

Appeal Decision

Site visit made on 24 September 2024

by Siobhan Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal Ref: APP/J0350/W/23/3334641

American Golf, 175 Bath Road, Slough, SL1 4AA

- 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 Mr G Seller against the decision of Slough Borough Council.
 - The application Ref is P/00490/055.
 - The development proposed is the demolition of the existing building and the construction of 50 residential dwellings including basement parking level and landscaped open space.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Slough Borough Council has made an application for costs against Mr G Seller. This will be subject of a separate decision.

Preliminary Matters

3. Reason for Refusal 4 relates to a lack of an affordable housing contribution and a lack of financial contributions to provide for necessary infrastructure. Nevertheless, since the appeal was made, an executed Unilateral Undertaking (UU) has been submitted which provides for infrastructure contributions but no affordable housing. In respect of Reason for Refusal 4, I will therefore focus on the lack of affordable housing.
4. An amended unsigned UU has been received which was to address some of the Council's concerns about the original signed version. As it cannot overcome the harm I have found below, I have not gone back to the appellant to request it to be signed.

Main Issues

5. The main issues are:
 - (i) the effect of the proposed development on the supply of employment land;
 - (ii) the effect of the proposed development on the potential to redevelop adjacent sites, with particular regard to 20 Wellcroft Road;

- (iii) whether the proposed flats would provide acceptable living conditions for future occupants;
- (iv) the effect of the proposed development on highway and pedestrian safety;
- (v) whether a planning obligation should provide for affordable housing.

Reasons

Employment Land

6. The site is within an Existing Business Area. Core Strategy 2006-2026 (CS) Policy CP5 indicates that in such areas there will be no loss to non-employment generating uses, especially where this would reduce the range of jobs available.
7. The Council says that there is an undersupply of employment land in the area and the appellant does not dispute this.
8. The site is currently operating as a golfing shop. It has its retail showroom on the ground floor with storage at lower ground level. The building is about 35 years old with an expected lifespan in excess of 50 years.
9. The golfing shop sells high value items with relatively few customers but the appellant claims that the attractiveness of the unit to other users is limited because there is limited parking on the site.
10. The appellant also says that there is limited remaining lease for the existing occupier which has a "tricky" recent economic position and therefore, the occupiers might vacate the unit. Nevertheless, the appellant's valuation report says that the tenant's covenant strength is considered to be good and it has benefitted from the recent restructuring of their company. There is no substantive evidence, therefore, that the existing tenant is about to move out.
11. Moreover, the appellant's valuation report says that the subject property has the benefit of being a detached unit on a corner plot within a reasonably prominent setting. As a result, the appellant's valuers says that they would anticipate a good level of interest from prospective occupiers. The valuation report also says that demand for light industrial/trade warehouses has remained strong in the locality and at the present time there is good demand for units of this type. Therefore, the evidence is that even if the current occupiers left, others would be found.
12. I acknowledge the comments in the valuation report that a void period in the region of 3-6 months would be anticipated if the property became vacant, but this is a relatively short-term period when set against a permanent loss of the site for employment purposes.
13. Whilst I note the appellant's comments that the site is currently only staffed by about 3 members of staff at any one time, the shop is still operating and therefore has an economic benefit to the locality. Even though the current number of staff is small, the site still contributes to employment within the area. There is no evidence that a potential future occupier could not employ more staff.

14. There are other non-employment uses near the site and I appreciate that some of these are on former employment land. However, I do not know the full history of these developments and they do not justify the loss of this particular site to employment use.
15. I also note that there are permitted development (PD) rights to change Class E (commercial, business and service) uses to residential uses under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015. I accept, therefore, that it is a possibility that the site could be lost to employment. However, a condition of Class MA is that before beginning development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to numerous potential impacts. Such an application could be rejected. Therefore, I give only a small amount of weight to the appellant's claimed fallback position.
16. I conclude that the proposed development would lead to an unacceptable loss of employment land and it would be contrary to CS Policy CP5. It would also be contrary to Paragraph 8 of the National Planning Policy Framework (the Framework) which indicates that achieving sustainable development includes an economic objective by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity. In addition, there would be conflict with Paragraph 85 of the Framework which says that planning decisions should help create the conditions in which businesses can invest, expand and adapt and that significant weight should be placed on the need to support economic growth and productivity.

Development of other sites

17. The Council is concerned that the proposed development would prejudice adjacent sites from being comprehensively redeveloped. 20 Wellcroft Road is specifically mentioned in this respect.
18. The proposed building would be very close to its own site boundaries, including at the rear where the building would face No 20. This rear elevation would contain numerous windows to habitable rooms. It would also contain balconies which would look towards No 20. The Council's concern is that the proposed flats would be so close to No 20 that they would restrict its redevelopment potential. The owner of No 20 has also objected for similar reasons.
19. However, although CS Policy CP1 indicates that proposals for the comprehensive regeneration of selected key locations within the Borough will be encouraged at an appropriate scale, I have no evidence before me that the site or No 20 is included in any comprehensive regeneration proposal or plan. The "Implementation" part of the policy says that the Council will prepare a Development Control Policies and Site Allocations DPD plus information documents such as Supplementary Planning Guidance, which could include Design Briefs. No such documents are before me in relation to the appeal site and its environs. Furthermore, there is no approved or permitted scheme for the redevelopment of No 20 before me. Therefore, the development of the appeal site must be considered in accordance with the current site and surroundings rather than a theoretical future situation.

20. I accept that paragraph 7.12 of the CS says "*Parts of Britwell and the Slough Trading Estate 19 are examples of such areas which would benefit from being redeveloped in a comprehensive, properly planned and coordinated manner. The scale of development in these areas will depend upon the existing and proposed accessibility of sites and the extent of any environmental constraints.*" However, this paragraph is not a policy.
21. In terms of the effect upon the existing office building at No 20, the proposed block of flats would be much taller than the existing retail unit and it would be closer to No 20. I accept that the proposal would result in some loss of light and outlook from No 20. However, there are no specific planning policies before me relating to light and outlook from offices.
22. I conclude that the proposal would not unacceptably prejudice the future development of adjacent sites. In this respect, I find no conflict with Local Plan for Slough (LP) Policy EN1 or CS Policy CP8. Both of these policies require high quality design but they do not require the redevelopment of the site to be undertaken as part of a specific wider plan or proposal and neither do they require proposed development to take into account the future development potential of nearby sites.

Highway and Pedestrian Safety

23. Slough Borough Council Parking Standards require 78 spaces for the 50 flats. Only 27 are proposed which is a very substantial shortfall.
24. I noted at my visit that there was very little on-street parking space available. Multiple cars on the industrial estate were parked illegally on double yellow lines adjacent to accesses, blocking visibility. Many cars were parked half on pavements blocking footways. In particular, the service road to the site was full of parked cars which were parked half on the pavement and half on the carriageway. Two-way traffic on this service road is clearly very difficult with the parked cars there.
25. The site is about 1.5km from Slough Centre and about 2km from Slough railway station. I do not consider these to be easy walking distances and the route is unattractive along a busy dual carriageway. I acknowledge that there is a cycle route to the town centre, that National Cycle Route 461 is nearby, and that there would be sufficient cycle parking on the site. Cycling is therefore fairly well catered for. There are also other services within a kilometre of the site such as supermarkets, places of worship, a retail park, a bank, a doctors' surgery and a gym which could be accessed by cycling or walking. In addition, there are several bus services within convenient access to the site.
26. Nevertheless, although living in the area would not necessitate every journey to be undertaken by car, transport options other than the car do not prevent the existing parking problems in the vicinity. My observations of the site and its surroundings is evidence that cars are a popular choice of transport to and from the site.
27. In addition to a lack of car parking, there would be a problem with the collection of refuse from the service area inside the building. The tracking diagram for a larger refuse vehicle shows tracking beyond the vehicle

carriageway. This would be a particular hazard for pedestrians. Furthermore, the tracking diagram does not demonstrate that such a vehicle could pass if cars were parked on the service road. Although the appellant has a right of way over the service road, he does not own it.

28. The appellant's UU pertains to provide for a Traffic Regulation Order (TRO) for parking restrictions on this service road. The service road is not defined in the UU which is a drafting issue, although the appellant has confirmed by email that the service road is the access road between the site and 20 Wellcroft Road. Nevertheless, the TRO cannot be made because the service road is not part of the adopted highway and the Council has confirmed in its evidence that it cannot control parking on it. Therefore, as it is outside of the appellant's ownership and out of the Council's control, there is no mechanism before me to prevent parking on it. Furthermore, even if parking restrictions could be made on the service road, this would result in even less parking available in the area. The risk would be that the parking would be displaced to other nearby inappropriate places.
29. A Travel Plan has been submitted which would encourage occupiers to use alternative modes of transport to the car. However, the Travel Plan seeks to reduce car journeys by only a very small amount over a 5-year period. The travel plan cannot prohibit people owning or parking a car.
30. The appellant's UU also provides for financial contributions towards bike station installation, the Council's Low Emission Strategy (for an offsite electro-voltaic car club), a bus service contribution (for increased bus frequency); a cycle and walking route contribution; bollard contribution (to prevent parking on the highway verge/pavements to the front, side and rear of the ground floor of the building), and Travel Plan monitoring.
31. The bollard contribution would be directly related to car parking on the site, as it would prevent car parking in a specific but limited area. However, there is no substantive evidence that any of these obligations would have any direct effect to deter future occupiers owning a car or that they would reduce the need for onsite car parking. Therefore, I do not consider that these obligations, either in combination or alone, are sufficient mitigation for the lack of car parking provision.
32. The Transport Statement proposes 6 car club spaces in the basement car park. It says that the CoMoUK car club annual report 2021 stated that each car club vehicle replaces 20 private cars. However, no data has been provided to support this claim. Furthermore, the 6 car club spaces shown in the Transport Statement would further reduce the number of spaces available for residents' and visitors' cars. Therefore, I do not consider that a car club in the car park would be a solution to the very substantial shortfall of parking.
33. In summary, although there are alternative means of transport to and from the site other than the car, there is already a very significant parking problem in the vicinity. The shortfall in the number of proposed car parking spaces is very substantial and I do not consider that the mitigations proposed would be effective. Therefore, there is a serious risk that the proposed development would exacerbate the existing parking problems. In

addition, there is severe difficulty with access to the service area by a large refuse vehicle.

34. I conclude that the proposed development would have an unacceptable impact on highway and pedestrian safety. Therefore, it would conflict with CS Policy CP7 and LP Policy T2, which, in combination, require that residential development has a level of parking that is appropriate to its location and scale, taking account of local parking conditions. It would also be contrary to paragraph 114(b) of the Framework which indicates that it should be ensured that safe and suitable access can be achieved for all users. In addition, it would conflict with paragraph 116(c) of the Framework which advises that applications for development should minimise the scope for conflicts between pedestrians and vehicles. Paragraph 115 of the Framework allows for development to be prevented on highways grounds if there would be an unacceptable impact on highway safety.

Living Conditions

35. According to the appellant's sunlight and daylight report only 71% of windows in the proposed development would get sufficient daylight. These affected rooms are to living areas and bedrooms. Mostly, whole flats are affected, so that no rooms in an individual flat would have sufficient daylight. Furthermore, not all of the habitable rooms in the proposed development would receive sufficient direct sunlight either. The appellant has referred me to appeal decision APP/J0350/W/22/3313789. However, it appears from the decision that it was the odd room that would have a significant lack of daylight rather than entire flats. That appeal decision is a different site and a different development and is not directly comparable to the proposal before me.
36. The sunlight and daylight report suggests the complete removal of the balconies on the south facing façade to improve the performance of the daylight reaching the windows. The appellant has not removed the balconies as this would have resulted in the proposed development having inadequate private amenity space. However, providing adequate private amenity space does not compensate for a lack of daylight – normally, both should be provided.
37. Unit 2 on the ground floor would have all its windows, including bedroom windows, abutting the pavement on Wellcroft Road. This would provide an unattractive outlook and a poor level of privacy for the entire flat.
38. For the above reasons, the proposed development would provide unacceptable living conditions for many of its future occupants. Therefore, it would conflict with LP Policy EN1 and CS Policy CP8 which, in combination, require a high standard of design. It would also conflict with paragraph 135(f) of the Framework which indicates that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Affordable Housing

39. CS Policy CP4 requires that all sites of 15 dwellings or more will be required to provide between 30% and 40% of the dwellings as social rented housing

along with other forms of affordable housing. The proposal would conflict with that policy as no affordable housing is proposed, either on site or off-site. Affordable housing would normally be secured by a planning obligation.

40. Nevertheless, the Framework advises that planning obligations must only be sought where they meet all of 3 tests, one of which is that they must be fairly and reasonably related in scale and kind to the development. In this case, the appellant has submitted a viability assessment which shows that the development would not be financially viable if affordable housing were to be provided. The Council accepts that there would be a viability deficit.
41. The Council, however, argue that the UU should contain a review mechanism to ensure provision of affordable housing contributions, in case the proposed development becomes viable over time. The UU does not contain such an obligation.
42. The Planning Practice Guidance (PPG)¹ indicates that plans should set out circumstances where review mechanisms may be appropriate. It also says that plans should also set out clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development. It says that where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time.
43. The Council has not referred to any development plan policy which sets out a review mechanism. It has, however, referred to Slough Borough Council's Developer Contributions and Affordable Housing (Section 106) Developers' Guide Part 2, Interim Document. This sets out that if a development is agreed without being policy compliant in respect of affordable housing, a Section 106 obligation should include a review mechanism. The review would establish if development values rise above development costs after permission is granted so that more affordable housing or an equivalent payment could be provided. Any additional affordable housing or payment justified by the review would take account of developers' return for the site and be capped at the normal policy compliant level.
44. However, the appellant says that this is not an adopted Supplementary Planning Document (SPD) and the Council has not disputed this claim. Indeed, the Preface of the document says that it is being published as an interim document and that it is envisaged that, in due course, more comprehensive advice will be produced in the form of a SPD, following consultation and statutory procedures. The lack of a development plan policy in respect of a review mechanism does not conform with the advice in the PPG. I give the interim document little weight as it appears that it has not been through the same level of consultation that would be required for a development plan document or SPD.
45. I conclude that it is not necessary for the proposed development to provide for affordable housing in the UU.

¹ Paragraph: 009 Reference ID: 10-009-20190509

Other Matters

46. The Council has mentioned that the proposed building would result in an increased bulk from the street scene and an oppressive nature from the immediate public realm. This is a character and appearance issue which is not clearly in the reason for refusal and the Council has not substantiated its case in this respect. As I am dismissing the appeal for other reasons, there is no need for me to investigate this matter further.
47. The appeal site lies within 5.6km of Burnham Beeches Special Area of Conservation. Within this area, new housing can be expected to result in an increase in recreational pressure. Natural England objected to the proposal but said that they would remove the objection providing that the Council can confirm that sufficient Suitable Alternative Natural Green Space (SANG) capacity remains and that the developer pays a financial contribution towards it. The Council has confirmed in its appeal statement that the mitigation solution requires a fee of £570 per dwelling contributions towards the SANG mitigation strategy at Upton Court Park and the appellant has provided for this contribution in the UU. This matter, therefore appears to have been resolved and as I am dismissing the appeal for other reasons, there is no benefit in addressing it further.
48. In addition to the financial contribution to the SANG, the UU provides for financial contributions towards transport and highways improvements; public open space; and education. These pertain to make the development acceptable. I have already considered the transport and SANG contributions. As I am dismissing the appeal there is no need for me to consider the open space and education contributions.
49. The appellant has referred to several caselaw judgements in his evidence which I have taken into account.

Planning Balance

50. The Council has confirmed that, in accordance with its most recent Annual Monitoring Report of 2022/23 (reported in November 2023), it has a housing land supply of 2.6 years. The appellant suggests it might be 2.1 years as set out in a previous appeal decision². However, in that decision, the Inspector says the figure was confirmed by the Council at the appeal hearing. This was held on 20 June 2023. The Annual Monitoring Report post-dates that hearing. Nevertheless, both figures confirm a very significant shortfall in housing land supply.
51. Paragraph 11(d) advises that in such a situation where development plan policies are deemed out-of-date because a 5-year supply of housing land cannot be achieved, planning permission should be granted unless one of 2 criteria apply. One of these is if any adverse impacts would 'significantly and demonstrably' outweigh the benefits when assessed against the policies in the Framework taken as a whole. This is known as 'the tilted balance'.
52. I find no harm in respect of the lack of provision of affordable housing and neither do I find that the proposal would unacceptably prejudice the

² APP/J0350/W/22/3313789

redevelopment of other sites. These are neutral factors in the balance. Nevertheless, I do find harm in respect of a loss of employment land; living conditions for future occupants; and highway and pedestrian safety. Cumulatively, I give very substantial weight to this harm.

53. The benefits of the scheme are the provision of 50 dwellings on brownfield land to which I give significant weight. There would also be economic benefits of the scheme during the construction stage to which I give some weight. However, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusion

54. For the above reasons, I dismiss the appeal.

Siobhan Watson

INSPECTOR

