



Appeal Decision

Site visit made on 2 April 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th June 2024

Appeal Ref: APP/C3430/W/23/3329822

Units 50-62 Landywood Enterprise Park, Holly Lane, Great Wyrley, Staffordshire WS6 6BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mercia Real Estate against the decision of South Staffordshire Council.
 - The application Ref is 22/00544/FUL.
The development proposed is the demolition of existing building and erection of new building for flexible B2/B8 use, with associated parking and loading areas.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and erection of new building for flexible B2/B8 use, with associated parking and loading areas at Units 50-62 Landywood Enterprise Park, Holly Lane, Great Wyrley, Staffordshire WS6 6BD in accordance with the terms of the application, Ref 22/00544/FUL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mercia Real Estate against South Staffordshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the development and address used in the heading and decision above has been taken from the Council's decision notice as it provides a more concise description and precise address than given on the application form.
4. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. However, as the parts of the Framework most relevant to this appeal have not significantly changed there is no requirement for me to seek further submissions on this latest version. I am satisfied no party would be prejudiced by determining the appeal accordingly.
5. The appeal site is located within the Zone of Influence (ZoI) for the Cannock Chase Special Area of Conservation (CC SAC) and the Cannock Chase Extension Canal Special Area of Conservation (CCEC SAC). Such designations are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended. Although not forming part of the Council's reason for refusal, it is incumbent upon me as a competent authority to consider whether the proposal would be likely to have a significant effect on

the integrity of the SACs. It is therefore necessary to address this matter as a main issue.

6. The appeal is supported by a planning obligation in the form of a signed and certified unilateral undertaking, dated 13 June 2024, made pursuant to section 106 of the Town and Country Planning Act 1990 (the UU). The UU makes provision for the payment of a travel plan monitoring fee, the implementation of a travel plan and the submission of travel plan annual performance reports. Such provision will be addressed later in my decision.

Main Issues

7. The main issues are the effect of the development on:
 - the living conditions of the occupiers of nearby residential properties with particular regard to the effects of noise;
 - highway safety with particular regard to access by Heavy Goods Vehicles (HGVs); and
 - the integrity of the CC SAC and the CCEC SAC.

Reasons

Living conditions

8. The development site forms part of an existing Enterprise Park (EP) and comprises several buildings occupied by unrestricted industrial uses including a company that carries out bespoke commercial vehicle conversions. The site adjoins residential properties on The Spindles and Loom Close and a site that has outline planning permission for 30 new dwellings. Further existing dwellings, on Weston Drive and Pendrel Close, are separated from the site by a railway line.
9. The proposal is supported by a Noise Impact Assessment (NIA) which identifies that the general background noise climate at the nearest dwellings is primarily determined by traffic noise from nearby roads and regular intermittent noise from trains. In addition, it states that there is significant noticeable noise during the daytime from activities associated with the commercial vehicle conversions. The NIA finds there is the potential for HGV movements, reversing alarms and external loading activity arising from the proposal to have an adverse or significant adverse impact on the living conditions of the occupants of the nearest dwellings during quieter periods. However, subject to mitigation measures the NIA considers the proposal would achieve a low impact at all times.
10. The Council has expressed concerns that the living conditions of nearby residents would be adversely affected due to noise and disturbances arising from loading of goods and reversing alarms. Nonetheless, in the absence of any substantive evidence to the contrary, I find no reason to dispute the findings of the NIA that such noise would be adequately mitigated by the proposed building and the erection of a 3 metres high solid barrier fence around part of the service yard. It is also reasonable to conclude that the 3m high acoustic fence secured through the outline planning permission would appropriately mitigate the effect of the proposal on the occupiers of that development.

11. The appellant's Transport Statement (TS) indicates that there will be an increase in vehicular movements in the am and pm peak times. The NIA does not assess the effect of such movements outside of the site. Even so, there is no evidence to suggest that additional HGV movements would materially change the noise characteristics within the wider area, even when the traffic calming measures and the associated slowing and revving of vehicles are taken into consideration. Furthermore, a condition could be imposed to control the management and routing of all HGV movements to minimise any effect on the living conditions of the occupiers of the wider area.
12. There are no openings within the elevations of the proposed building that would face towards the nearby existing dwellings. Accordingly, the building envelope would sufficiently attenuate any noise generated by activity within the building. Additionally, whilst there is a large extent of glazing on the elevation that would face towards the site with outline planning permission the glazing serves offices where noisy activity would not take place. Consequently, noise breakout from the building would have a low impact at the nearest dwellings.
13. The Council considers that additional sporadic and unpredictable noises, that have not been accounted for in the NIA, and the perception of increased noise, would cause significant adverse harm to residential amenity. Nonetheless, while there could be unpredictable noise events there is no compelling evidence before me to demonstrate that they would result in significant or cumulative adverse noise impacts. Furthermore, while it has been suggested that it would not be possible to always secure compliance with the control measures, there is little before me to suggest that this would be anything other than an occasional occurrence or such breaches would have an unacceptable effect on living conditions.
14. The noise and activity generated by the proposal would have the potential to disturb home and shift workers during the day. However, there is nothing before me that demonstrates that this would be to a greater extent than the existing uses on the site and that unacceptable harm to the living conditions of nearby residents would arise.
15. Whilst not shared by the Council, concern has been expressed that the proposal would result in some loss of privacy and light to the occupants of the adjoining houses. Nevertheless, the position of the windows within the proposed development, separation distances and proposed boundary treatments would be sufficient to ensure that the living conditions of the surrounding neighbours would not be unacceptably harmed for these reasons.
16. Concerns have also been raised with regards to the potential for noise, dust and dirt during construction. However, any such nuisance would be short-term and could be appropriately managed through a condition. Therefore, such a matter does not materially weigh against the development in the overall planning balance.
17. Consequently, I find that the development would not unacceptably affect the living conditions of the occupiers of nearby residential properties with particular regard to the effects of noise. As such there would be no conflict with Core Policies 3 and 4, and Policy EQ9 of the Core Strategy (CS), which, amongst other things, seek to protect the amenity of residents, and ensure development is of a high quality design. It would also accord with paragraph 135 of the

Framework which seeks to provide high standards of living conditions for existing users.

Highway safety

18. The tracking assessments for HGVs and large cars, within the submitted TS, demonstrates that the parking and manoeuvring of vehicles associated with the proposed development can be safely accommodated within the site. Whilst vehicles currently park along the internal access road, its width is sufficient for a HGV to safely pass. Accordingly, given its length, it is reasonable to consider that a significant number of HGVs could be accommodated on the internal access road. Consequently, there is no robust basis upon which to conclude that the stacking of HGV vehicles associated with the proposal would extend to the public highway and would be detrimental to highway safety.
19. The wider area experiences on-street parking that restricts the width of the highway along the routes to the EP and leads to on-coming traffic having to wait to pass. However, no traffic accidents were identified within the five-year search period set out in the TS or referred to in the Council's evidence or representations. This strongly suggests that HGVs currently accessing the EP can safely travel along the nearby highways. In the absence of robust evidence that demonstrates otherwise, I find that the limited additional HGV movements generated by the proposal would not make such routes unsafe for other users of the highway, including children attending the nearby Landywood Primary School. In the same regard, I find that the proposal would not result in a significant deterioration in the punctuality of public transport.
20. Additionally, I have not been presented with evidence that suggests Holly Lane and other roads in the area are unsuitable for the additional weight of the HGVs associated with the proposal, or that damage to the road surface, sewers or water mains would materially increase due to the additional vehicular movements.
21. The promotion of sustainable travel choices, to reduce the reliance on the private car and the number of vehicular movements generated by the proposal, could be achieved through a travel plan secured by means of a condition. In addition, the implementation of the travel plan, submission of annual reports and a financial contribution towards the monitoring costs have been secured in a Unilateral Undertaking (UU) provided by the appellant. As such provisions would be necessary to support highway safety and the continued promotion of sustainable modes of transport, they are necessary to make the development acceptable in planning terms, and are directly related to, and fairly and reasonably related in scale and kind to, the proposed development. I am therefore satisfied that the UU would accord with the Regulations and meet the tests set out in paragraph 57 of the Framework.
22. I therefore conclude that the proposed development would not be harmful to highway safety with particular regard to access by HGVs and would thereby accord with Core Policies 3, 4 and 11 and Policies EQ9, EQ11 and EV11 of the CS. Such policies require, amongst other things, that development facilitates sustainable modes of transport, provide a functional, accessible and safe environment, and that appropriate provision is made for a safe access. For similar reasons, the proposed development would also accord with paragraph 114 of the Framework.

CC SAC and CCEC SAC

23. Whilst the appeal site lies within the ZoI for the CC SAC, given that residential development is not proposed, it would not result in an increase in residents near to it, or human activity within it. In addition, based on the information before me, the scheme would not generate additional vehicular movements of a number that would lead to an increase in atmospheric pollution. Consequently, I consider that the proposal would not have a likely significant effect on any important features of the CC SAC, whether alone or in combination with other developments.
24. The CCEC SAC is an anthropogenic, lowland habitat which supports a very large colony of floating water-plantain and has diverse aquatic flora and rich dragonfly fauna due to its good water quality.
25. Due to its proximity, there could be hydrological connection between the appeal site and the CCEC SAC. Therefore, the discharge of polluted surface water from the site has the potential to adversely affect the conservation status of the qualifying features of the CCEC SAC. As such, it is necessary for me, as the competent authority, to conduct an appropriate assessment in relation to the effect of granting permission on the integrity of the Habitat Site.
26. It is proposed that the drainage from the appeal scheme would utilise existing facilities that are routed away from the CCEC SAC. This would ensure that the canal would not be polluted and could be secured by condition.
27. Having regard to the views of Natural England, and subject to the imposition of the condition referred to above on which I place weight, I am satisfied that the development would not cause harm to the ecological value of the CCEC SAC.
28. In conclusion, the proposal would not harm the integrity of the CC SAC, or, subject to conditions, the CCEC SAC. It therefore accords with paragraph 186 of the Framework.

Other Matters

29. I have had regard to the other matters raised by interested parties, including harm to the character and appearance of the area, loss of the existing unit and requirement to relocate existing businesses, air pollution and the effect of the proposal on ecology. However, I have been presented with no substantive evidence that would lead me to disagree with the Council's conclusions on these matters and determine that the proposal would result in material harm sufficient to justify dismissing this appeal.

Conditions

30. The Council has suggested several conditions which I have considered against the Framework and Planning Practice Guidance. As a result, I have made some amendments to the wording for clarity, consistency and to avoid duplication.
31. In addition to the standard time limit condition limiting the lifespan of the planning permission I have also, in the interests of certainty, attached a condition specifying that the development is carried out in accordance with approved plans.
32. I include conditions to ensure that the construction process is suitably controlled and its effects on the surroundings are minimised. In the interests of

safety, operational needs and integrity of the railway, conditions are also necessary to ensure that the site is developed without affecting the railway line. Other than the condition relating to vibro-impact works and piling these are pre-commencement conditions to ensure that appropriate measures are in place before development commences.

33. To minimise risks to the occupants of the site, neighbouring occupiers and the environment, conditions are required to ensure that contamination and the implications of past coal mining activity are appropriately addressed, and the stability of the site secured. These are pre-commencement conditions to ensure that appropriate investigation is carried out at a very early stage of the development.
34. I have imposed a condition relating to foul and surface water drainage to prevent flooding, pollution and to protect the CCEC SAC. To ensure that adequate provision for drainage is made at an early stage, it is necessary for these details to be agreed prior to the commencement of development.
35. Conditions requiring agreement to the external materials, landscaping, tree protection measures, boundary treatments, external plant and water storage tanks, and the gatehouse, and to prevent external storage, are necessary to preserve the character and appearance of the area. The condition relating to external plant and storage tanks is also required to protect the living conditions of nearby residents as is the one relating to the boundary treatments, which is also required in the interests of highway safety. I consider it necessary for the condition relating to the tree protection to be a pre-commencement condition to ensure that such measures are in place over the full construction period.
36. Having regard to the NIA, and the concerns of the Council, I have imposed conditions relating to operation of the business occupying the unit. Furthermore, given that my decision has been based on the effects of a flexible B2/B8 use of the building, it is necessary to restrict the use of the premises to those purposes to protect the living conditions of nearby residents and in the interest of highway safety.
37. Whilst I have concluded that it is not necessary for the details to be prior to commencement of development, I have included a condition to secure biodiversity enhancement measures in the interests of nature conservation. To safeguard protected species and their habitat, I have imposed conditions relating to external lighting and to secure the recommendations of the submitted Preliminary Bat Roost Assessment. The control of the external lighting is also required to protect the living conditions of nearby residents.
38. I have included conditions relating to parking, turning and servicing to ensure that the development does not adversely impact highway safety. For the same reason and to protect the living conditions of nearby residents, a condition is imposed to control the management and routing of all HGV movements. It is also reasonable, to promote sustainable forms of transport, to require the provision of electric vehicle charging points, cycle parking spaces and compliance with the submitted Travel Plan.
39. In the interests of energy efficiency and to ensure a sustainable development, the building will be required to achieve 'excellent' BREEAM ratings and a reduction in carbon emissions.

Conclusion

40. For the reasons given above I conclude that the appeal should be allowed.

Elaine Moulton

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: 21-116-PL01, 21-116-PL04C, 21-116-PL05A, 21-116-PL06A, 21-116-PL07B, and 22-38-P-03.
- 3) Prior to the commencement of development, including demolition, a Construction Management Plan shall be submitted to, and approved in writing by the local planning authority. The Management Plan shall:
 - i) Specify details of the site compound, including arrangements for the parking of site operatives and visitors;
 - ii) Specify details of the construction access;
 - iii) Specify the delivery and construction working times;
 - iv) Specify the types of vehicles to be used;
 - v) Specify the location, type and hours of use of any artificial lighting;
 - vi) Specify noise, air quality and dust control;
 - vii) Detail the management and routing of construction traffic;
 - viii) Provide for the parking of vehicles of site operatives and visitors and wheel washing facilities;
 - ix) Provide for the loading and unloading of plant and materials;
 - x) Provide for the storage of plant and materials used in constructing the development; and
 - xi) Provide satisfactory arrangements for the control of surface water during the construction period.

The development shall thereafter be carried out in accordance with the approved details, which shall be adhered to throughout the demolition and construction period.

- 4) Prior to the commencement of development, excluding demolition and groundworks, full details of the following shall be submitted to and approved in writing by the local planning authority;
 - a) a scheme of intrusive site investigations of the site to establish the risks posed to the development by past coal mining activity, and;
 - b) any remediation works and/or mitigation measures required to address land instability arising from coal mining legacy, as may be necessary, and verification that such works has been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 5) Prior to the commencement of development, excluding demolition and groundworks, full details of a scheme of foul and surface water drainage, shall be submitted to and approved in writing by the local planning authority. The approved drainage system shall thereafter be provided before the first use of the development.
- 6) Prior to the commencement of development, including demolition and groundworks, details of protective fencing and other protective measures (to British Standard 5837), to safeguard existing trees and/or hedgerows on the site, as shown to be retained within the Tree Survey, produced by bea landscape design ltd, reference 2238 / TGW / TR001, dated 28th March 2022, shall be submitted to and approved in writing by the local planning authority. The fencing and measures so approved shall be erected prior to the commencement of development, including demolition, and thereafter retained for the duration of construction (including any site clearance works). No fires, excavation, change in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians, shall occur within the protected areas. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed. Any trees that are damaged or lost during a two year period, starting from the date of commencement, due to a failure of required tree protection measures shall be replaced in the following planting season. The species, size, nursery stock type and location of such replacements, shall be first submitted to and approved in writing by the local planning authority.
- 7) Prior to the commencement of development, excluding demolition and groundworks, full details of a remediation strategy to deal with the risks associated with contamination of the site, shall be submitted to and approved in writing by the Local Planning Authority. This strategy will include the following components:
 - i) A site investigation scheme in areas of the site where new structures are proposed to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
 - ii) The results of the site investigation and the detailed risk assessment referred to in (i) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (ii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.
- 8) Prior to the commencement of development, including demolition and groundworks, a method statement and risk assessment, specifically relating to the impact upon the neighbouring rail network, shall be submitted to and approved in writing by the local planning authority (in consultation with Network Rail) for review and agreement prior to works commencing on site. The development shall thereafter be undertaken in accordance with the approved document.

- 9) Prior to the commencement of development, including demolition and groundworks, a demolition methodology statement (including mitigation measures) shall be submitted to and approved in writing by the local planning authority (in consultation with Network Rail). The demolition methodology statement strategy shall be implemented in full throughout the demolition period.
- 10) Prior to the commencement of development, excluding demolition, full details of proposed ground levels, earthworks and excavations to be carried out shall be submitted to and approved in writing by the local planning authority (in consultation with Network Rail). The development shall thereafter be undertaken in accordance with the approved details.
- 11) No part of the development hereby permitted shall be constructed above ground floor level until details of the type and exact location of biodiversity enhancement measures, including 1 group of 3 number swift boxes on or integrated into the north or east facing elevation of the new building shall be submitted to and approved in writing by the local planning authority. The approved measures shall be incorporated into the scheme and be fully constructed prior to first use of the building and retained as such thereafter for the life of the development.
- 12) Prior to their first use, full details of all external materials to be used to construct the building shall be submitted to and approved by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details and retained as such for the life of the development.
- 13) Prior to the first use of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping scheme shall thereafter be planted within the first planting season (October – March inclusive) following the first use of the building.
- 14) Prior to first use of the development hereby approved, the parking, servicing and turning areas as shown on approved plan, reference 21-116-PL-04 RevC, shall be provided in a bound porous material and be sustainably drained, with the individual bays clearly delineated.
- 15) The Active Electric Vehicle Charging Points and passive infrastructure, shall be installed, prior to the first use of the site, to serve the identified parking spaces and thereafter, the parking, EV Charging, servicing and turning areas shall be retained for their designated purposes, for the life of the development.
- 16) Prior to the first use of the development hereby approved, safe, secure and weatherproof cycle parking facilities for staff and visitors (providing a minimum of 12 spaces), shall be provided in the location as shown on approved plan, reference 21-116-PL-04C, and shower/ locker/ changing facilities for staff, in accordance with details that have been submitted to and approved in writing by the local planning authority. The cycle parking and

shower/ locker/ changing facilities shall thereafter be retained for the life of the development.

- 17) Prior to the first use of the development hereby approved, external lighting shall be erected in accordance with full details, which shall include means of illumination and design of the lighting systems, that have been submitted to and approved in writing by the local planning authority. The external lighting shall be operated in accordance with the approved details and shall not thereafter be amended or altered unless otherwise agreed in writing by the local planning authority.
- 18) Prior to the first use of the development hereby approved, boundary treatments shall be erected in accordance with details, which shall include vehicle safety protection measures along the boundary with the railway and solid acoustic fencing to the western boundary of the service yard, that have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall thereafter be retained for the life of the development.
- 19) Prior to the first use of the development hereby approved, a Vehicular Routeing Management Plan shall be submitted to and agreed in writing by the local planning authority to determine details of the management and routeing of all HGV movements to and from the approved unit. The business operating from the approved unit shall thereafter operate in accordance with the approved details for the life of the development, unless otherwise agreed in writing by the local planning authority.
- 20) External plant or water storage tanks shall not be installed until details, including the location and any associated enclosures, have been submitted to and approved in writing by the local planning authority along with full details of any noise mitigation measures to be implemented in conjunction with such. Any mitigation or enclosure shall be installed in accordance with the approved details prior to the first use of the plant or water tank and shall thereafter be maintained for the life of the development.
- 21) Prior to the construction of the gatehouse, details of its scale, appearance and materials, shall be submitted to and approved in writing by the local planning authority. The gatehouse shall be erected in accordance with the approved details.
- 22) Before erecting any scaffold within 10 metres of a boundary of the railway line, a method statement, including details of measures to be taken to prevent construction materials from the development reaching the railway (including protective fencing) shall be submitted to and approved in writing by the local planning authority. The approved measures shall be retained in place throughout the construction phase of the development.
- 23) Before undertaking any vibro-impact works or piling on site, a risk assessment and method statement shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved measures.

- 24) Within 6 weeks of the completion of the shell and core works of the building, a certificate of compliance from an accredited assessor confirming that the unit has achieved the required BREEAM (2018) rating of Excellent, shall be submitted to and approved in writing by the local planning authority. In addition, the applicant shall also demonstrate how carbon emissions have been reduced by 20%, through incorporating low or zero carbon (LZC) energy generation systems within the development.
- 25) The development hereby approved shall be carried out in strict accordance with the methods of working, which are detailed in the Preliminary Bat Roost Assessment produced by Middlemarch report number RTMME-156933-02 dated March 2022.
- 26) Any tree, hedge or shrub planted as part of the approved landscape and planting scheme (or replacement tree/hedge) on the site, which dies or is lost through any cause during a period of 5 years from the date of first planting, shall be replaced in the next planting season with others of the same or similar size and species.
- 27) No materials, plant or machinery of any kind, shall be stacked or deposited in the open within the site.
- 28) All industrial, workshop or manufacturing processes shall be carried out within the approved buildings and no such works shall be carried out in the open.
- 29) The development hereby approved shall be operated in complete accordance with the recommendations and measures as identified within the Noise Impact Assessment, produced by Hoare Lea, Revision 2, dated 7th March 2022.
- 30) The development hereby approved shall be carried out in complete accordance with the recommendations, measures and timescales identified within the approved Framework Travel Plan, produced by Mode Transport Planning, reference 326417 dated April 2022.
- 31) If during the course of development hitherto unknown sources of contamination are identified, then the development shall stop, and a revised contamination report shall be submitted to and approved in writing by the local planning authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless, and the methodology used. The approved remediation scheme shall thereafter be completed, and a validation report submitted to and approved in writing by the local planning authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first use of any part of the development.
- 32) The building hereby approved shall be used only for purposes within Class B2 and/or B8 of the Schedule to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) and for no other purposes.