



Appeal Decision

Site visit made on 12 March 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2024

Appeal Ref: APP/K0940/W/23/3329525

Prizet Service Area Southbound, A590, Helsington, Kendal LA8 8AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
 - The appeal is made by Simon Hockings (AUK IPProperties Ltd) against the decision of Westmorland and Furness Council.
 - The application Ref is SL/2023/0023.
 - The development proposed is construction of new business building (Use Class E) with associated car parking and site works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An update to the National Planning Policy Framework (the Framework) has been published dated 19 December 2023 but there are no material changes relevant to the substance of the appeal.

Main Issues

3. The main issues are:
 - Whether the site location is suitable for the proposed development, having regard to development plan policy governing proposals within the open countryside;
 - Whether the submitted Sequential Assessment (SA) sufficiently demonstrates that there are no suitable and available sites for the proposal within town centre, edge of centre or more accessible out of centre locations;
 - Whether the site location is suitable for the proposed development, having regard to its accessibility by sustainable transport modes; and
 - The effect of the proposed development on flood risk.

Reasons

Location

4. The appeal site is located to the southeast of Prizet Services Southbound, located on the A591, to the south of Kendal. The services comprise the filling station, three office units and a retail unit on the southbound side and a filling station, workshop, and hotel on the northbound side. The site is located within

the open countryside and approximately 1.1 kilometre from the nearest (local) service centre of Natland.

5. Policy CS1.1 of the South Lakeland Development Framework Core Strategy, 2010 (CS) sets out the sustainable development principles, which includes, amongst other things, directing most new development to existing service centres and applying the following sequential approach to development: first, using existing buildings (including conversion) within settlements, and previously developed land within settlements; second, using other suitable infill opportunities within settlements; and third, the development of other land where this is well located in relation to housing, jobs, other services and infrastructure. Policy CS1.2 of the CS explains that, exceptionally, new development will be permitted in the open countryside where it has an essential requirement for a rural location, is needed to sustain existing businesses, provides for exceptional needs for affordable housing, is an appropriate extension of an existing building or involves the appropriate change of use of an existing building.
6. The proposed development seeks full planning permission for the construction of a business building (Use Class E) with associated parking and other works. The proposed building would be located to the south-east of the site with a parking area to the north of the building with access taken directly from the A591 to the west. Given the site's location in the open countryside and its unsustainable location, with particular regard to accessibility which I cover elsewhere in this decision, the proposed development would not follow the above sequential approach to development or fall within any of the exceptions as set out. Additionally, Policy CS2 of the CS sets out the Kendal strategy whereby amongst other things, the Council aim to where possible, locate new employment uses where they are not only accessible (or can be made accessible) by walking, cycling and public transport from main residential areas, but also provide good connections to the strategic transport network without any detrimental impact on the town centre network. A further aim is to focus as far as possible new office development in or adjacent to Kendal town centre.
7. I am aware of the appellants' claims that Policy CS1.2 of the CS presents a restricted set of criteria against which development in the countryside is considered appropriate and I am aware of the sequential approach to main town centre uses which I cover further in my decision. However, I cannot agree that because of the provisions set out in the Framework relating to the sequential approach for main town centre uses then Policy CS1.2 is out of date and similarly Policy LA1.1 of the South Lakeland Local Plan Land Allocations Development Plan Document, 2013 (LADPD) which relates to development boundaries. This is because the sequential test to planning applications relates to main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. It is only once this assessment against the development plan has been undertaken that the test is applied with a specific requirement for main town centre uses to be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre.

8. Additionally, the Framework in paragraph 109, states amongst other things, that the planning system should actively manage patterns of growth in support of objectives set out in paragraph 108, including that opportunities to promote walking, cycling and public transport use are identified and pursued. Paragraph 109 explains that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. It goes on to state that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
9. It is therefore clear that both local and national policy take a responsible approach to spatial distribution. The management of new development to more rather than less sustainable locations is an important development plan purpose which is reflected in both local and national policy. I appreciate that there are policies that provide a level of support in relation to economic needs of rural communities including employment-related development in rural areas. However, the proposed development by virtue of its nature and its unsustainable location, with particular regard to accessibility would still not relate to any of the types of development the policies seek to encourage or support.
10. The application site is located within open countryside and an unsustainable location, with particular regard to accessibility which is discussed further below. The proposal does not relate to any of the types of development that the policy seeks to encourage or support. Consequently, the proposed development would not accord with Policies CS1.1 and CS1.2 of the CS and Policies LA1.0 and LA1.1 of the LADPD which together, amongst other matters, explains that most new developments should be directed to existing service centres where there is adequate service and infrastructure capacity to accommodate the required levels of development.

Sequential Assessment

11. The proposed development relates to an office building, which is a main town centre use, and it is undisputed that the proposal is located in an out of centre location. As already referred to above, paragraph 91 of the Framework explains that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Paragraph 92 of the Framework explains that when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
12. The proposed development would provide 613 square metres (Gross Internal Area) plus 29 No. car parking spaces located close to the proposed offices and an additional 6 No. spaces to replace the 5 car spaces associated with the service station. The proposed site area extends to 3,954 (0.39ha). The proposals have been designed to provide flexible space which is capable of

responding to tenant requirements whether that is for the entire building or part of the building i.e. 2 units of 306 square metres. I do not dispute that the existing business units at Prizet Court have been fully occupied with a variety of tenants since completion, are well regarded with a waiting list of occupiers. I also note the level of demand/interest and support shown for the unit and based on the evidence before me, I have no reason to question the future occupancy of the building.

13. The appellant claims that the business space model offered by the application cannot be provided in the town centre as it provides out of town business space on the main road network which suits particular types of businesses when access to the road network is important. Even so, there does not appear to be an essential requirement for a rural location or robust justification for this. The requirements of the sequential approach as outlined by the Framework would still apply.
14. The submitted SA states that flexibility has been shown by reducing the amount of parking required to 14 off-street spaces within 100 metres walking distance of potential office floor space. However, there is not any justification for why any parking would be strictly necessary and especially within such close proximity given that town centres typically offer a range of other transport modes. Therefore, it is considered that the submitted SA does not demonstrate sufficient flexibility in this regard. Previous discussions that have taken place relating to the quantum of parking required would not alter my findings on this and it is not clear if such discussions related to a town centre location rather than the appeal site in question.
15. The SA discounts strategic employment sites allocated by Policy LA1.6 of the LADPD, which includes Land at Scroggs Wood, Milnthorpe Road, Kendal. This is because they are claimed to be large sites that provide both for the relocation and development of existing firms and for the needs of large businesses wishing to locate in the district. Given the scale of the proposed development, the appellant claims that it would be inappropriate to locate it on a strategic allocation. Although I have limited details in relation to this, the Council explain that the policy specifically states that the purpose of such sites is to meet the needs of larger businesses close to the primary road network, which is also the stated aim of the proposal. Despite claims that other allocated sites in the district do not appear to be coming forward, the officers' report explains that during the recent call for sites, the Scroggs Wood allocation was resubmitted with the submission stating that the site is deliverable within five years.
16. Notwithstanding the appellants' argument in relation to Scroggs Wood, the SA also discounts the business and science sites allocated by Policy LA1.7 of the LADPD without any detailed justification. This policy allocates land east of Burton Road, Kendal, which is understood from the officers' report to have been resubmitted during the recent call for sites with the submission stating that it is available immediately and deliverable within five years. The policy also allocated land at Lightburn Road, Ulverston which again I understand from the officers' report is currently being delivered and has recent permissions for two office buildings, including one with a gross internal floor area of 612 square metres which is almost identical to that of the proposed scheme. I have no compelling evidence to the contrary of this.

17. The SA claims to have taken account of the recent call for sites which is questioned by the Council. Based on the evidence before me, it remains unclear if the full list has been assessed with a lack of commentary in this regard. The Council explain that whilst many of the submitted sites are similarly out of town, they are within or directly adjoining settlements and as such have greater accessibility with town centres than the appeal site and would be sequentially preferable sites. Based on the evidence before me and without any compelling case to the contrary, I have no reason to disagree with this finding.
18. I am aware of previous case law relating to the sequential approach to development and overall suitability including flexibility in terms of the format and scale of development. The scope of the SA has been previously discussed with the Council and I am also aware of advice given to future occupiers in trying to identify suitable alternative premises for business purposes. Even so, based on the evidence before me and my findings above, I cannot be certain that there are no other potentially sequentially preferable sites that appear both suitable and available (or expected to become available within a reasonable period) for the broad type of development proposed.
19. I therefore conclude that the submitted SA has not sufficiently demonstrated that there are no suitable and available sites for the proposal within town centre, edge of centre or more accessible out of centre locations. The proposed development would therefore be contrary to Policies CS2 and CS7.5 of the CS, Policy LA1.2 of the LADPD and paragraphs 91, 92 and 95 of the Framework which together, amongst other matters, explain that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Where an application fails to satisfy the sequential test, it should be refused.

Accessibility

20. As set out above, the application site is located within the open countryside, approximately 1.1 kilometre from the nearest (local) service centre of Natland. The route would require walking and cycling on narrow, poorly surfaced roads, which lack footways, cycleways, lighting, and natural surveillance. The principal service centre of Kendal is also 2 kilometres away where future users are likely to come from. This route also requires walking and cycling on an unlit route along the very busy A591, which lacks natural surveillance which would deter walking and cycling as an attractive option for most users.
21. I appreciate that the businesses currently on site often employ local staff although this may not always be the case and that some tenants of the existing offices currently cycle to work and use the existing footpath. I am also aware that cycle parking would be provided as part of the proposed development along with a number of free to use bicycles to encourage cycling to work. However, based on the evidence before me and my own observations on site, it is likely that future users would still likely access the site mainly by car given the location of the site along the A591 dual carriageway, degree of separation distance to other settlements combined with limited opportunities for alternative travel including narrow, poorly surfaced road, with lack of footways in parts, cycleways, lighting, and natural surveillance. I am aware of the appellants' suggestion in terms of re-widening/upgrading the existing footpath

for a shared footway/cycle path for pedestrians and commitment to this via a planning obligation. The dual carriageway is a very busy fast-moving road with high speeds and lack of lighting which even if upgraded would still deter walking and cycling as an attractive option for most users. The significant take up of new electric vehicles by existing tenants of Prizet Court would not alter my findings on this.

22. There are bus stops on either side of the A591 to the north of the application site and I am aware that a contribution was made by the appellant to upgrade this bus stop following approval of the existing offices. These bus stops provide regular services from and towards Kendal, Lancaster and Ulverston. A round trip would however require users of the proposed development to cross the dual carriageway, which does not have any crossing facility or lighting. Therefore, it is considered highly unlikely that public transport would be an attractive option for most users. I am also aware of the two serious and three slight incidents in and around the southbound services between 2016 and 2021, including one serious incident involving a pedestrian which does not appear to be disputed. Whilst I have limited detail on this, it does bolster my findings that it is highly likely that future users would predominantly use unsustainable transport modes to access the proposed development. The location of other employment sites elsewhere would not alter my findings as I am determining the appeal based on its own merits.
23. For the above reasons, I conclude that the site location is not suitable for the proposed development, having regard to its accessibility by sustainable transport modes. It would therefore be contrary to Policy CS10.2 of the CS, Policy DM13 of the Local Plan Development Management Policies (DMP), 2019 and paragraph 116 of the Framework which together, amongst other matters, requires development to be designed to reduce the need to travel and to maximise the use of sustainable forms of transport appropriate to its particular location.

Flood Risk

24. The proposal would be partially located in an area that was intended to have an attenuation pond serving the offices that are already located at Prizet Court. The previous planning permission was the subject of a condition requiring the approval of a surface water management and then implementation prior to occupation, which does not appear to have occurred.
25. I appreciate the appellants' claims that further site investigation showed a soakaway worked on the site and the attenuation pond was not required and I am aware of an application lodged with the Council in this respect and level of detail provided as well as frustration regarding its progress. However, the details of the existing surface water drainage arrangement have not been formally approved as a variation from the approved development. On this basis, it would still conflict with the arrangements as previously shown and I cannot therefore conclude with certainty that the loss of the attenuation pond associated with Prizet Court would not have implications on the wider management of surface water and thus may increase flood risk elsewhere. This is still the case despite the design information submitted from the Engineer and previous discussions which have been had as it would still result in a conflict. I also note concerns relating to the constrained size of the site and whether attenuation could be feasibly located elsewhere. The drainage scheme being

signed off by building control would not alter my findings on this as such matters are dealt with by a different department to that of planning.

26. Taking a precautionary approach to this issue, in the absence of formal approval from the Council and in light of my findings of harm elsewhere, I conclude that it has not been sufficiently demonstrated that the proposed development would not have an unacceptable effect on flood risk. It would therefore be contrary to Policy CS8.8 of the CS, Policy DM6 of the DMP and Paragraph 173 of the Framework which together, amongst other matters, explains that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

Other Matters

27. The proposed development would allow for an established local business to continue operating and expand their operations to bring forward a cohesive scheme of modern employment uses, increasing the quantum of employment floorspace and the number of quality jobs within the area. This would likely give rise to some economic and social benefits. I also understand that the land proposed for the new offices has always formed part of the Prizet Services area with intentions for future expansion. However, such matters would not be sufficient to outweigh the harm I have identified nor would matters relating to landscaping, appearance, renewable energy, or lack of local objection as a lack of objection does not mean that the scheme would not be harmful.

Conclusion

28. For the above reasons, I find that the site location is unsuitable for the proposed development, having regard to development plan policy governing proposals within the open countryside. The submitted SA does not sufficiently demonstrate that there are no suitable and available sites for the proposal within town centre, edge of centre or more accessible out of centre locations. The site location is also unsuitable for the proposed development, having regard to its accessibility by sustainable transport modes and it has not been sufficiently demonstrated that the proposed development would not have an unacceptable effect on flood risk.
29. It follows that the proposal conflicts with the development plan, read as a whole and there are no material considerations, including the advice of the Framework, that would outweigh this conflict. I, therefore, conclude that the appeal should be dismissed.

N Teasdale

INSPECTOR