



Appeal Decision

Hearing held on 10 August 2016

Site visit made on 10 August 2016

by Simon N Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 August 2016

Appeal Ref: APP/X1735/W/16/3145929

38 London Road, Purbrook, Waterlooville, PO7 5LI

- 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 McCarthy & Stone Retirement Lifestyles Ltd against the decision of Havant Borough Council.
 - The application Ref APP/15/00896, dated 13 August 2015, was refused by notice dated 11 December 2015.
 - The development proposed is demolition of existing buildings and redevelopment to form 42 retirement apartments for older persons including communal facilities, parking provision and associated landscaping and 2 commercial/retail units.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and redevelopment to form 42 retirement apartments for older persons including communal facilities, parking provision and associated landscaping and 2 commercial/retail units at 38 London Road, Purbrook, Waterlooville, PO7 5LI in accordance with the terms of the application, Ref APP/15/00896, dated 13 August 2015, subject to the conditions contained in the annex below.

Preliminary Matters

2. The Council gave four reasons for refusing permission, but during the course of the appeal they withdrew the 2nd, 3rd and 4th reasons having reached agreement with the appellants. Following agreement over the issue of viability the Council accepted the appellant's offer of a sum of money for the purpose of securing affordable housing off-site. Arrangements were also made for mitigation measures for the Solent Special Protection Area and for necessary alterations to the local highway network. These were all dealt with in two separate S106 obligations which were presented to the hearing. I consider the three matters pass the tests for a necessary and appropriate s106 and have given them weight accordingly.

Main Issue

3. The remaining reason for refusal concerned the loss of existing employment uses on the site and a subsidiary issue to that (although of great importance to the Council) was whether the Council could show a 5 Year supply of housing

land and the implications of that for the policies they relied on to support this reason for refusal. These then are the main issues.

Reasons

The policy background

4. The Council adopted their Core Strategy in 2011. This contains policies CS2 and DM3. The former is headed "*Employment*". The first part deals with the net total of new floor space to be accommodated in the Borough for employment uses, B1, B2 and B8. The second part begins "*planning permission will be granted for development proposals that:*" and then lists a number of criteria, one of which is "*5. Safeguard existing employment sites and allocations that are fit for purpose from development proposals for non-employment uses*". DM3 is headed "*Protection of Existing Employment and Tourism Sites*". This policy explicitly deals only with uses falling within Class B of the Use Classes Order and essentially seeks to ensure Class B sites are not lost unless it can be shown they are no longer viable or necessary.
5. In 2014, following an examination in public, the Council adopted its Local Plan (allocations) document. This contains policy AL3, headed "*Town, District and Local Centres*". The appeal site is identified as lying within the Purbrook centre where the policy says that planning permission will be granted for proposals that "*provide main town centre uses.....and so contribute to their vitality and viability*".

5 year housing land supply

6. The 2011 Core Strategy (CS) seeks to provide land for 6300 dwellings from 2006 to 2026, at a rate of 315 a year. Up to 2013/14 this annual target had not been met in any year, but has been exceeded in the last two years. The figure of 6300 dwellings was derived from the South East Plan (SEP). The appellant has provided a comprehensive argument that the figures from the SEP cannot constitute an Objectively Assessed Need (OAN) as required by paragraph 47 of the NPPF. The main argument being the SEP itself which says at paragraph 7.7 that the figures for housing growth are "*still significantly below the forecast growth of households and even more so by the more recent 2006-based population projections*". As the appellant points out this means they are "policy on" figures and so not an OAN.
7. The Council did not seek to dispute this directly but relied instead on the report of the Inspector into the 2014 allocations local plan (ALP). The Inspector found the ALP to be sound and compliant with any legal requirements and was consistent with the NPPF. Consequently, the Council argue this is an endorsement of the figures in the CS, which the ALP uses as the basis for its allocations. The appellant points out that this is not the case. The Inspector did not seek to re-open the housing numbers debate but simply took the CS as it was. Paragraph 9 of the report says that the ALP seeks to "*deliver the vision for growth that is set out in the CS. It does not seek to reassess any strategic issues, such as overall housing or employment needs....*". Consequently the ALP report does not endorse the housing figures of the CS but explicitly states it is taking the CS at face value. I was referred to the case in the High Court of *Gladman v Wokingham BC*¹, where the court held that this was exactly what an

¹ *Gladman Development Ltd v Wokingham BC* [2014] EWCH 2320 (Admin)

Inspector should do, there was no requirement in law or the NPPF to go behind the figures in an adopted CS.

8. The Council are clearly aware of this issue and have produced a Strategic Housing Market Assessment (SHMA). This document showed that 11,250 houses are needed in Havant between 2011 and 2036. The Council, in their most up to date review² are treating this as a new OAN, which requires 450 houses per year to be built. At present the Council accept they have a shortfall of 1322 dwellings.
9. The issue is therefore whether the Council are correct to interpret the housing figure in the CS as an OAN, and it seems clear to me, from the evidence I was given, that they are not. The SEP housing figures were clearly not an OAN as envisaged in the NPPF. Although the SHMA figure has not been tested yet, it would seem that it is based on work that follows the advice in the PPG and is being treated as an OAN by the Council. As they acknowledge they do not have a 5 year supply of housing compared to that OAN, then it follows that paragraphs 49 and 14 of the NPPF are engaged.

The loss of commercial floor space

10. The Council accepted the builder's merchant on the site was a sui generis use and not a 'B' class. This means there are five businesses on the site, the builder's merchant and the car sales are not class 'B', but the MOT garage, motorbike repairs and the tyre fitters are all class 'B'. Although the units that are not class 'B' units occupy the majority of the site, the others are not insignificant in size and it is reasonable to accept the site as a whole is covered by any policies that seek to protect against the loss of 'B' class businesses.
11. It was pointed out that CS2 did refer in the explanatory paragraphs to class 'B' only and that other employment uses, which would include sui-generis uses, fell outside the ambit of CS2. Nevertheless, there is no mention of these exclusions in the text of the policy itself, and section 5 is quite clear that it seeks to safeguard employment sites from non-employment uses. As the appeal site is an employment site and the appeal is for non-employment uses then in my view the site is covered by policy CS2. Policy DM3 clearly only applies to 'B' class use, but as these exist on the site, this policy is also relevant.
12. No marketing exercise has been undertaken and no other employment uses have been considered. The appellant accepts the site is a viable employment site and if CS2 and DM3 are found to be relevant then the appeal proposal is contrary to those policies and I consider this to be the case. Nevertheless the appellant argues that there is plenty of vacant light industrial floor space available in the Borough. This month a search revealed 36,000 sqm, up from 32,000 in February. In the context of the 641,000 sqm of floor space in the Borough as a whole the appeal site (which is less than 4000sqm) is a tiny drop in this large ocean. The appellant argues that the existing uses should therefore have no difficulty in relocating and at the most there is only a technical conflict with the policies.
13. I heard considerable evidence from the owners of three of the businesses, and from several local councillors. I was informed that while there might be a lot of

² Draft Local Plan Housing Statement July 2016

vacant premises, either the landlords were unwilling to accept motor trades or they were too far away. The builder's merchant is part of a large company and have been actively seeking to relocate since they first heard of the appeal, but to no avail. Many sites have restrictions on the use of the yard for vehicles or storage which make them impractical for their business. It was also made clear that the MOT garage was a local firm, employing locals and serving the local residents. It seemed they had built up a successful relationship with local schools for work experience places and relocating to other parts of the Borough would bring that to an end as well as force them to start again from scratch as those living in Purbrook were unlikely to travel across the Borough to have their cars serviced.

14. However, it was made plain that none of the businesses owned their properties, but they were leased from the site owner who had an option with the appellant to sell the site if planning permission was forthcoming. Several leases were due for renewal at the end of this year and it was suggested they might not be. There is obviously considerable uncertainty for the businesses on the site whatever the outcome of this appeal. Nevertheless, the loss of these local businesses where there is no obvious possibility of relocating does count against the appeal.
15. The appellant argued that policy AL3 counted in their favour. As noted above this policy supports development in the area of the town centre, including the appeal site for "main town centre uses". While at least some of the businesses on the site may be popular locally, none can be described as "main town centre uses". This suggests to me that when AL3 was drawn up (which was as recently as 2014), the site was considered to house non-conforming uses that were better located away from the centre, otherwise I assume the site would have been excluded from the policy. Despite including two small shop units, the appeal proposal is not, as a whole, a "main town centre use", so it too would be contrary to AL3, but the point the appellant makes, which I consider to be sound, is that up until the application was lodged the Council clearly accepted the site could be redeveloped for a town centre use and so gave little weight to the loss of employment land.
16. It was also argued that policies CS2 and DM3 were counterpart policies that affected the supply of housing land. Counterpart policies were discussed in the Suffolk Coastal³ case by the Court of Appeal. They held that in paragraph 49 of the NPPF the phrase "relevant policies for the supply of housing" should be given a wide interpretation. Policies that restricted development on a site could constrain housing supply just as much as those that specifically mentioned housing. In this appeal by seeking to prevent redevelopment of employment sites (CS2) or sites with 'B' class use (DM3), both those policies constrain the supply of housing, and are counterpart policies that come within the ambit of paragraph 49 of the NPPF.

Other Matters

17. A number of third parties raised issues related to the value of the businesses on the site to Purbrook, and while it is obviously convenient to get ones MOT done locally, it is not essential, and no actual evidence was provided that would suggest the vitality and viability of Purbrook would be harmed if the appeal were allowed.

³ Suffolk Coastal DC & others [2016] EWCA Civ 168

18. The access onto London Road was considered to be dangerous, and there is a bus shelter which obscures views to the right, but the access is onto a small layby, so it is possible to edge forward without interrupting the flow of traffic to obtain clear views to the right. The gate that was proposed across the London Road entrance has been removed in the latest plans so there should be no delay for traffic turning right off the London Road. The site currently has four businesses that use the same access, so there are already a reasonable number of turnings into and out of the site. The appellant's traffic analysis suggests that car use by the proposed elderly occupiers would actually be less than at the moment. The Council had no objections on highway grounds.
19. There were also issues around car parking on the site. Stakes Road, to the side of the site already suffers from parking problems and recent double-yellow lines have not proved universally popular. There was concern that any overspill parking would inevitably be on Stakes Road, further exacerbating the parking situation. However, the Council had no objection to the number of parking spaces being provided, which should accommodate residents' cars as well as visitors', especially as more elderly residents are unlikely to be car owners.
20. Finally the owner of the neighbouring hairdressing salon pointed out the proposed shop unit was too close to her side wall, making future maintenance difficult. The appellant suggested this matter would be covered by the Party Wall Act, which had provisions to deal with disputes of this nature.

Benefits

21. There are a number of listed buildings in the area, the main one being the church on the opposite side of London Road. The appellant argued that in addition to not causing any harm to the setting of the listed building, there was actually a small improvement. The Council in the officer's report recognised the design of the proposal was of a high quality and would enhance the streetscene and the setting of the nearby conservation area and by implication therefore, also the setting of the listed building. I have no reason to disagree with this assessment. The current site is a typical, partly scruffy, set of buildings and uses that have grown up in an ad hoc fashion, and their replacement with a well designed housing development would be of benefit to the area.
22. The appellant also stressed the need for older peoples housing. Although the Council could point to a number of recent developments for such accommodation, there was no suggestion they would be able to meet all the demand for older people's housing in the Borough. The CS recognised that by 2026 a quarter of the Borough's population would be aged 65 or over and the PPG at paragraph 21 in the section "Housing and Economic Development Needs Assessments" recognises that "*the need to provide housing for older people is critical*".
23. There would also be the associated benefits of the economic value of the building contract, the provision of two small shop units and the extra spend the occupants of the proposal would bring to the area, estimated at £458,000 a year.

Conclusions

24. Bringing this all together I find the Council does not have a 5 year supply of housing land and so its policies for the supply of housing are out of date. This includes policies CS2 and DM3. Paragraph 14 of the NPPF is activated so that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The benefits include the provision of much needed housing in an area with no 5 year housing land supply, and in particular older people's accommodation for which there is a critical need nationally and it would seem, a definite need locally. There are also associated economic benefits, especially the extra spend brought to the locality by the future residents, and an improvement to the streetscene and the setting of the nearby listed building.
25. Although policies CS2 and DM3 are out of date in NPPF terms they still exist and are capable of attracting weight. The proposal is clearly contrary to those policies. However, there would seem to be plenty of vacant commercial property in the Borough and land allocated for more so the loss of this relatively small site would not be significant. Despite the appellant's floorspace figures, there would seem to be little or no availability either locally or where the owners are willing to take on the particular uses that would be displaced. I have doubts therefore whether the three local motor trade businesses, at least, would be able to successfully relocate locally.
26. Although I have concluded there would be clear harm to the businesses currently operating from the site and some harm to policies CS2 and DM3, this does not significantly and demonstrably outweigh the benefits I have also identified. I therefore consider the proposal to be sustainable development as defined in the NPPF and should be granted planning permission, subject to the conditions discussed below.

Conditions

27. The plans condition needs to accommodate the two extra plans provided at the hearing, and a condition to deal with potential contamination is necessary due to the uses on the site. The appellant argued that the condition requiring the assessment before development commenced would preclude the removal of the buildings which might be necessary to determine the extent of contamination. I agree and this can be most easily dealt with by adding in "excluding the removal of any existing buildings" to the condition. Conditions dealing with foul and surface water drains, contractor's vehicles and materials storage, floor levels and external materials are all required, the latter to include the condition suggested for a sample panel of brick and flint. Soft and hard landscaping and boundary treatment conditions are needed, but I consider the relevant schemes and plans can be provided before occupation rather than commencement of development, which might otherwise unnecessarily hold up works on site.
28. A condition restricting the age limit of the occupiers is needed due to the specific nature of the proposal, as is one to deal with suspected bats on the site and the acoustic report provided by the appellant. I do not agree that a condition is required to deal with asbestos removal as this is fully covered by other legislation. A condition is needed to ensure the gates across the entrance are not installed and that parking arrangements are laid out in

accordance with the revised plan. Finally details of the proposed shop fronts are needed as well as the external meter boxes and any metal flues.

Simon Hand

Inspector

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Rupert Warren QC
Gian Bendinelli – Planning Bureau
James Chaffer – Alder King
Paul Sedgewick
David Beardmore

FOR THE LOCAL PLANNING AUTHORITY:

Leanne Buckley-Thomson – of counsel
Rachael McMurray – Havant Borough Council
David Heywood
Ganesh Selvarajah

INTERESTED PERSONS:

David Alexander – Estates Manager for SIG
Michael Dixon – Purbrook Tyres
Vikki & John Coventry – Purbrook Garage Services
Robin McIntosh – County Councillor
Gary Hughes – Borough Councillor
Jacqueline Moore – Jacqueline's Hair Salon

Documents

1. S106 for affordable housing
2. S106 for other contributions
3. Draft local Plan Housing Statement (2016)
4. Committee report on 3.
5. Revised ground floor plan
6. New plan showing layout and topography
7. Printed version of 3
8. Inspector's report into the Local Plan (Allocations) 2014

Conditions Annex

- 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: SE-2168-03-AC-001 (Site Location Plan); SE-2168-03-AC-002D (Proposed Site Plan Site Layout Plan); SE-2168-03-AC-003F (Proposed Ground Floor Plan); SE-2168-03-AC-004B (First Floor Plan); SE-2168-03-AC-005B (Second Floor Plan); SE-2168-03-AC-006D (London and Stakes Road Elevations); SE-2168-03-AC-007B (East and South Sectional Elevations); SE-2168-03-AC-008 A (South Courtyard and South Elevation); SE-2168-03-AC-009 A (West Courtyard Elevation); SE-2168-03-AC-010D (Street Elevations); SE-2168-03-AC-011 A (Artist Impression 1 of 3); SE-2168-03-AC-012 A (Artist Impression 2 of 3); SE-2168-03-AC-013 B (Artist Impression 3 of 3); SE-2168-03-AC-LA-001B (Landscape Plan); PP/3066/M&S/Purbrook (Topographical Survey); 8817-01(Tree Constraints Plan); SE-2168-03-AC-025 (Layout and Topographical Plan).

- 3) Prior to the commencement of development approved by this planning permission (excluding the demolition of any existing buildings) or such other date or stage in development as may be agreed in writing with the Local Planning Authority, an assessment of the nature and extent of contamination at the site, whether originating from within or outside the curtilage, shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall be undertaken by competent persons, and the findings presented as a written report.

The assessment may comprise separate reports as appropriate, but unless specifically excluded in writing by the Local Planning Authority, shall include;

- 1) A site walk-over survey &/or sufficient desk-based research to identify;
 - All relevant previous uses of the site
 - Potentially significant contaminants associated with those uses
 - Uncertainties relating to previous use or associated potential contaminants
 - A conceptual site model identifying all relevant sources, exposure pathways and receptors, and;
 - A summary of potentially unacceptable risks arising from contamination at the site.
- 2) Site investigation based on (1), to provide sufficient data and information to adequately identify & characterise any physical contamination on or affecting the site, and to inform an appropriate assessment of the risks to all receptors that may be affected, including those off site.
- 3) The results of an appropriate risk assessment based upon (1) & (2), and where unacceptable risks are identified, a Remediation Strategy that includes;
 - appropriately considered remedial objectives,

- an appraisal of remedial &/or risk mitigation options, having due regard to sustainability, and;
- clearly defined proposals for mitigation of the identified risks.

4) 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 (3) are complete, identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

All elements shall be adhered to unless agreed in writing by the Local Planning Authority.

- 4) Prior to the occupation of any relevant part of the permitted development, any verification report required in accordance with condition 3 above shall be submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan, and must demonstrate that site remediation criteria have been met. Where longer-term monitoring of pollutant linkages is identified as being necessary, the report shall clearly set out plans for monitoring, provision for maintenance, relevant triggers and contingency actions (a "long-term monitoring and maintenance plan"). The long-term monitoring and maintenance plan shall be implemented as approved.
- 5) No development hereby permitted shall commence until plans and particulars specifying the layout, depth and capacity of all foul and surface water drains and sewers proposed to serve the same, and details of any other proposed ancillary drainage works/plant (e.g. pumping stations) have been submitted to and approved in writing by the Local Planning Authority. Unless agreed otherwise in writing by the Local Planning Authority, the development hereby permitted shall not be brought into use prior to the completion of the implementation of all such drainage provision in full accordance with such plans and particulars as are thus approved by the Authority.
- 6) No development shall take place until plans and particulars specifying the following matters have been submitted to and approved in writing by the Local Planning Authority:
- (i) The provision to be made within the site for contractors' vehicle parking during site clearance and construction of the development;
 - (ii) The provision to be made within the site for a material storage compound during site clearance and construction of the development.
- Thereafter, throughout such site clearance and implementation of the development, the approved parking provision and storage compound shall be kept available and used only as such.
- 7) No development shall take place until details of existing and finished floor and site levels relative to previously agreed off-site datum point(s) have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
- 8) Notwithstanding any description of materials in the application no above ground construction works shall take place until samples and/or a full

specification of the materials to be used externally on the buildings have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials and in particular a sample panel of brick and flintwork shall be constructed on site to accurately reflect the brick bond, finish, mortar type, finish and capping detail with accompanying specifications. Only the materials so approved shall be used, in accordance with any terms of such approval and the approved sample panel shall be retained on site until the work is completed and the work carried out in full accordance with the approval granted.

- 9) No residential units in the development hereby approved shall be occupied until a detailed soft landscaping scheme for all open parts of the site not proposed to be hard-surfaced has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall specify the proposed finished ground levels in relation to the existing levels, the distribution and species of ground cover to be planted, the positions, species and planting sizes of the trees and shrubs to be planted and/or retained, and timing provisions for completion of the implementation of all such landscaping works.

The implementation of all such approved landscaping shall be completed in full accordance with such approved timing provisions. Any tree or shrub planted or retained as part of such approved landscaping scheme which dies or is otherwise removed within the first 5 years shall be replaced with another of the same species and size in the same position during the first available planting season.

- 10) No residential units in the development hereby approved shall be occupied until a specification of the materials to be used for the surfacing of all open parts of the site proposed to be hardsurfaced has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall not be brought into use until the implementation of all such hardsurfacing has been completed in full accordance with that specification.
- 11) No residential units in the development hereby approved shall be occupied until plans and particulars specifying the alignment, type, height and, where appropriate, construction materials and design of all proposed screen walls, fences, hedges and other means of enclosure have been submitted to and approved in writing by the Local Planning Authority. Unless agreed otherwise in writing by the Authority, the development hereby permitted shall not be brought into use prior to the completion of the installation of all screening provision as is thus approved by the Authority. At all times thereafter, all of that screening provision shall be retained in a wholly sound and effective condition.
- 12) With the exception of any site manager/warden's accommodation, at no time shall the sheltered apartments development hereby approved be occupied by persons under the age of 60, unless in the case of a couple where one person is over the age of 60, the second person shall not be under the age of 55.
- 13) The mitigation measures included in the Bat Presence / Absence Survey dated 23rd September 2015 must be complied with in full, unless otherwise agreed in writing by the LPA. Thereafter, the mitigation,

compensation and enhancement measures shall be permanently maintained and retained in accordance with the approved details. If bats, or evidence of bats droppings (e.g. droppings, bat carcasses and insect remains) are encountered at any point during this development, all work shall stop immediately and further advice sought from Natural England and/or a professional ecologist.

- 14) The development shall be carried out in strict accordance with the agreed acoustic report prepared by Parsons Brinkerhoff dated May 2015.
- 15) No gates to be installed on the London Road access to the site without prior written approval of the Local Planning Authority.
- 16) Prior to occupation the final parking layout shown on plan SE 2168 03 AC 025 LAYOUT & TOPOGRAPHICAL PLAN shall be implemented and shall thereafter be retained and used solely for those purposes.
- 17) No development shall commence until a scheme for the eradication and / or control of Japanese Knotweed has been submitted to and approved by the Local Planning Authority and the approved scheme shall be implemented prior to the commencement of the use of the building.
- 18) No development shall commence until details relating to the following have been submitted to and agreed by the Local Planning Authority:
 - i. Confirmation of the existing drainage system
 - ii. Infiltration tests should be carried out to discover if this method of surface water disposal is appropriate and the results provided
 - iii. Evidence of the appropriate number of treatment stages in the surface water management train as stated in CIRIA C69.
 - iv. Calculations comparing the existing surface water run off rate, in I/s for a 1 in 100 year flood event +30% for climate change, with the proposed development's surface water run off rate for the same event
 - v. Calculations to demonstrate the existing run off volume for a 1 in 100 year, 6 hour flood event and evidence showing that there will be adequate storage for the attenuation of this volume on site, and allowing discharge without increasing the run off rate or volume off site.
- 19) Before any above ground construction takes place large scale (1:20) details of the proposed shop fronts (elevation and vertical cross-sections including the stall riser and fascia) shall be submitted to, and approved in writing by the local planning authority cross sections. All work shall be carried out in full accordance with such approval.
- 20) Details of the siting and design of any proposed external meter boxes/metal ducting/flues shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall thereafter be carried out in accordance with the approved details.