



Appeal Decision

Hearing Held on 27 February 2019

Site visit made on 27 February 2019

by John Wilde CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 19 March 2019

Appeal Ref: APP/Q3820/W/18/3202034

Land north of Tilgate Forest Business Centre, Brighton road, Tilgate, Crawley RH11 9PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Lamron Developments (Tilgate Ltd) against the decision of Crawley Borough Council.
 - The application Ref CR/2017/0346/OUT, dated 20 April 2017, was refused by notice dated 30 January 2018.
 - The development proposed is the erection of two four storey residential buildings, comprising 80 one and two bedroom flats, with car parking at undercroft and surface level, and communal private amenity space.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was made in outline with layout and access to be decided at the current time and appearance, landscaping and scale to be assessed later.
3. During the appeal process the appellant provided several indicative layouts, one of which showed allotment and amenity areas to be on the roofs of the proposed buildings rather than around them, no amenity area to the west of the site, and additional planting. The Council agreed at the Hearing that with the imposition of a suitable condition that would ensure this or a similar final arrangement then their reason for refusal 3, relating to visual amenities and character, could be withdrawn. I have determined the appeal on that basis.
4. At the Hearing a Planning Obligation by Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 was submitted by the appellant. This dealt with several of the Council's concerns relating to their fifth reason for refusal but not all of them. In light of this and my previous comments relating to visual amenities and character, the main issues concerning this appeal are therefore as set out below.

Main Issues

- a) The effect of the proposed development on the supply of employment sites within the borough, and on the living conditions of future occupiers, with particular emphasis on outlook, light, noise and privacy.

- a) Whether or not the proposed development would be in an accessible location and in accordance with the Local Development Plan in terms of its spatial strategy.
- b) Whether or not mitigation required to prevent harm to Ancient Woodland would be provided in an acceptable manner.

Reasons

The site

5. The appeal site, of about 0.9ha, is primarily located within the Tilgate Business Park, to the south of Crawley, off the A23 dual carriageway. There are four detached office buildings on the business park and the site itself, which has an extant planning permission for two office buildings with associated parking and landscaping, lies to the north of two of these office buildings (Nos 1 and 4 Forest Gate).
6. The site is broadly rectangular and contains concrete slabs left over from a previous use. The site is generally flat but slopes downwards at the eastern end. There is Ancient Woodland to the north and the eastern corner and protected trees to the west, adjacent to the A23.

Effect on employment sites

7. Policy EC1 of the Crawley Borough Local Plan 2015-2030 (LP) seeks to ensure that Crawley's economic role and function is maintained and enhanced and that the town's main employment areas (of which the appeal site is one) are the focus for sustainable economic growth. Paragraph 5.18 of the justification for the policy indicates that there is an overall need of about 58ha for business use during the plan period. However, about 35ha of identified land is subject to a safeguarding designation related to the possibility of a further runway at Gatwick Airport. Of the required 58ha therefore only 23ha is actually currently available. Policy EC1 makes clear that this meets only short term economic growth needs for the town over the early part of the plan period.
8. Policy EC2 of the LP stipulates that proposals that would involve a net loss of employment floorspace in any of the Main Employment Areas will only be permitted if, firstly, the site is no longer suitable viable or appropriate for employment purposes.
9. I have been supplied with several documents that tackle the question of viability. A report by Stiles Harold Williams (SHW) (March 2017) and two supplementary reports (July 2017 and December 2017) prepared on behalf of the appellant detail the marketing of the site carried out over a twenty year period. The reports note that there have been several planning permissions on the site but that none have come to fruition for a variety of reasons, including lack of funding, the preference for other sites and the vacancy rates of existing business units. The conclusion reached is that the site is not viable for any form of employment purpose.
10. Conversely, the Council have supplied two reports from Graves Jenkins, the first being a viability assessment dated December 2017 and the second, dated December 2018, containing comments on the appellant's statement of case. The latter document concurs with the SHW report that office use at the appeal site would be unlikely to come forward but goes on to state that there is

potential for the use of the site for small business units, which would not be precluded by the shape or accessibility of the site. This is based on occupier demand and the location of the appeal site, close to the M23.

11. I am also in receipt of a letter from Vail Williams who act for the landlord of the Atrium, one of the other office blocks on the business park. Vail Williams agree that the appeal site is still suitable, viable and appropriate for employment purposes and at the Hearing I was made aware that, notwithstanding the current vacancies within the existing buildings, two of them are in the process of having a considerable amount of funds spent on them in the way of improvements.
12. The appellant has pointed out that no viability assessment has been provided by Graves Jenkins regarding small business units. However, paragraph 120 of the National Planning Policy Framework (the Framework) makes clear that policies and decisions need to reflect changes in the demand for land but that it is for the local planning authority to reallocate the land for a more deliverable use when they consider that there is no reasonable prospect of an application coming forward (my underlining).
13. I am also aware that the LP is relatively new and that in his report on the examination into the LP the Inspector commented on *the scarcity of employment land* and concluded that *policy EC2 rightly seeks to retain existing employment areas in their current uses and to resist any loss of employment floor space*.
14. Whilst I acknowledge that the site has been marketed for many years and that office use would not be viable, from the information before me I consider that the case has not been made that it would be unviable for uses other than office use, particularly small business units.
15. The second criterion of policy EC2 makes clear that proposals that would involve a net loss of employment floorspace will only be permitted where it can be demonstrated that the loss of the floorspace would result in a wider social, environmental or economic benefit to the town. The appellant makes the point that as the site is currently empty there would not be an actual loss of employment floorspace. To my mind this is somewhat simplistic and ignores the fact that *potential* floorspace would be lost, and the majority of the appeal site is deemed to be economic floorspace within the LP. I accept that some social and economic benefits would accrue from the proposed development but to my mind these do not outweigh the loss of the potential economic floorspace, given the relative paucity of such space.
16. The third criterion requires that there is no adverse impact on the economic role or function of the main employment area. Having found that potential employment floorspace would be lost then to my mind it follows that the imposition of residential use within the Tilgate Business Centre must have a negative impact on its economic role and function. Conflict therefore exists with policy EC2 of the LP.

Living conditions – outlook/daylight and sunlight

17. The north of the appeal site is bounded by tall mature trees and the proposed layout plans P002A and P003 show that the north elevation of the proposed eastern block would be in very close proximity to the canopy of the trees. I

acknowledge that the application was in outline and that the design process could iron out many problems, but nonetheless consider that, given the proposed number of units, it would be inevitable that a number of them would have a single aspect towards the trees.

18. In terms of outlook I accept that a view of trees, even at close range, may not be considered as unpleasant as a view of built form by some people. In terms of the amount of light received by single aspect units I note that the trees are tall (up to 17.5m) and that the windows of the units would face north.
19. I have been supplied with an Interior Daylight Analysis (IDA) prepared by Eight Associates on behalf of the appellant. This takes two units from the illustrative drawings that are considered to be the worst case scenarios for daylight due to their single aspect and orientation. The calculations were updated prior to the Inquiry to take into account the correct height of the trees. The IDA indicates that the Average Daylight Factor (ADF) recommended for a kitchen is 2%.
20. The updated results show that in the winter this would be achieved for both units but for unit two it would only just be achieved. In the summer the figure would fall well below the 2% for both units. The IDA states that *for a room where the recommended value is exceeded in winter, but not in summer, (as is the case here), daylight provision year round is likely to be adequate, but it is clear that the trees are having some effect on daylight.*
21. To my mind the term *likely to be adequate* is by no means a ringing endorsement that daylight levels would be sufficient. I also note that the presence of the trees has a very large impact on the ADF levels and indeed the height of the trees also has a considerable impact. The trees are going to grow with time, further planting is required as landscaping and I note that the distance to the nearest trees is disputed by the Council. Given these factors, and, taking into account that the unit two kitchen barely attains the recommended level in the winter and fails to attain it by a long way in the summer, and notwithstanding that the application was in outline, I conclude that the daylight levels for a number of the proposed units would not be acceptable.
22. In respect of sunlight, the appellant concedes that approximately 75% of the units would receive some sunlight (my underlining) and goes on to stress that all units would have communal amenity space on the roof of the building that would receive high levels of sunlight throughout the day. It follows that approximately 25% of the units would receive no sunlight and the occupiers would be dependent on using the communal outdoor space. Once again, I acknowledge that the design of the units could change at reserved matters stage, however, the shape and constraints of the site are such that I am not persuaded that satisfactory levels of sunlight could be achieved in any eventual design.

Living conditions - privacy

23. My attention has been drawn to a Supplementary Planning Document entitled Urban Design. This indicates on page 25 that dwellings of more than three storeys should have a minimum separation of 30m to maintain privacy and avoid overlooking. The distance between the south elevation of the units in the proposed block two and the adjacent office block would be about 21m. This is considerably less than that recommended. I acknowledge that the situation in

the proposed scheme would be residential to office and not residential to residential. I also note that there could be design solutions such as high level windows, tilted windows or obscure glazed secondary windows. Nonetheless, the sheer fact that such solutions are having to be considered indicates to me that the buildings would be too close together. I am also conscious that the appellant is now proposing amenity space and allotments on the roofs of the proposed buildings. Whilst again these spaces could to an extent be shielded from view from occupiers of the offices (although this could have a knock-on effect on character and appearance), the necessity for doing so indicates that the proximity of the buildings is unsatisfactory.

Living conditions - noise

24. In terms of noise impact on future occupiers of the proposed units, the Council have two areas of concern. The first of these is noise generated from the adjacent A23.
25. I have been supplied with an Acoustic Report (AR) prepared by Sharps Gayler on behalf of the appellants. This report assesses the impact of noise from the A23 on the two proposed blocks and gives a worst case scenario for external façade noise levels for both day and night. The west block has the higher results of the two blocks with predicted average levels of 66 LAeq dB) during the day (16 hr) and 58 LAeq dB during the night (8 hour) and a maximum level of 67dB at night. These figures were all derived from modelling and are external levels, and which include a 3dB correction for reflection from the façade.
26. At the Hearing the two main parties agreed that these figures should be reduced by between 10-15dB to represent the noise level actually present within the dwelling. Taking the best scenario of 15dB therefore the relevant LAeq (16 hr) for the day would become 51db and for the night 43dB.
27. BS8233: 2014 – *Guidance on Sound Insulation and Noise Reduction for Buildings* (BS) gives, in table 4, design targets for residential dwellings. For a living room the target LAeq (16 hr) is 35dB while for a bedroom at night it is 30dB. No maximum level is given in the BS but the appellants have taken the World Health Organisation figure¹ of 45dB as an appropriate figure.
28. It follows that in the worst case scenarios mitigation would be required that would more than likely mean that windows would be unopenable and an alternative system of ventilation would be required. If the windows were openable then noise levels in the rooms would exceed the recommended levels if they were opened.
29. My attention has been drawn to a Planning Noise Advice Document (PNAD) produced jointly by the various Councils in Sussex. This outlines the basic principles in designing buildings and places in respect of noise intrusion. Section 1.2 of the document outlines the basic principles and these involve a stepped process that firstly separates the noise sources from the sensitive receptors, secondly controls the noise at source and only in the final process should the protection of the receptors be considered.
30. I acknowledge that it is not an ideal world and that there are many areas of the country where having opening windows is not achievable. Nonetheless, in a

¹ World Health Organisation Guidelines for Community Noise

situation where there is no compulsion to develop dwellings in a particular location due to an unfulfilled need, I do not consider that proceeding directly to the third step in the process indicates a desirable design led approach.

31. In arriving at this view, I have also taken heed of a document entitled ProPG: Planning and Noise (May 2017) which states in paragraph 2.22 that *using fixed unopenable glazing for sound insulation purposes is generally unsatisfactory and should be avoided.*
32. I am also aware that the AR was based on modelling and not validated by on-site measurements. I acknowledge that the appellant considers this unnecessary as the modelling assumes a worst case scenario but the PNAD observes at 5.4.5 that *night time monitoring will be expected* and at 5.4.6 that *the prediction of night time noise levels using calculation methods only will normally be rejected unless strong evidence is provided to show the method is robust and accurate.*
33. The second area of concern for the Council is the noise generated by the existing adjacent buildings. In this respect I note that the Planning Practice Guidance (PPG) advises that *the potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. This is because existing noise levels from the business even if intermittent, may be regarded as unacceptable by the new residents and subject to enforcement action.*
34. No consideration of the impact of the noise from the existing business premises is given within the AR. Given the proximity of these premises, the orientation of the proposed units and the fact that the outdoor amenity space for them is now proposed on the roofs, I consider that it has not been satisfactorily demonstrated that conflict, in terms of noise, would not be an issue.

Living conditions - summary

35. I have found that certain units of the proposed development would receive inadequate sunlight and daylight, that there would be insufficient space between the proposed block two and the existing office block to ensure that privacy could be protected and that noise from both the A23 and the adjacent business units could impact upon some future occupiers.
36. I acknowledge that a good design could eliminate some of these problems. However, on balance I consider that the sheer amount of concerns identified and the interlinked nature of them means that it has not been shown with sufficient certainty that the future occupiers would enjoy an adequate standard of amenity. Consequently, conflict exists with policies CH3 and ENV11. The former of these seeks to ensure, amongst other things, that development provides a good standard of amenity for all existing and future occupants of land and buildings. The latter makes clear that residential use will only be permitted where it can be demonstrated that users of the development will not be exposed to unacceptable noise disturbance from existing or future uses.

Spatial strategy

37. Crawley was designated as a new town in 1947 and has been developed upon the principle of neighbourhoods, each with good access to its own centre offering local shops, services and community facilities. Policy CH1 seeks to ensure that the neighbourhood principle is protected and enhanced by,

amongst other things, maintaining the neighbourhood structure of the town with a clear pattern of land uses. Policy CH2 requires that development responds to and reinforces locally distinctive patterns of development. Policy IN3 requires that development is concentrated in locations where sustainable travel patterns can be achieved.

38. The nearest centre to the appeal site is Broadfield. This is about a 25 minute walk from the site and involves walking by and then across the A23. A cycle track/improved footpath is proposed along the section that runs parallel to the A23. In general, the walk is not particularly attractive, the route is not obvious and it starts with having to walk through the business units to the south of the site.
39. I acknowledge that there are schools and a leisure centre within walking distance and that there is a bus stop a short distance away. Nonetheless, the introduction of a residential use into a business centre, on the opposite side of a busy road to the neighbourhood centre and with the poor level of connectivity I have described above cannot, to my mind, be construed to be maintaining the neighbourhood structure of the town or protecting a clear pattern of land uses. Conflict therefore exists with policies CH1, CH2 and IN3.

Ancient woodland

40. As previously mentioned, at the Hearing I was supplied with a signed and dated Unilateral Undertaking (UU). This would ensure the provision of affordable housing, footpath improvements and tree mitigation. The Council also require a contribution of £25000 towards Ancient Woodland mitigation but consider that the wording of the UU would not necessarily ensure this.
41. Firstly, however it is necessary for me to determine if this contribution is justified and evidenced. In this respect my attention has been drawn to policy ENV2. This requires that a buffer zone of 15m (in line with Natural England standing advice) between development and ancient woodland is provided. However, nowhere in the policy or in any other documentation I have been supplied with is there a mechanism such that the requirement for the buffer can be overcome by a contribution to improve nearby woodland. And there is certainly no evidence to show how the required contribution would be in any way related in scale to the proposed development.
42. It follows that this required contribution would not be in line with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 which states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. I cannot therefore take this section of the UU into account in my decision. As no mitigation would be forthcoming and the proposed development would be within 15m of the ancient woodland, then conflict with ENV2 would arise.
43. In respect of the required buffer my attention has been drawn to the fact that this is a recent requirement which has come about since the planning permission for the business use on the site was granted, and that this new stipulation could impact on any further business proposals for the site. I have not however been given evidence conclusive enough to show that the new

situation would be so constricting as to prevent or render unviable any future business proposals.

Conclusion

44. I have found that the proposed development would conflict with various LP policies in respect of the loss of employment sites, the living conditions of future occupiers, the spatial strategy and ancient woodland. The provision of the proposed dwellings and affordable dwellings and any associated economic benefits would not overcome this substantial conflict. Therefore, having taken into account all other matters raised, I conclude that the appeal should be dismissed.

John Wilde

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr M Cole
Mr M McPhail
Mr N Rose
Mr K Gayler
Mr T Hardwicke
Mr A Draffin

FOR THE LOCAL PLANNING AUTHORITY:

Mr E Heath
Mr B Cox
Mr A Massou
Ms D Angelopoulou

INTERESTED PERSONS:

Ms S Holloway

DOCUMENTS HANDED IN DURING THE HEARING

- 1 Council's notification letter for the Hearing dated 6 February 2019.
- 2 Updated light analysis.
- 3 Marketing brochures (two No) for business units on Tilgate Business Centre.
- 4 Planning Obligation by Unilateral Undertaking.

DOCUMENTS SUPPLIED AFTER THE HEARING (agreed by the Inspector)

- 1 Crawley Local Plan Noise Annex.
- 2 Planning Noise Advice Document July 2015.
- 3 ProPG: Planning and Noise.
- 4 Extract from BS 8233:2014 Guidance on sound insulation and noise reduction for buildings.

PLANS

- A Large size Crawley Local Plan Map.