



Appeal Decision

Site visit made on 16 July 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2024

Appeal Ref: APP/Y3940/W/23/3335592

Mount Pleasant Yard, White Street, Market Lavington, Devizes SN10 4DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr I Brown on behalf of Prestage Developments Ltd against the decision of Wiltshire Council.
 - The application Ref is PL/2022/09535.
 - The development proposed is described as 'Redevelopment of site including demolition of an existing building and erection of 4 no. live/work units (Sui-Generis) and 1 no. bed and breakfast (Use Class C1) with Access and Layout to be determined and all other matters reserved.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr I Brown on behalf of Prestage Developments Ltd against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was made in outline with approval of the means of access and layout sought at this stage, with matters of scale, appearance and landscaping reserved for future consideration. Therefore, I have treated the drawings showing the appearance of the development as indicative only.
4. An amended 'Proposed Site Plan'¹ is submitted as part of the appeal which includes the provision of refuse/recycling storage for the individual units. An updated 'Existing Access Arrangements'² plan is also submitted which replaces the 'Indicative Off-Site Highway Mitigation Works'³ plan which confirms the proposed off-site highway mitigation works, including pedestrian infrastructure, are no longer part of the scheme.
5. An updated Arboricultural Survey, Impact Assessment, Method Statement and Tree Protection Plan and an Addendum: Specification for Tree Works, a Tree Work Specification Location Plan (groups) and Tree Work Specification Location Plan (individual trees), by Wold & Vale Tree Consultancy all dated November 2023, and a Bat Tree Addendum Report Version 1.0 prepared by Gordano Ecology dated December 2023 (BTA) are also submitted as part of the appeal.

¹ dwg no. 3478/2 Rev B

² dwg no. SK02 Rev A

³ dwg no. SK02

Given these documents represent supporting evidence that provide clarification and do not include material changes to the proposal, and that the Council and interested parties have had the opportunity to comment on the information as part of the appeal process, I have therefore determined the appeal on the basis of these plans and updated documents.

6. The appeal submissions include details of marketing of the site undertaken between July 2023 and the submission of the appeal in December 2023. Further information in the form of a Marketing Update Report⁴ is submitted as part of the appellant's final comments. However, on the basis that considering that evidence at this late stage in the process would mean that the Council and interested parties have not had the opportunity to comment, it would not be procedurally fair to all parties should I accept this late evidence.

Main Issues

7. The main issues are the effect of the proposed development on:
- the character and appearance of the area, including the setting of the Market Lavington Conservation Area, with specific regard to trees;
 - the supply of employment land and premises to meet current and future demand;
 - highway safety;
 - protected species, specifically bats; and
 - whether the proposal would include appropriate provision for the storage of refuse.

Reasons

Character and appearance

8. The appeal site comprises a commercial storage yard and associated building. It is located on the edge of Market Lavington and is largely enclosed by mature trees on steep embankments on the northern and southern boundaries. It is accessed by an existing track from White Street/Lavington Hill. The appeal proposal seeks the redevelopment of the existing employment site to include the erection of 4 detached 4 bedroom live/work units and a 7 bedroom bed and breakfast unit (B&B), including the owners accommodation.
9. Due to their maturity, condition and prominence, the trees to the site boundaries make a significant positive contribution to the visual qualities of the area, including the verdant character of the edge of the village. They also contribute positively to the significance of the Market Lavington Conservation Area (the CA) which arises from its setting. The appellants Ecological Impact Assessment⁵ (EiA) identified the areas of woodland surrounding the site as a habitat feature of local importance for wildlife including bats, birds, common species of amphibian, and invertebrates.

⁴ Letter dated 22 May 2024 from Kilpatrick & Co Commercial Property Consultants

⁵ Ecological Impact Assessment by Ethos Environmental Planning dated May 2023

10. The appellant contends that the live-work units are sited so as to reduce the shading impacts of the trees and to ensure adequate daylight and sunlight is received and that the proposed development will not lead to the requirement to remove any trees. The AIA⁶ confirms that most of the trees on the site are to be retained, with the exception of a single young sycamore tree and overhanging self-sown trees saplings from the edges of the quarry wall. The Tree Protection Plan therein shows that the proposed buildings would be positioned beyond the Root Protection Areas (RPAs) of the trees on the boundary of the site, having regard to the topography of the land. New surfacing to the areas of driveway within the RPAs will be installed above the existing hard standing to avoid any need for excavation of these areas. The building works could therefore be carried out in a manner which would safeguard the trees to the site boundaries.
11. The appellant indicates that the siting of the built form has had regard to the site opportunities and constraints, and that the buildings would be positioned on the part of the site most suitable to accommodate them. Even taking account of work required in relation to the ongoing maintenance of the existing trees, which the AIA suggests would significantly improve clearance and light levels within the site, the proposed buildings would nevertheless be positioned a short distance from the existing mature trees to the boundary of the site, which are of a considerable height.
12. By reason of the site layout, the limited separation distance and elevated position of the trees in relation to the proposed buildings, including the rear elevations of the live-work units, the proposal would increase the likelihood that they would give rise to overbearing and overshadowing effects, as well as inconvenience through overhanging limbs and leaf fall. Consequently, it is probable that such effects would increase pressure to remove or to carry out works to the retained trees to improve the living conditions of the future occupiers of the development. This in turn would have an adverse visual effect, given the prominence of the trees and the contribution they make to the setting of the edge of the settlement. In addition, this would diminish the contribution the trees make to the setting of the CA, as well as the biodiversity value of the group of trees.
13. The trees to the northern and southern boundaries of the site are protected by a tree preservation order and so any works would need to be approved by the local planning authority. However, it would be difficult for the Council to resist such works as tree nuisance to residents would be an issue.
14. In light of the above considerations, it has not been clearly demonstrated that the proposal would adequately safeguard the long-term health of the trees to the site boundaries. The loss of the trees would harm the character and appearance of the area, including the significance of the CA derived from the verdant setting in which it sits, and the contribution the trees make to the biodiversity of the area. Accordingly, it would fail to preserve or enhance the character and appearance of the CA. The harm would be less than substantial in the terms of the Framework. In such circumstances, paragraph 208 of the Framework states that the harm should be weighed against the public benefits of the proposal, I shall return to this matter later.

⁶ Updated Arboricultural Survey, Impact Assessment, Method Statement and Tree Protection Plan (Nov 2023) prepared by Wold & Vale Tree Consultancy

15. For the foregoing reasons the proposal would conflict with Core Policy 50 of the Wiltshire Core Strategy, adopted January 2015 (WCS) in so far as it requires development proposals to demonstrate how they protect features of nature conservation and secure measures to ensure no net loss of the local biodiversity resource, the combined aims of Core Policies 51, 52 and 57 of the WCS that seek the protection and enhancement of landscape character and high quality design that makes a positive contribution to the character of an area through the retention and enhancement of existing on-site green infrastructure, including existing important landscaping and natural features such as trees and hedges, and Core Policy 58 of the WCS which sets out that development should protect, conserve and where possible enhance the historic environment.
16. It would also fail to accord with Policies 1(e) and 1(g) of the Market Lavington Neighbourhood Development Plan 2018-2026, made May 2021 (NP), that require developments to avoid harm to both landscape features and character and heritage interests, and to retain and enhance mature, native, broadleaved trees and hedgerows, and the National Design Guide in relation to achieving well-designed development that integrates into its wider surroundings, having regard to the landscape character of an area. It would also fail to reflect the parts of the National Planning Policy Framework (the Framework) which recognise the important contribution trees make to the character and quality of urban environments and its aims in relation to conserving and enhancing the natural environment and heritage assets.

Employment land

17. The site is described on the planning application form as being used as a storage yard and workshop, with 2 existing full-time employees. Core Policy 35 of the WCS seeks to retain the availability of existing employment sites to deliver a thriving economy which provides a range of job opportunities. Within Local Service Centres, such as Market Lavington, Core Policy 35 sets out that proposals for the redevelopment of land or buildings currently or last used for activities falling within use classes B1, B2 and B8 will be assessed against specific criteria, including that the proposed development will generate the same number, or more permanent jobs than could be expected from the existing, or any potential employment use.
18. The appeal submissions, and my observations at my site visit, indicate that existing employment use of the site is low key. Moreover, a commercial review⁷ on behalf of the appellants found the site currently contributes virtually nil to the provision of employment opportunities in Market Lavington and that the most likely continued commercial use is for low density open storage or parking. In terms of potential employment generation, the appeal submissions⁸ indicate that the existing B2 *Industrial and Warehousing* or B8 *Storage and Distribution* uses of the site would be likely to generate employment for up to 5 or 10 full time equivalent employees respectively.
19. The proposal would see the replacement of the existing commercial use with 4 live-work units including office floorspace which would enable the occupiers of the units to work from home, as well as provide jobs for additional employees. This element of the proposal would therefore be likely to provide opportunities

⁷ Letter from Kilpatrick & Co. Commercial Property Consultants dated 28 June 2022

⁸ The Homes & Community Agency Employment Density Guide 3rd edition (2015)

for up to 11 full-time equivalent employees. In addition, the B&B would generate 2 full-time equivalent posts. The proposal would therefore see the introduction of alternative employment uses alongside the proposed residential uses and provide a similar number of job opportunities to that of the existing site.

20. The Council contend that in order to safeguard the employment use of the site in the future, it should be demonstrated that live-work units are a viable proposition, there is a demand for the units, and that their future use as such, including the ongoing provision of employment space, could be appropriately secured. In that regard my attention has not been drawn to any specific policy requirement to demonstrate an existing need for such development, or the viability of the use, including that the properties would be mortgageable. Furthermore, alongside the increase in home working post the Covid-19 pandemic, the Framework recognises the need for policies to allow for new and flexible working practices (such as live-work accommodation).
21. Moreover, there is no clear reason why the use of the live-work units as such could not be secured through the imposition of planning conditions to secure the occupancy of the units, and the extent of business floorspace and its retention, which would ensure the delivery of the employment space.
22. The appellant's commercial review also advised that the viability of B&B accommodation would be dependent on it being part of or alongside residential development. Given that the B&B forms part of a scheme for redevelopment of the site including residential accommodation, there is no substantive evidence that the use would not be viable. My attention is also drawn to objective 5 of the NP which seeks to balance additional houses with employment opportunities including more and better shops and small-scale tourism including bed and breakfast accommodation.
23. In light of the above considerations, I am therefore satisfied that the proposed development would not, in principle, result in a loss of the employment use of the site. Moreover, based on the evidence before me, the proposal would lead to the provision of a similar number of jobs, or more, than that of the existing commercial use of the site, or any potential employment use. Consequently, the proposal would not have an adverse effect on the supply of employment land and premises to meet current and future demand. Accordingly, the proposal would not conflict with the aims of Core Policy 35 of the WCS.
24. My attention is drawn to the emerging Wiltshire Council Local Plan Pre-Submission Draft 2020-2028 (July 2023), which reflects the aims of Core Policy 35 of the WCS with regards to existing employment sites. However, given the stage of the review, I attribute this limited weight.

Highway safety

25. Access to the appeal site is via a short existing track and Public Bridleway (PROW) which runs between the site and White Street/Lavington Hill. The Council's main concern relates to use of the PROW by vehicular traffic generated by the development and the subsequent effect on highway safety, including pedestrians, cyclists and horse riders.

26. The appellant's Transport Statement⁹ (TS) indicates that the expected trip rates, and trip attraction associated with the existing commercial use of the site is approximately 4 trips in the AM peak and 1 trip in the PM peak hours, with up to 41 trips across a typical weekday 12-hour period. In comparison, the forecast vehicular trips in relation to the proposed live-work units is approximately 2 trips during the AM peak and 3 during the PM peak hours, which equates to up to 23 two-way trips across a typical weekday 12-hour period. The TS confirms this is reflective of the live-work units based on the assumption that one occupier of each unit would work on-site, thus reducing the forecast daily trips by 2, and another employee living elsewhere and traveling to work at the site, would generate 2 daily trips.
27. The appellant's Highways Appeal Statement¹⁰, suggests that, even with a potential for an additional 3 employees in relation to the live-work units, giving a total of 11 overall, this would result in approximately a further 6 two-way trips. Vehicular trips associated with the B&B are forecast to be up to 12 trips across a typical weekday 12-hour period. Overall, the proposal is therefore expected to generate a total of 41 two-way trips across a typical weekday 12-hour period. Based on this evidence, there would be no increase in traffic associated with the proposed development, over and above existing levels. While I note the Council's estimated vehicular movements associated with the live-work units are somewhat higher, it is not clear on what technical basis they have been derived.
28. Notwithstanding the above, there is no substantive evidence before me to demonstrate that the existing use of the site would generate the level of vehicular movements suggested in the TS. Indeed, I saw at my site visit there were only a small number of vehicles present on the site and very limited evidence of any commercial activity taking place. Moreover, despite the lawful use of the site, the appeal submissions suggest that the continuation of the existing commercial use is unlikely to be economically viable. However, even if the level of vehicular trips generated by the existing commercial use of the site has been overestimated and is currently more infrequent than the figures suggest, the volume of traffic generated by the proposal would nevertheless be limited. As such, it would not result in a significant increase in the overall level of vehicular movements to and from the site. In addition, while the proposal may attract home delivery vehicles, it would be likely to involve an overall reduction in HGV movements that may be associated with the commercial use of the site.
29. Furthermore, given the rural nature of the PROW it is likely that vehicles travelling along it would be doing so cautiously at reduced speeds, until they can see any oncoming traffic, pedestrians, or horse riders. For these reasons, I am unable to conclude that additional traffic generated by the appeal proposal, over and above the existing commercial use of the site, would be harmful to highway safety having regard to the users of the PROW.
30. The Council express concern regarding forward visibility for vehicles leaving the PROW to join Lavington Hill/White Street, which I saw at my site visit is relatively narrow, and devoid of a pavement. However, the Highway Authority (HA) confirm the visibility splays set out in Appendix G of the appellant's TS¹¹

⁹ Transport Statement by Rappor dated November 2022

¹⁰ Highways Appeal Statement by Rappor dated December 2023

¹¹ Access Visibility Assessment dwg. No. SK01 Rev A

for vehicles egressing the junction onto Lavington Hill/White Street are appropriate given the speeds of vehicles travelling along the road. Even if the speed survey was undertaken during school holidays, given that the volume of traffic would therefore be likely to be less, and consequently traffic speeds greater, I am satisfied that the timing of the survey is not inappropriate.

31. Personal injury collision data confirms that no accidents have been recorded within the vicinity of the site for the 5 years up to June 2021, the most recent period for which records are available. While interested parties contest to several 'near misses' which have occurred in the locality, there is no clear evidence that these incidents were attributable to the operation of the junction. Consequently, there is no compelling evidence before me to indicate that the existing junction is operating to the detriment of highway safety.
32. In light of the above considerations, I find that visibility at the junction of the PROW and Lavington Hill/White Street is acceptable. Therefore, even if there was an increase in the use of the existing access which serves the site, without substantive evidence to the contrary, I conclude the proposal would not have an unacceptable impact on highway safety, including vehicle traffic or other users of the highway including pedestrians, horse riders, and cyclists.
33. Concern has been expressed by interested parties regarding the parking provision to serve the proposed development. However, the HA has raised no objection to the proposal on these grounds, taking into account the need for spaces for employees that may be working at the live-work units and living elsewhere. Based on the evidence before me, I have no reason to reach a different conclusion.
34. My attention is drawn to pre-application advice previously provided by the HA whereby it expressed concern regarding forward visibility at the junction. This was in relation to a scheme for 10 residential units on the appeal site and in any event, pre-application advice is not binding on the Council in determining later applications. Indeed, the HA confirm that details set out in the appellants TS addresses the concerns previously raised. As such, I have dealt with the appeal on its planning merits based on the information before me.
35. For the reasons set out above, I find that the proposal would not increase the risk of conflict between road users either on the PROW or at its junction with Lavington Hill/White Street which would be harmful to highway safety. In that regard it would comply with Core Policies 57 and 61 of the WCS which require proposals to demonstrate that they are capable of being served by safe access to the highway network and new developments to be designed to create places which are safe. It would also accord with the aims of the Framework which seek to ensure safe and suitable access can be achieved for all users and indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Protected species

36. All species of bats are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations), and the Wildlife and Countryside Act 1981, and are therefore European Protected Species (EPS). The regulations impose a duty to consider whether there is a

reasonable likelihood of EPS being present and affected. Circular 06/2005¹² is clear that the extent that a EPS may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

37. The appellant's dusk activity and static surveys carried out at the site identified 13 species of bats including common pipistrelle, soprano pipistrelle and serotine as well as species such as barbastelle, lesser horseshoe and greater horseshoe bats. A revised EiA¹³, which includes details of additional bat tree climbing surveys of the 3 trees directly affected, was submitted during the application process in response to the Council's concerns regarding the initial survey effort. However, the Council contend that a further 6 trees in close proximity to the proposed development, also identified to have moderate or high roost suitability, should be subject to further survey.
38. The appellant's BTA confirms that, given the suitability of trees T25 and T30 for only individual or low numbers of bats and that the others (T13, T29, T38 and T46) do not require any works as part of the proposal, as confirmed in the Specification for Tree Works, further surveys are not required at this stage. It sets out that any indirect impacts upon these trees such as light, or noise and disturbance could be avoided through the implementation of appropriate methods of working, which could be secured through planning conditions, and on that basis no further surveys are required.
39. Even though I have found there is likely to be future pressure to fell or carry out work to the trees, this would not absolve the contractor of their duties under other legislation designed to protect bats. Nevertheless, as there is no work proposed to the trees at this time, I am satisfied that an appropriate level of survey work has been carried out.
40. The proposal would therefore accord with Core Policy 50 of the WCS, which requires proposals to demonstrate how they protect features of nature conservation, which it expects should be retained, buffered, and managed favourably in order to maintain their ecological value, connectivity and functionality in the long-term, and the provisions of the Framework in relation to habitats and biodiversity.

Refuse storage

41. The Proposed Site Plan¹⁴ shows the provision of a bin drop off point at the junction of the private drive and the existing PROW. Vehicle tracking for a refuse vehicle is shown on the 'Access Swept Path Analysis – Refuse Vehicle' drawing¹⁵ included at Appendix J of the appellants TS. This indicates that a refuse collection vehicle could access the designated collection point via the PROW and there is adequate space for it to turn within the access point. In addition, an amended Proposed Site Plan¹⁶ submitted as part of the appeal, includes areas for the storage of bins for each of the live work units and the B&B unit.

¹² Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System, 2005

¹³ Ecological Impact Assessment by Ethos Environmental Planning dated May 2023

¹⁴ Dwg. No. 3478/2

¹⁵ Dwg. No. SP02

¹⁶ Dwg no. 3478/2 Rev B

42. Accordingly, based on the evidence before me I am satisfied that the proposal would include appropriate provision for the storage of refuse. In that regard it would not conflict with Core Policy 3 of the WCS which requires new development to provide for the necessary on-site infrastructure requirements arising from the proposal, Core Policy 57 of the WCS which seeks a high standard of design in all new developments, and Policy WCS6 of the Wiltshire and Swindon Waste Core Strategy 2006-2026, adopted 2009, which requires proposals to provide facilities for occupiers of the development to recycle/compost waste. It would also accord with the aims of the Council's Waste storage and collection: guidance for developers Supplementary Planning Document, January 2017, in relation to the management of waste.

Planning balance

43. I have found that the proposal would result in harm to the character and appearance of the area and significance of the CA arising from development in its setting, which would also harm the biodiversity value of the site. The Framework sets out that any harm to, or loss of, the significance of a designated heritage asset requires clear and convincing justification. In terms of the Framework, the harm would be less than substantial, but would nevertheless be of considerable importance and weight.
44. The proposal would accord with the aims of the Framework which recognise the benefits of effective use of land, including suitable brownfield sites within existing settlements for homes and other identified needs. Future occupiers of the development would also benefit from accessibility to nearby amenities and facilities in Market Lavington by means other than the private car. The proposal would offer employment opportunities, which the available marketing evidence submitted as part of the appellant's Statement of Case suggests, would be over and above the existing situation in relation to the present or other employment uses. In that regard it would support the sustainable growth and expansion of all types of business in rural areas, as set out in the Framework. However, these benefits overall would be modest given the scale of the development.
45. The appellant contends that there would be benefits arising from the live-work units in terms of the delivery of four new homes, and the residential element of the buildings would meet an identified need for dwellings of this size. While the live-work units would provide the opportunity for future occupiers to work from home, for which there is an increasing demand post Covid 19, they are nonetheless a bespoke type of accommodation, which differs from a conventional home office arrangement in terms of scale and the potential for additional employees, which would not necessarily be attractive to all future occupiers. For this reason, and in the absence of any clear evidence of a demonstrable need for this type of accommodation, I attribute moderate weight to the benefits of the scheme in that regard.
46. Furthermore, while I acknowledge the policy support for small-scale tourism including bed and breakfast accommodation alongside residential development, in the absence of any clear evidence of unmet need for additional tourist accommodation in the area, the weight to be attached to this is similarly limited.
47. As such, overall, the public benefits arising from the proposal, when considered cumulatively, are not sufficient to offset the identified harm to the heritage asset, to which I attach significant weight.

48. The appellant suggests that the Council is unable to demonstrate an adequate supply of housing land. In this scenario, paragraph 11 d) of the Framework indicates that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, including designated heritage assets, provides a clear reason for refusing the development proposed. I have found that the public benefits of the proposal would not outweigh the harm to the significance of the heritage asset and, therefore, the Framework provides a clear reason for refusing the development. As such, the proposal does not benefit from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework.

Other Matters

49. The appeal site is within the Zone of Influence of the Salisbury Plain Special Protection Area (SPA). The proposed development would be likely to have significant effects on the SPA through additional recreational pressure causing disturbance to its population of stone-curlew. The Conservation of Habitats and Species Regulations 2017 (as amended) require the competent authority to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. However, regulation 63(1) indicates the requirement for an AA is only necessary where the decision maker is minded to grant planning permission. Therefore, in light of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Conclusion

50. The proposal would conflict with the development plan, when read as a whole. Material considerations have not been shown to carry sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

E Worley

INSPECTOR