



Appeal Decision

Site visit made on 12 December 2023

By R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/C3810/W/23/3316638

Brookview Nursery, Eastergate Lane, Walberton, West Sussex BN18 0BA

- 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 Philip Sowden against the decision of Arun District Council.
 - The application Ref WA/87/22/PL, dated 15 August 2022, was refused by notice dated 10 January 2023.
 - The development proposed is described as the removal of outdoor storage, including caravan and polytunnels and the erection of 7 No. flexible E (g) flexible units comprising of offices and workshops, associated parking, drainage and turning spaces.
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Decision

1. The appeal is dismissed insofar as it relates to the installation of an attenuation pond in the south-east corner of the site. The appeal is allowed insofar as it relates to the remainder of the application and planning permission is granted for the removal of outdoor storage, including caravan and polytunnels, and the erection of 7 No. flexible E (g) flexible units comprising of offices and workshops, associated parking, drainage and turning spaces at Brookview Nursery, Eastergate Lane, Walberton, West Sussex BN18 0BA, in accordance with the terms of the application, Ref WA/87/22/PL, dated 15 August 2022, subject to the attached schedule of conditions.

Applications for costs

2. An application for costs was made by Mr Philip Sowden against Arun District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant has submitted various versions of the arboricultural and drainage information. The versions considered in this decision are those dated December 2022, which were submitted to the Council prior to the decision notice being issued, and the February 2023 updates, which were submitted at appeal. These versions do not alter the proposed development but seek to clarify elements of that proposed.
4. The National Planning Policy Framework (the Framework) was updated in December 2023. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views, but the revised version has been referred to in this decision.
5. For the following reasons, I find the attenuation pond in the south-east corner of the appeal site unacceptable. As it is clearly severable both physically and

functionally from the rest of the proposal, I therefore intend to issue a split decision.

Main Issues

6. The main issues are the effect of the proposed development on the character and appearance of the area, including trees, and the Singleton and Cocking Tunnels Special Area of Conservation and bats.

Reasons

Character and appearance

7. The appeal site constitutes a mix of single storey buildings and storage structures surrounded by hardstanding. Vegetation and trees are limited to the boundaries, specifically those with the adjacent nursery complex and the fields to the rear. The existing layout of buildings, car parking and mix of commercial uses gives the site a somewhat unkempt appearance which appears more urban than its surroundings.
8. To the rear of the site are a series of large fields interspersed with hedgerows leading back to Barnham Lane and the associated cycle and footpath. However, on all other sides the appeal site is surrounded by development. To the front there are residential properties, on one side a large expanse of uniform glass houses within the adjacent nursery complex, and on the other numerous agricultural buildings. This means views of the appeal site are largely screened by other buildings, except from Barnham Lane where the intervening field boundaries and the rear boundary trees provide reasonable screening.
9. The proposed replacement buildings would maintain a single storey height and be of a form and style appropriate to the appeal site's rural setting. It is appreciated there would be an increase in built form. Nevertheless, their sympathetic design in combination with the simplified and legible proposed site layout, would provide a cohesive and defined appearance with a more rural character. This would constitute a less visually intrusive form of development than that which currently exists.
10. The proposal would require the removal of some trees including 1 field maple subject to Tree Preservation Order (TPO), identified as T02¹. Most of the trees that would be removed are along the side boundaries. As such their removal would have limited impact on the screening of the proposal, due to existing development beyond. The most visible trees, towards the rear of the site, would be retained.
11. The proposal would require some development around the retained trees. However, the technical information submitted provides evidence that the use of permeable hard standing, no dig construction methods, and tree protection measures would ensure the parking and hard standing proposed would not be detrimental to the health of the retained trees and there is nothing before me to conclude otherwise.
12. It is acknowledged that the proposed attenuation pond in the south-east corner of the appeal site, could put undue pressure on the trees along the rear boundary. This could affect their health and therefore their visual impact.

¹ As identified on the plan LLD2442-ARB-DWG-001 Revision 00, and within the Existing Tree Schedule LLD2442 02, dated 15 August 2022

However, the technical information submitted shows that this pond is not required to ensure adequate drainage of the site. Therefore, as an element which is physically severable from the rest of the proposal and is not functionally required for the proposed drainage strategy, its removal would ensure the rest of the proposal would be acceptable.

13. It is also appreciated the trees provide softness to the appeal site which is otherwise dominated by development. However, the proposal would allow for additional landscaping throughout the site. It would not be restricted to the boundaries as it is currently. With appropriate planting, including trees, this could improve the overall verdant character of the site beyond that which currently exists, and could be secured by condition. The loss of trees would not, therefore, have a detrimental impact on the character and appearance of the area.
14. Nevertheless, Policy ENV DM4 of the Arun Local Plan (LP), amongst other things, requires that trees protected by TPO are not damaged or destroyed unless their removal is in the interest of good arboricultural practise; would enhance the survival and growth prospects of other protected trees; or the benefits of the proposal would outweigh the loss of that tree.
15. There is nothing before me stating specifically the removal of T02 would be in the interests of good arboricultural practise; nor that its loss would enhance the survival or growth of other protected trees. However, the loss of T02 would be outweighed by the benefits of that proposed, namely the overall improvement to the appearance of the site and thereby its impact on the surrounding landscape; the scope for additional planting and landscaping to enhance biodiversity; and the economic and social benefits the provision of additional business units would have on the local rural community. The proposal would therefore comply with LP Policy ENV DM4.
16. The Council consider the submitted arboricultural documents to be unclear. It is acknowledged that the Existing Tree Schedule² (ETS) provides a schedule of existing trees that could be removed, and this does not appear to correlate with the proposal plans. However, the ETS forms part of the evidence base that informs the proposal. The Arboricultural Impact Assessment and Method Statement³ and associated tree constraint and retention protection plans⁴ describe the intended arboricultural works. I am therefore satisfied that the submitted documents provide adequate clarity.
17. For the above reasons, I find that the proposal, excluding the attenuation pond in the south-east corner of the appeal site, would not have a harmful effect on the character and appearance of the area. It would comply with LP Policies ENV DM4, D DM1, and LAN DM1, and Policy VE3 of the Walberton Neighbourhood Development Plan (NP), as far as they seek high standards of design which respect the characteristics and natural features, including trees, of the surrounding area.

² LLD2442 02, dated 15 August 2022

³ LLD2442-ARB-REP-001 04, dated 13 February 2023

⁴ LLD2442-ARB-DWG-001 01, LLD2442-ARB-DWG-003 02, LLD2442-ARB-DWG-004 02 and LLD2442-ARB-DWG-005 Revision 02

Cocking Tunnels Special Area of Conservation and bats

18. The appeal site is within the 12km buffer zone of the Cocking Tunnels Special Area of Conservation (SAC). It qualifies for protection due to its importance for barbastelle and bechsteins bats. The Council has taken the position that the proposal would result in significant adverse effects on the SAC. This is because it considers that the appeal site's boundary trees could potentially provide commuting routes between woodlands for barbastelle bats.
19. Nevertheless, on consultation with Natural England it is evident they have previously told the Council that the proposal would not have a likely significant effect on the SAC. On review of the evidence before me, including the Council's Ecologist's comments, I agree with this conclusion, therefore an appropriate assessment⁵ is not required. However, the proposed mitigation and compensation measures, and ecological enhancements within the appellant's Environmental Impact Assessment would be beneficial in the support of bats, a protected species, and the NP designated biodiversity corridor which runs along 2 sides of the site. These can be secured by condition.
20. Accordingly, the proposal would comply with LP Policies ENV DM1 and ENV DM5, and NP Policy VE10, insofar as they seek to protect designated sites of biodiversity and protected species.

Other Matters

21. Interested parties have concerns relating to the appropriateness of use, noise disturbance, the impact on the setting of Choller House Farm, a Grade II listed building, and the potential of residential conversion. The Council do not object to the appeal scheme it regard to any of these matters. Due to the existing use of the site, the orientation of the proposed buildings, and the intervening distances, I agree with the Council that the proposal is acceptable in terms of use and potential noise disturbance, and it would not harm the setting of Choller House Farm. In relation to potential future uses, I am required to determine the appeal in relation to the scheme which is before me, and this does not include a residential element.

Conditions

22. The Council and appellant have suggested several conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended them for consistency and clarity.
23. Condition 1 provides a standard time limit and condition 2 requires accordance with the approved plans, both of which provide certainty. Conditions 3 and 4 have been imposed to ensure the protection of all retained trees during construction, and conditions 5 and 17 to conserve and enhance protected species and habitats. I have imposed conditions 6, 7, 8, 9, 10, 11, 13, and 16 to ensure that the site is developed in a way which will be safe for its intended end use and to ensure the proposal will not adversely affect the surrounding area and habitats, with specific regard to construction and delivery. The imposition of condition 15 is for the benefit of future occupiers of the development and necessary for compliance with LP Policy TEL SP1. Condition 14 is necessary to support the efficient use of resources and reduce energy use.

⁵ As defined by Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (Habitat Regulations)

24. Conditions 6 and 7 are required to be pre-commencement as it is fundamental to have these details agreed prior to any works commencing on the appeal site and have been similarly proposed by the appellant.
25. The Council had proposed a condition to remove permitted development rights which could allow the future change of use of the site specifically to prevent general industry and storage/distribution uses. However, as these uses do not fall within the same use class order, or would require prior approval to be converted, a condition of this nature is not necessary. The Council has also proposed a condition relating to the provision of fire hydrants. The reasoning for this condition is not persuasive and it is noted other regulatory mechanisms would require such provision, this condition is not, therefore necessary.

Conclusion

26. For the reasons given above and having considered the development plan as a whole, along with all other relevant material considerations, including the Framework, I conclude the appeal should be dismissed insofar as it relates to the attenuation pond in the south-east corner of the appeal site, and should be allowed in relation to all other elements of the appeal scheme.

RJ Redford

INSPECTOR

SCHEDULE OF 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 insofar as they are relevant to the part of the development hereby permitted, and all elements regarding the proposed attenuation pond in the south-east corner of the site are disregarded: 3058-01 Revision G; 3058-02; LLD2442-ARB-DWG-004 Revision 02; LLD2442-ARB-DWG-005 Revision 02; and plan 202-6286-001 Revision C.
- 3) The development hereby permitted shall be carried out in accordance with the details set out in the Arboricultural Impact Assessment and Method Statement (LLD2442-ARB-REP001 rev 02, dated December 2022) and the accompanying plans LLD2442-ARB-DWG-003 Revision 02; LLD2442-ARB-DWG-004 Revision 02; and LLD2442-ARB-DWG-005 Revision 02.
- 4) Notwithstanding condition 3. no utility service route connections which would cross any of the retained trees' root protection areas shall be installed until a method statement for their construction has been submitted to and approved in writing by the local planning authority. The utility service route connections shall then be constructed in accordance with the approved details.
- 5) The development hereby permitted shall be carried out in accordance with the Mitigation and Compensation measures set out in the Ecological Impact Assessment (EIA) (LLD2442 Revision 01, dated 14 October 2021), and no

unit shall be occupied until the Ecological Enhancements identified within the EIA have been implemented, and thereafter retained.

- 6) No development shall take place until a Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with any programme or methodology of site investigation and recording required by the Written Scheme of Investigation.
- 7) No development shall take place, including any works of demolition, until a Construction and Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall provide for, but is not limited to:
 - the phased programme of construction works;
 - the control of vehicles during construction including routing, timings, parking, turning, loading, and unloading, and any temporary traffic management which may be required;
 - measures to control and reduce impacts during demolition and construction including but not limited to dust, dirt, noise, vibration, and polluted runoff control;
 - wheel washing facilities, and road sweeping if necessary;
 - a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - storage of plant and materials used in constructing the development;
 - the temporary erection and maintenance of site enclosure hoarding including access gates, decorative displays, and facilities for public viewing, where appropriate;
 - any temporary external lighting to be used during construction;
 - measures to address any environmental problems arising from any of the above;
 - impact avoidance and mitigation measures relating to protected species within the development site;
 - working hours for delivery, demolition, and construction; and
 - delivery of public engagement including details of responsible persons and lines of contact.

The approved CEMP shall be adhered to throughout all stages of the development.

- 8) No development beyond site survey and investigation works shall commence until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale to remediate the site to render it suitable for the approved development shall be submitted to, and approved in writing by the local planning authority.

The site shall be remediated in accordance with the approved measures and timescale and no unit shall be occupied until a verification report as

first been submitted to and approved in writing by the local planning authority.

- 9) If contamination is found during any stage of development that was not previously identified by condition 8, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority.

The remediation of the site shall then be undertaken prior to recommencing development and shall incorporate the approved additional measures, and no unit shall be occupied until a verification report for the remediation works has first been submitted to and approved in writing by the local planning authority.

- 10) No construction above slab level shall take place until a Biodiversity Enhancement Strategy (BES) has been submitted to and approved in writing by the local planning authority. The BES shall include, but is not limited to:

- the purpose and conservation objectives for the proposed enhancement measures;
- detailed designs to achieve stated objectives including the protection of protected and priority species;
- the locations of proposed enhancement measures by appropriate maps and plans including those identified in condition 5;
- details of the persons responsible for implementing the enhancement measures; and
- details of initial aftercare and long-term maintenance (where relevant).

The BES shall be adhered to throughout all stages of the development, and no unit shall be occupied until all enhancement measures have been fully implemented, and thereafter maintained in accordance with the approved details.

- 11) No construction above slab level shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include, but are not limited to:

- details of existing trees and hedgerows to be retained and measures for their protection during the development;
- an implementation programme, including phasing of work where relevant;
- a maintenance strategy to include the replacement of any trees or plants which die, are removed, or become seriously damaged or diseased; and
- vehicle parking layouts including electrical vehicle charge points.

No unit shall be occupied until the landscaping works have been carried out in accordance with the agreed implementation programme, and thereafter maintained in accordance with the maintenance strategy.

- 12) No unit hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first

have been submitted to and approved in writing by the local planning authority. The submitted details shall be based on plans D1963-PL300 C, and D1963-PL302 and include, but are not limited to:

- winter groundwater monitoring to establish highest annual ground water levels and winter percolation testing to BRE 365, or similar approved, to support the design of any infiltration drainage;
- the discharge flows to the watercourses;
- the methodology for the culverting, diversion, infilling or obstruction of any water course on or adjacent to the site if required; and
- the maintenance and management of the surface water drainage system including a site-specific maintenance manual, and how current and future landowners will be enabled to undertake their riparian maintenance responsibilities in respect to any watercourse or culvert on or adjacent to the site.

The drainage system shall thereafter be retained and maintained in accordance with the agreed details.

- 13) No unit hereby permitted shall be occupied until the vehicle access serving the development has been constructed in accordance with the details set out in the Transport Statement (6286, dated April 2022) and plan 202-6286-001 Revision C.
- 14) No unit hereby permitted shall a scheme which would achieve a minimum of 10% energy supply production from either the use of decentralised/renewable or low carbon energy sources has been implemented in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 15) No unit hereby permitted shall be occupied until infrastructure to facilitate connection to high-speed broadband has been installed to that unit.
- 16) No external or flood lighting shall be installed until details have first been submitted to and approved in writing by the local planning authority. Installation shall then be carried out in accordance with the approved details.

END OF SCHEDULE