



Appeal Decision

Site visit made on 25 January 2024

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 31st January 2024

Appeal Ref: APP/H1515/W/23/3318748

Ongar Garden Centre, Ongar Road, Kelvedon Hatch, Brentwood, Essex CM15 0LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Tracey Lunnnon against the decision of Brentwood Borough Council.
 - The application Ref 22/00903/OUT, dated 31 August 2022, was refused by notice dated 1 February 2023.
 - The development proposed is the demolition of the existing commercial units on site. Erection of new replacement commercial buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original application was made in outline with all matters reserved apart from access. The proposal seeks a mix of Class B2 and Class E uses. I have had regard to the various drawings submitted with the application but consider that all details shown are indicative except where they relate to access.
3. There is some uncertainty regarding the red line boundary for the appeal site. The site location plan which is based on an Ordnance Survey extract supplied by Getmapping and dated 15 March 2021 shows the boundary tightly drawn around the access road from Ongar Road (A128) and the existing garden centre buildings and hardstanding. The flood map shows a wider boundary that incorporates surrounding fields which is replicated (in part) on the block plan. The flood map is focused on depicting flood zones while the block plan is labelled as indicative. Therefore, and for the sake of clarity, I have taken the appeal site to be the red line area shown on the site location plan.
4. The main parties agree that the site constitutes previously developed land in the Green Belt and that it is possible to ensure, given the outline nature of the proposal, that the redevelopment would not have a greater impact on the openness of the Green Belt than the existing garden centre development. Consequently, the parties consider that the proposal would not represent inappropriate development in the Green Belt. Subject to suitable controls at the reserved matters stage relating to the scale and layout of new buildings, I have no reason to disagree.
5. I have been provided with a copy of a committee report for a second application on the site (ref 23/00296/OUT). The report was due to be presented at planning committee in October 2023 but was withdrawn due to a legal note received from the current site occupants. For the avoidance of

doubt, I have assessed this appeal based on the documents submitted by the appellant in March and May 2023 rather than any documents submitted with the second application.

6. A revised version of the National Planning Policy Framework (NPPF) was published on 19 December 2023. There were no substantive changes of relevance to this appeal. Amended paragraph numbers are referenced below.

Main Issues

7. The main issues are the effect of the proposed development on (a) highway safety and (b) flood risk.

Reasons

Highway safety

8. The garden centre is open no earlier than 9am and closes by 5pm depending on the day of the week. The application form states that the proposed uses on site would open from 8am on Mondays to Saturdays. The application form indicates that the number of full-time employees on site would increase from 15 to 150 people. It is possible that fewer than 150 employees might be on site at any one time and that some might occasionally work from home or at other locations, but I have no mechanism to control the number or whereabouts of people. Therefore, I have assumed the maximum of 150 employees could be present on site.
9. The appellant's Transport Assessment (TA) estimates that the existing total car trip generation for the garden centre is 1,057 movements per day. This contrasts with an estimated total development trip generation of 278 movements per day. However, with up to 150 people potentially on site, this figure seems low. It is also unclear how many heavy goods vehicle (HGV) movements are expected each day. While the garden centre generates significant traffic movements from customers and receives daily deliveries from HGVs, it is difficult to compare the existing and proposed situations.
10. Vehicle movements associated with the proposed development are likely to be concentrated during the AM and PM peak hours unlike the garden centre and it is not evident how the trips would be dispersed across the local road network or whether any impact on road junctions has been considered. There is no evidence to suggest that the existing access is unsafe and there are limited recorded accidents on the A128, but the evidence is lacking in terms of the likely effects on highway safety.
11. The TA provides swept path analysis for cars and HGVs that show safe vehicle manoeuvres in and out of the site. It also has some references to sustainable travel measures such as cycle parking although the detail is limited. Nevertheless, the evidence is insufficient in respect of the potential effects on traffic movements and the highway network.
12. In conclusion, it has not been demonstrated that the proposed development would have an acceptable effect on highway safety. Therefore, it would not accord with Policies BE08, BE09 and BE12 of the Brentwood Local Plan 2016-2033 (LP) which seek to mitigate the transport impacts of development, make improvements to the highway network as deemed necessary, and promote sustainable means of travel. It would also not adhere to NPPF paragraph 115

which states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Flood risk

13. Most of the site is located within Flood Zone 1, with the access road and the northern boundary within Flood Zone 2. The River Roding lies a short distance to the north. The site area is greater than 1 hectare (ha).
14. LP Policy NE09 requires new development to avoid areas of flood risk by applying the sequential and, where necessary, the exception tests in accordance with national policy and guidance. The policy goes on to say that a site-specific flood risk assessment (FRA) must assess all sources of flooding and demonstrate how flood risk will be managed over the development's lifetime taking climate change into account. Amongst other things, the policy requires a site-specific FRA for all new development greater than 1ha in size in Flood Zone 1, and all new development in Flood Zones 2 and 3. Where proposals satisfy the sequential and exception tests, designs should ensure that several criteria are met on flooding matters.
15. The approach of LP Policy NE09 is consistent with the NPPF including paragraph 165 which directs development away from areas at highest risk of flooding. NPPF paragraph 168 sets out the aim of the sequential test to steer new development to areas with the lowest risk of flooding from any source. NPPF paragraph 173 sets out the requirements for site-specific FRA (including footnote 59) and states that development should only be allowed in areas at risk of flooding where various criteria can be demonstrated.
16. LP Policy BE05 states that all developments should incorporate appropriate sustainable drainage systems (SuDS) for the disposal of surface water to avoid any increase in surface water flood risk or adverse impact on water quality. Applicants are required to submit a surface water drainage strategy and an FRA for all major development. This policy is consistent with the NPPF including paragraph 175 on the requirement for major development to incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate.
17. The appellant has submitted a single page FRA which notes the above flood zones and states that the redevelopment area lies entirely within Flood Zone 1 apart from potential resurfacing of the existing access road and the possible installation of landscaping schemes. It concludes that the proposal would have no impact on flood risk and any concerns regarding the landscaping works can be addressed at the reserved matters stage. In contrast, Essex County Council as the Lead Local Flood Authority (LLFA) has issued a holding objection stating the information provided does not allow them to assess the flood risk implications.
18. The appellant's FRA focuses on fluvial flood risk and makes scant reference to other potential sources such as surface water flooding. It has not been demonstrated that the sequential test has been looked at or satisfied. Little detail exists on how flood risk will be managed or whether climate change has been considered. The site access is within Flood Zone 2, and it is not clear whether safe access and egress would be possible in the event of a flood. There

is no initial drainage strategy for the LLFA and the Council to assess and a lack of information provided as required by the Essex SuDS Design Guide.

19. While all matters are reserved apart from access, an outline planning permission establishes the principle for a specific form of development to take place on a specific site. Consequently, sufficient information needs to be provided at the outline stage to understand the potential flood risk issues for the site from any source and whether this is a suitable and safe site to develop subject to more details at the reserved matters stage.
20. There is an existing commercial use on site, but the proposal would involve a different mix of uses (including B2 general industrial) and a different number of people. Indicatively, the proposed layout of buildings and hardstanding would differ from the existing development and matters relating to drainage are unclear. Therefore, it would not be appropriate to deal with all the missing elements of the FRA or drainage strategy by condition or reserved matters.
21. In conclusion, it has not been demonstrated that the proposed development would have an acceptable effect on flood risk. Therefore, it would not comply with LP Policies NE09 or BE05 as set out above, or Policy BE14 which amongst other things seeks safe places in which to live and work. It would also not adhere to Section 14 of the NPPF in relation to planning and flood risk.

Other Matters

22. The redevelopment of the site would have economic benefits with modern commercial buildings and more employment than at present. However, contrary to some statements from the appellant, the existing garden centre appears to be an ongoing operation and I saw no evidence on my site visit that the existing buildings are unkempt or redundant. The garden centre clearly provides jobs and retail services to the local community. Therefore, I only afford moderate weight to the economic benefits.
23. I am aware of opposition from the current operators of the garden centre and issues relating to the lease. However, these are private matters between the appellant and the garden centre operator and not something that can be taken into account as a material planning consideration.
24. NPPF paragraph 123 promotes the effective use of land and making as much use as possible of previously developed land. However, it has not been demonstrated that the site is under-utilised, or that it is suitable for redevelopment given my findings on the main issues. Therefore, I give limited weight to these benefits.
25. The proposal could deliver ecological benefits through improved landscaping and habitat areas for various species. Such measures could be secured by condition and through the reserved matters stage. In the absence of more detailed information, including any biodiversity net gain, I give these benefits moderate weight. The new buildings could be more aesthetically pleasing than the existing garden centre, but these details have yet to be secured given the outline nature of the proposal and so this carries little weight.
26. The benefits of the proposed development would be no greater than moderate and would not outweigh the uncertainties relating to the effects on highway safety and flood risk. Therefore, the proposal would fail to accord with the

development plan with insufficient material considerations to indicate that planning permission should be granted.

Conclusion

27. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR