



Appeal Decision

Site visit made on 20 February 2024

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2024

Appeal Ref: APP/Q5300/W/23/3323144

Hereward House, 288 Southbury Road, Enfield EN1 1TR

- 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 outline planning permission.
 - The appeal is made by Mr Osman Ismail of Lycium Properties Limited against the Council of the London Borough of Enfield.
 - The application Ref 22/03175/OUT, is dated 8 September 2022.
 - The development proposed is commercial business use 'employment hub', involving the redevelopment of the site for up to seven storeys of mixed use development – basement car parking, retail/ cafe/ offices at ground floor level, offices at first floor level and residential use above.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Osman Ismail of Lycium Properties Limited against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the description of development from the application form. Although different to that on the appeal form, no confirmation was provided that a change was agreed.
4. Where comments were received from the main parties on the latest National Planning Policy Framework (Framework), I have taken them into account in my reasoning.
5. Outline planning permission is sought with only access and scale to be considered. Other than details relating to these matters, I have regarded all other elements shown on the submitted plans as illustrative.
6. The appellant lodged an appeal against non-determination after the expiry of the statutory period without the Council having issued a decision. The Council subsequently stated that had they determined the application they would have refused it for a number of reasons. The appellant has had the opportunity to respond to these in their final comments. Therefore, they would not be prejudiced by my taking the Council's comments into account and forming the main issues.

Main Issues

7. The main issues of the appeal are:

- Whether the appeal site is an appropriate location for the proposed development with regard to the local development strategy,
- The effect of the proposed development on the future operation of nearby business premises, with particular regard to the Strategic Industrial Location (SIL),
- Whether the proposed development makes appropriate provision for affordable housing and family housing,
- The effect of the proposed development on flood risk,
- The effect of the proposed development on the living conditions of the occupiers of Southbury House, with particular regard to sunlight and daylight; and
- The effect of the proposed development on the character and appearance of the area.

Reasons

Development Strategy

8. The appeal site lies within a SIL. Policy E5 of the London Plan seeks for these locations to be sustained and that policies should protect and intensify their function, attractiveness and competitiveness. Industrial type uses will be supported, and proposals should not compromise the integrity or effectiveness of them.
9. Policy DMD19 of the Development Management Document (DMD) states that a change of use in the Great Cambridge Road Industrial Business Park SIL is acceptable where certain criteria are met. This includes that the proposed use would not compromise the function and operation of the area, the operating conditions of remaining industrial uses and future ones.
10. Policy E4 of the London Plan seeks sufficient supply of land and premises to meet industrial functions stating that retention of industrial capacity should be prioritised. Any release of land should be focused on locations that are well connected to infrastructure. Core Policy 14 of The Enfield Core Strategy (CS) seeks to safeguard SILs.
11. Policy E7 of the London Plan encourages the intensification of business uses on industrial land. Policy DMD25 of the DMD aims to steer major office development to the town or district centre with a sequential assessment needed for out of centre proposals.
12. Policy 6.2 of the North East Enfield Area Action Plan (NEEAAP) states that proposals in this location for redevelopment should support high quality employment uses that fit with its role and be ancillary and complementary to the industrial business park.
13. There are a range of uses in the area including non-industrial uses nearby, adjacent to the appeal site and at the site itself. In addition, the existing use and previous uses were not industrial or light industrial. However, the proposed

development would introduce residential development currently not at the site. Moreover, while certain activities such as research and development could require less heavy goods vehicle movements, it is not clear if these could be accommodated in the proposal which also includes retail, café and residential use. From the evidence before me the proposed commercial uses would not align with those sought, or could be adapted to be considered appropriate for the SIL.

14. There is no compelling evidence that the site as a whole is not or would not be needed or suitable for uses appropriate to the SIL. The proposed development makes future use for such purposes less likely. Even though at the fringe of the SIL, the appeal scheme could lead to a shortage of suitable industrial capacity going forward.
15. The proposal would provide commercial uses on a greater scale than at present. Nonetheless, there is a lack of detailed evidence to demonstrate that the scheme would address a current shortage of those proposed. Furthermore, although full details of the scheme are not to be confirmed at this stage, the parameter details indicate a significant area of office floorspace. It has not been shown that the appeal site is sequentially preferable for the suggested commercial provision. Therefore, the benefit of the additional provision would be small. Similarly, it has not been shown that the residential element of the scheme needs to be provided at this site.
16. Therefore, the appeal site would not be an appropriate location for the proposed development with regard to the local development strategy. It would be contrary to Policies E4, E5 and E7 of the London Plan, Core Policy 14 of the CS, Policies 19 and 25 of the DMD and Policy 6.2 of the NEEAAP. These, in part, seek to retain and protect SIL for appropriate purposes and direct development to certain locations.
17. It would also fail to accord with the Framework where it states decisions should recognise and address the specific locational requirements of different sectors and that significant weight should be placed on the need to support economic growth and productivity.

Operation of nearby businesses

18. Policy D13 of the London Plan places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-sensitive development. Development should be designed to ensure that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them. In addition, as above, policies E5 of the London Plan, Core Policy 14 of the CS and Policy DMD19 of the DMD seek to protect the functioning of SILs.
19. Southbury Road was very busy at the time of my site visit, and I saw numerous heavy goods vehicles using it. While Baird Road was quieter, there was also a steady flow of traffic and numerous parked cars suggesting that it was well used. While only a snapshot in time, and it may be different at other times of days and the week, there is no clear evidence before me that this was untypical. Although there is planning permission for the redevelopment of the land behind the appeal site, there are several commercial and industrial uses nearby and others with planning permission. Moreover, the site is in a SIL where policy encourages the expansion and intensification of industrial uses.

20. The proposed development would introduce residential use and occupiers. The building would be located close to its site boundaries in a location with high levels of traffic and industrial/commercial uses. No noise or air quality assessments have been provided. While there are other residential uses and further ones proposed nearby, I do not have full details of what information was provided with those or any mitigation to prevent noise and disturbance. Given the lack of information, I cannot be sure if or how the residential use could be accommodated within the required parameters without leading to future objections from residents. This could result in existing activities being limited or curtailed. Consequently, the proposal would compromise the integrity and effectiveness of the SIL in accommodating industrial type activities.
21. As such, the proposed development would unacceptably harm the operation of nearby businesses with regard to the SIL. It would be contrary to Policies D13 and E5 of the London Plan, Core Policy 14 of the CS and Policy 19 of the DMD where they seek to protect existing uses within the SIL.

Affordable and family housing

22. Core Policy 3 of the CS sets a borough wide target of 40% affordable housing units on developments of 10 or more dwellings, with a mix reflecting the need for larger family units as required by Core Policy 5. Policy H4 of the London Plan sets a strategic target of 50% of all new homes delivered across London to be genuinely affordable.
23. Policy H5 of the London Plan sets threshold levels at 50% for schemes in SILs, such as the appeal site, where the scheme would result in a net loss of industrial capacity. Where a scheme does not meet these requirements detailed supporting viability evidence is required to be submitted as part of the application using the methodology and assumptions set out in the London Plan and the Affordable Housing and Viability SPG. Policy H6 of the London Plan sets out requirements for the types of affordable housing.
24. The Affordable Housing Statements provided indicates 35% of units would be affordable and 31% of the habitable rooms. Notwithstanding this, there are no details of the tenure mix for those units. No clear financial evidence has been put forward to justify a contribution below the policy requirements due to viability considerations or that this would be disproportionate.
25. The appeal scheme is its own development and subject to separate consideration to the Colosseum Retail Park site. There is no conclusive evidence before me that any affordable housing contributions sought on the adjacent planning permission includes provision for other future schemes. The viability or otherwise of the appeal scheme is not based on that of another proposal. Therefore, the consideration of affordable housing provision should be based on the circumstances of the appeal proposal.
26. The Framework states that to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount. Nevertheless, no clear details of what level of reduction this would result in have been provided and the building appeared to be in use at the time of my visit.
27. In any event, planning obligations should be secured at the outline stage, as this is the planning permission, not the reserved matters stage. There is no

completed agreement before me. Planning Policy Guidance sets out that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. It has not been shown that this is the case for the appeal scheme. In the absence of an appropriate mechanism, it would not be possible to secure any affordable housing contribution.

28. Core Policy 5 of the CS sets out requirements for the range of unit types by number of bedrooms for both market housing and social rented housing. Policy H10 of the London Plan states that schemes should generally consist of a range of unit sizes having regard to, amongst other things, robust local evidence.
29. The Local Housing Needs Assessment 2020 (LHNA) is more recent than the CS and indicates a need for a considerably different mix of housing than that of Core Policy 5. However, while a greater proportion of smaller units may take pressure off existing larger properties being subdivided, the provision of larger homes of 3 or more bedrooms is substantially below both the policy requirement and the LHNA.
30. Consequently, the proposed development would not make appropriate provision for affordable housing and family housing. It would be contrary to Policies H4, H5, H6 and H10 of the London Plan as well as Core Policies 3 and 5 of the CS for the reason given above.

Flooding

31. The proposal is in outline form with detailed design a reserved matter and the indicative information does not indicate any habitable accommodation at basement level.
32. Nevertheless, despite being within Flood Zone 1 and the extent of existing hardstanding at the site, the appeal site is an area identified as being subject to surface water flooding in the Enfield Strategic Flood Risk Assessment. Therefore, in accordance with footnote 59 of the Framework a site-specific flood-risk assessment (FRA) should be provided for all development on land identified in a strategic flood risk assessment as being at increased flood risk in future. The requirement for an FRA in such locations is repeated in Policy DMD60 of the DMD.
33. No such assessment has been provided with the scheme and no detailed surface water drainage strategy to indicate the potential risks from flooding and how, or if, they could be appropriately managed. Given this issue relates to the principle of the acceptability of the proposal, the present uncertainty over what risks there would be and whether any mitigation could address them, it is not appropriate to impose a condition requiring an FRA at a later time.
34. As such, on the evidence before me I cannot be certain that the proposed development would not lead to increased risks from flooding at the site or elsewhere. It would be contrary to the Policies SI12 and SI13 of the London Plan, Policy 28 of the CS and Policies DMD59, DMD60, DMD61 and DMD62 of the DMD. These, in part, seek to ensure that flood risk is minimised and mitigated, not increase flood risk elsewhere, consider options for prevention or mitigation and provide an FRA in areas identified as being at risk.

35. Moreover, it would be contrary to the Framework where it seeks to ensure that flood risk is not increased elsewhere, and any residual risk can be safely managed.

Living Conditions

36. The BRE guidance, which while not mandatory, suggests that the 25-degree line can be used to assess windows opposite a new development. Light would be blocked if a 25-degree line drawn from the centre of the lowest window were obstructed and a more detailed check is needed.
37. The proposed building would be set in further from the boundary with Southbury House than the existing building and stepped with the highest parts furthest from it. Notwithstanding this, the proposed one would be further forward, and it would be taller than the existing building. As a result, it would fill more of the plot depth along its boundary with Southbury House. The information before me indicates that the nearest windows over several floors at Southbury House are for flats and serve some of the main accommodation.
38. The scale of the building is to be agreed at the outline stage and although less than the existing angle, the proposal would considerably exceed the 25-degree line. No sunlight and daylight survey has been provided to demonstrate what effect the proposal would have on the windows facing the site. Therefore, I cannot be sure that appropriate levels of light could be maintained at these adjacent windows. This could lead to dark and uninviting rooms for those living in Southbury House.
39. As such, the proposed development could significantly harm the living conditions of the occupiers of Southbury House, with regard to sunlight and daylight. It would fail to accord with Policy D6 of the London Plan where it states development should provide sufficient daylight and sunlight to surrounding housing. Moreover, it would be contrary to the Framework where it seeks a high standard of amenity for existing users.

Character and Appearance

40. The existing building is not of any particular merit and there are large hard surfaced parking areas to the roadside boundaries. Nonetheless, the parking is partly screened being below street level. In addition, the set back of the building makes it largely discrete in both streetscenes. In contrast, the proposed building would be located very close to both roadside boundaries, much further forward than the adjacent Southbury House and the proposed buildings to the rear.
41. The proposed building would not be significantly taller than those currently either side of it on Southbury Road. It would also be considerably lower than those proposed at the Colosseum Retail Park site. However, while there are not consistent building lines, both the existing and proposed buildings near the site on Southbury Road and Baird Road are predominantly set back from the pavement giving a spaciousness to the streetscene.
42. The maximum height of the building would not be out of keeping and the area is subject to change with large scale developments with planning permission. Notwithstanding this, while the building would be stepped, the position of the building with the tallest part so close to the street would be discordant. Rather than appearing as a gateway building, and though the appearance is not to be

considered in this appeal, the scale of the building would result in it being abrupt and overbearing.

43. Landscaping is a reserved matter, and it may be possible to retain the frontage tree. Nonetheless, given the height and proximity to the street of the proposal leaving only limited space for any landscaping, any such landscaping would do little to soften what would be an imposing feature in the streetscene.
44. Consequently, the proposed development would unacceptably harm the character and appearance of the area. It would be contrary to Core Policy 37 of the Enfield DMD and Policies D3 and D4 of the London Plan. These, in part seek to deliver good design and prevent development that is inappropriate to and enhance its context. The scheme would also be contrary to the Framework where it seeks to ensure development is sympathetic to local character.
45. Policy DMD9 of the DMD relates to amenity space and is therefore not directly relevant to this main issue.

Other Matters

46. The appeal site is adjacent to the Colosseum Retail Park site. However, that is not located within the SIL. Moreover, from the evidence before me that proposal included detailed assessments on matters such as noise. In terms of scale and position it is set back further from the external roads and Southbury House. Therefore, it is materially different to the appeal scheme.
47. The appeal site is within the zone of influence of the Epping Forest Special Area for Conservation (SAC) and the SSSI Impact Risk Zones for Chingford Reservoir SSSI. As I am dismissing the appeal for other reasons, the proposal would not take place and would not affect the SAC or SSSI. As such, I do not need to consider this matter further. Even if suitable mitigation were secured, a lack of harm would only be a neutral factor.
48. The Council indicate that they have 3.8 years of housing land supply. In light of this shortfall and the number of units proposed, the contribution towards housing supply would be moderate. While it is indicated that some of the residential units would be affordable, there is no mechanism before me to secure them as such. There would also be moderate economic benefits from the build and occupation of the development including from the proposed commercial elements. From the evidence before me ecological benefits would be small.
49. The proposal would result in harm from each of the main issues as set out above. The policies it would be contrary to are broadly consistent with the Framework. This includes the application of policies in the Framework that protect areas or assets of particular importance providing a clear reason for refusing the development proposed. In this case areas at risk of flooding. Therefore, as set out in footnote 7 of the Framework, despite the current housing supply level, the presumption in favour of sustainable development as set out in paragraph 11d)ii of the Framework does not apply.

Conclusion

50. The proposed development conflicts with the development plan when considered as a whole, and the Framework, and there are no material

considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

51. Therefore, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR