
- In accordance with Schedule 2, Part 3, Class V of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification, development consisting of a change of use of the development hereby approved, or part thereof, to another use to which this permission specifically authorises is not permitted after 10 years from the date of this permission.
- 12) The approved parking facilities for vehicles and cycles as identified on drawing no. Proposed Site Layout P0005 Rev G shall not be used for any purpose other than the parking of vehicles and cycles and access shall be maintained at all times to allow them to be used as such.
- 13) Nothing shall be stacked or stored on the site at any time except within any buildings shown on the approved plans.
- 14) No sound reproduction equipment, conveying messages, music, or other sound by voice, or otherwise which is audible outside the site shall be installed on the site.
- 15) The Units hereby approved shall not be used for any Use Class E purposes involving the provision of retail sales to visiting members of the public and any retail activity carried out at the site should comprise solely of an ancillary element of trade counter sales.
- 16) The external sound level emitted from plant, machinery or equipment serving the development shall be equal to or lower than the

representative background sound level, with noise levels assessed in accordance with BS 4142:2014+A1:2019 at the nearest and/or most affected noise sensitive premises.

APPEARANCES

FOR THE APPELLANT:

Tom Mais
Paul Newton
Peter Richards
Heather Sargent
John Sim

FOR THE LOCAL PLANNING AUTHORITY:

Mark Berry
Aimee Harris
Adam Reddings
Peter Wildsmith

INTERESTED PARTIES:

Denise Martin
Shirlie Clements
Ellie May