The Planning Inspectorate

Appeal Decision

Hearing Held on 30 April 2024
Site visit made on 30 April 2024

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd June 2024

Appeal Ref: APP/D0650/W/24/3336748
Land to the east of Canalside Court, Warrington Road, Runcorn WA7 1RD

- 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 Harry Dodd against the decision of Halton Borough Council.
- The application Ref 22/00157/FUL, dated 16 March 2022, was refused by notice dated 14 July 2023.
- The development proposed is described as *"phase 2 extension to approved planning application 20/00607/FUL comprising an additional 10 mixed-use light industrial units (totalling 1,180 sq m), 24 parking spaces, associated refuse and cycle storage, and landscaping with access to site via existing crossover"*.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development given above is taken from the Council's Decision Notice. This reflects amendments that were made to the scheme at application stage and the application was determined on that basis.

3. The Decision Notice identifies 3 reasons for refusal, the second of which relates to the loss of designated green space. However, it is agreed that this matter is capable of being dealt with by way of a planning obligation, and the Council has now withdrawn this objection to the development. I have therefore determined the appeal on that basis.

Main Issues

4. The main issues are:

   (a) Whether the development would result in the unacceptable loss of part of a Gypsy and Traveller site allocation, and;

   (b) Whether it has been demonstrated that the development would be safe for its lifetime without increasing flood risk elsewhere.

Reasons

Gypsy and Traveller site allocation

5. Part of the appeal site is allocated for 9 Gypsy and Traveller pitches under Policy RD2 of the Halton Delivery and Allocations Local Plan (2022). This

allocation (Ref GT6) includes the Warrington Road frontage of the appeal site, and land immediately to the west. The GT6 allocation is irregular in shape and its northern edge broadly follows the line established by the extent of Flood Zone 3.

6. The development would introduce employment uses on a significant proportion of the GT6 allocation. However, an indicative layout plan has been submitted that purports to show how 9 pitches could be accommodated on the residual part of the allocation to the west, which is in the same ownership as the appeal site. It is argued that accommodating 9 pitches on this land would deliver the aims of the GT6 allocation whilst allowing the appeal scheme to proceed. In this regard, a condition is suggested that would prevent development from taking place until a separate planning application is approved on the adjacent land for at least 9 pitches.

7. The adjacent land to the west is not within the current appeal site boundary, and the layout plan for it is therefore indicative only. However, the 9 pitches it shows would be much smaller than the pitches on the nearby Gypsy and Traveller site, in a cramped layout with no turning head. Moreover, 3 of those pitches would be partly within Flood Zone 3 based on the Environment Agency's Flood Map for Planning (a broadly similar extent of Flood Zone 3 is shown in the appellant's modelling). In this regard, Annex 3 of the National Planning Policy Framework ('the Framework') identifies caravans as 'highly vulnerable development' in flood risk terms. Table 2 of the Planning Practice Guidance ('PPG') further states that such development should not be permitted in Flood Zone 3. Whilst it is asserted that the site would be capable of accommodating 9 pitches outside of Flood Zone 3, that is not what is shown on the indicative layout plan. Moreover, the presence of an easement for a United Utilities sludge pipeline is also likely to affect the ability to raise land on that site in order to make it safe from flooding. Accordingly, I consider that it is highly unlikely that 9 pitches on the adjacent land to the west is achievable.

8. In these circumstances, it would not be appropriate to impose the suggested pre-commencement condition, as there appears to be little prospect that it would be capable of being discharged. Such a condition would therefore fail the test of reasonableness.

9. The GT6 allocation is the only new Gypsy and Traveller site allocation identified in the Halton Delivery and Allocations Local Plan (2022). Moreover, the need for pitches identified in that plan is likely to have increased since it was adopted, given the recent change to the definition of "gypsies and travellers" at Annex 1 of Planning Policy for Travellers ('PPTS'). In this regard, the most recent Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (published in 2018) identifies a need for an additional 12 pitches arising from households that did not previously meet the planning definition. However, it is highly likely that a significant proportion of those households now meet the revised definition. This underlines the importance of ensuring that the GT6 allocation delivers the number of pitches it is allocated for.

10. The Council has not sought to acquire the GT6 allocation in order to develop it for Gypsy and Traveller accommodation. However, given the recent adoption of that plan, there is no reason to assume that the site could not be delivered as envisaged during the plan period.

11. For the above reasons, I conclude that the development would result in the unacceptable loss of part of a Gypsy and Traveller site allocation. It would therefore be contrary to Policy RD2 of the Halton Delivery and Allocations Local Plan (2022), which allocates the site for Gypsy and Traveller accommodation.

Flood risk

12. The appeal site is adjacent to the Manchester Ship Canal and is mostly within Flood Zones 2 and 3 for fluvial flood risk. In order to make the development safe for its lifetime, significant ground raising is proposed within Flood Zones 2 and 3. However, no compensatory provision is proposed for this loss of floodplain storage.

13. It is argued that the hydraulic modelling undertaken within the Flood Risk Assessment shows a negligible impact on floodwater levels in the adjacent Ship Canal as a result of the development. This is to be expected given the size of the site relative to the scale of the Ship Canal as a water body. However, the Environment Agency's representation to the appeal states that: *"to not provide compensatory storage ignores both the principle of ensuring no volumetric loss of floodplain and also the cumulative impact of many similar developments within Flood Zone 3 being treated in the same way – which aggregated over a period of time could nevertheless have a more demonstrable adverse impact on flood levels elsewhere"*. Whilst the Environment Agency's letter is not formally described as an 'objection', in substance it is clearly an objection to the approach that is proposed. I attach significant weight to this letter given the Environment Agency is a statutory consultee in relation to flood risk.

14. The Environment Agency's comments reflect guidance in PPG, which states that: *"development or the cumulative impacts of development may result in an increase in flood risk elsewhere as a result of impacts such as the loss of floodplain storage"* (my emphasis). PPG also states that: *"where flood storage from any source of flooding is to be lost as a result of development, on-site level-for-level compensatory storage, accounting for the predicted impacts of climate change over the lifetime of the development, should be provided"*[1]. Whilst the scale of the proposed ground raising is limited, PPG explicitly refers to the cumulative impacts of development, and the need to compensate for the loss of any flood storage. No such compensatory provision is proposed here.

15. At the hearing, the Lead Local Flood Authority accepted that its other concerns had largely been addressed, and that finished floor levels could be dealt with by condition. It is also agreed that the development would meet the Sequential Test as set out at paragraph 168 of the Framework. However, these matters do not alter my other concerns in relation to flood risk.

16. For the above reasons, I conclude that it has not been demonstrated that the development would be safe for its lifetime without increasing flood risk elsewhere. It would therefore be contrary to Policy HE9 of the Halton Delivery and Allocations Local Plan (2022) and national guidance relating to flood risk.

Planning Balance and Conclusion

17. For the reasons set out above, I conclude that the development would result in the unacceptable loss of part of a Gypsy and Traveller Site Allocation. It has also not been demonstrated that the development would be safe for its lifetime

[1] Paragraph ID: 7-049-20220825

without increasing flood risk elsewhere. It would be contrary to the development plan in both these respects.

18. Set against this, the development would provide new business accommodation for small and start-up businesses that would facilitate job creation. It would also allow for a greater part of the site to be developed given that employment uses are 'less vulnerable' in flood risk terms. The development would also generate jobs and economic activity during the construction phase. I attach significant weight to these benefits.

19. However, taking all matters into consideration, I consider that the benefits of the development would not outweigh the harms I have identified above. Accordingly, the material considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.

20. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Giles Atkinson, of Counsel	Six Pump Court
Harry Dodd	Director, NUKO Planning
Kevin Tilford	Managing Director, Weetwood Services Ltd
Neill Thomson	Landowner
Jordan Flemming	Planning Assistant, NUKO Planning

FOR THE LOCAL PLANNING AUTHORITY:

Constanze Bell, of Counsel	Kings Chambers
Leanne Crampton	Planning Officer, Halton Borough Council
Andrew Plant	Head of Planning and Development Services, Halton Borough Council
Andrew Evans	Principal Planning Officer, Halton Borough Council
Andrew Sims	Associate, Mott MacDonald

DOCUMENTS SUBMITTED AT THE HEARING

1 Plan of the appeal site and adjoining land with Flood Zones 2 and 3 shown

2 'Preparing a flood risk assessment: standing advice' (Environment Agency)

3 Suggested planning condition relating to the adjacent site to the west

4 Council's response to the suggested planning condition