
Appeal Decision

Site visit made on 5 January 2016

by David Richards B Soc Sci DipTP MRTPI

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

Decision date: 05 February 2016

Appeal Ref: APP/M3645/W/15/3135733

Land west of Grasslands, Cooper Close, Smallfield, Surrey

- 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 Estrans Ltd against the decision of Tandridge District Council.
 - The application Ref TA/2014/1809, dated 3 November 2014, was refused by notice dated 5 June 2015.
 - The development proposed is the erection of up to 51 dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 51 dwellings on land west of Grasslands, Cooper Close, Smallfield, Surrey in accordance with the terms of the application, Ref TA/2014/1809, dated 3 November 2014, subject to conditions set out in the annex to this decision.

Background

2. The site was formerly part of the Smallfield Hospital site. Outline planning permission was granted in 1992 on appeal for a mixed use development for residential development on the eastern side of the site and B1 light industrial on the western part of the site which is the subject of this appeal. Reserved matters were subsequently approved for the residential development, which was built. The outline permission for the business element lapsed. A subsequent application for the residential development on this part of the site was refused and dismissed on appeal in 1996 on the grounds of loss of potential economic development.
3. A further outline planning permission was granted for a business development (B1 and B8 uses) on the application site with access from Cooper Close, in the same position as that for which permission is now sought to serve the residential development. A reserved matters application was subsequently approved in 2005. The approved details included provision of three buildings 10 metres in height with a mix of B1 and B8 uses.
4. In 2010 planning permission was refused for the change of use to provide container storage (Class B8) including erection of office, secure lighting and formation of access road from Cooper Close. The reasons given for refusal were impact on the character of the area, potential for damage to protected trees, impact on protected species and harm to amenities due to security lighting.

5. In the light of the planning history, the Council raises no objection to the principle of development of the site. The site was previously allocated for business use under policy EM10 of the Tandridge District Local Plan 2001, and a previous proposal for housing was refused in part for being contrary to this policy. However, this policy was superseded when the Local Plan Part 2 – Detailed Policies was adopted in July 2014, and no equivalent policy forms part of the current development plan. There is therefore no longer a policy presumption in favour of the site's redevelopment for business use.
6. In addition, the Appellant has submitted marketing information to the effect that there has been limited commercial interest in the site since planning permission was granted for commercial use in 2003. The reasons given for this include the site's rural location, which is also away from a main access road, operators' preferences for being in a more mainstream commercial location, lack of straightforward access to existing commercial centres and restricted operating hours. On this basis, the Council accepts in principle that residential use is now a more suitable form of development for the site.

Main Issues

7. The main issues are: the effects of the proposal on the living conditions of the occupiers of neighbouring dwellings and of the proposed development itself; and on the amenity of the adjoining area of open space.

Reasons

8. The application was made in outline with all matters except access reserved.
9. The site is located to the west of the residential area of Grasslands and within the settlement of Smallfield, identified in the Tandridge Local Plan as a 'Larger Rural Settlement'. Access to the site would be via Cooper Close and would extend along the existing fenceline marking the northern boundary of Grasslands, the site itself occupying currently open land to the west of Grasslands. The northern boundary of the site is formed by Weatherhill Road on an embankment, while the western boundary is parallel to the M23, along which there is an established earth bund. The site includes some prominent trees which are protected by a Tree Preservation Order, and some parts are overgrown with bushes and scrub.

Living conditions of existing occupiers

10. The existing properties are two stories in height and include first floor windows in their rear elevations facing towards the application site. A number of the properties would have an outlook over the site, and the rear gardens of dwellings on the northern edge of Grasslands would be located directly adjacent to the proposed access road. The Council considers that the separation distances illustrated on the indicative layout are not sufficient to ameliorate the likely noise and disturbance due to traffic generated by the proposed development.
11. I note that this conclusion is at variance with the commentary set out in the Council's committee report, which states at paragraph 44 that 'sufficient separation distance distances exist to ensure that the minimum separation as set out in Local Plan policy DP7 could be met at the detailed stage. The trees on this boundary will also assist in providing screening for the development.'

12. While I acknowledge that existing residents would prefer to retain the site in its current undeveloped state, the previous planning history is an important material consideration. The site was allocated for commercial use in the LP, and planning permission was granted for B1 and B8 use which would have used essentially the same access arrangement. I accept that the pattern of usage may have been different to that generated by residential development, but there is no evidence to show that the effect on neighbouring residents would have been any worse. It is also relevant that the noise climate of this locality is dominated by the proximity of fast traffic on the M23. In this context it is unlikely that the additional traffic generated by the proposed development would have any significant effect in terms of the noise levels experienced by existing residents.
13. With regard to the effect on outlook, I agree with the officer's report that appropriate separation distances can be achieved through the approval of reserved matters applications at the detailed stage.
14. I conclude that the proposal would not result in conflict with Policy DP7 of the Tandridge District Core Strategy (CS) or any significant harm to the amenity of neighbouring occupiers.

Living conditions of occupiers of the development

15. The site is in close proximity to the M23. The Council draws attention to the acoustic report prepared for the Appellant, which shows that with a 6 metre bund in place the second floors of some properties would fall within Noise exposure category (NEC) C where planning permission should not normally be granted. Policy DP22 of the CS requires that proposals for new residential development which are sited close to transport derived noise sources are considered against the NEC criteria. For proposals falling within Category C, permission will not normally be granted unless there are very special circumstances outweighing the harm that would arise through noise pollution.
16. In response to concerns raised by the Council's EHO, the Appellant submitted further information to the effect that construction of the bund will be reviewed, internal layouts will ensure that habitable rooms are placed away from facades that face the M23 and suitable sound insulation will be used on the facades. In response, the EHO advised that provided these provisions are made and the appropriate standards can be met without relying on trickle vents and closed windows, no objection would be raised.
17. The Council also referred to the overbearing effect of the noise bund and fencing, and potential for air pollution from traffic on the M23. I acknowledge that these elements would be significant visual features. However a bund of some 4 metres in height surmounted by a noise attenuation fence of some 2 metres would not be excessive or overbearing given that reasonable separation distances of some 15 – 18 metres could be achieved from the facing elevations of the most affected properties. I accept that this would not be possible in respect of Plots 32 and 33. However these would have habitable accommodation only on the first floor and could be designed so as to minimise the outlook towards the bund and fence.
18. With regard to air pollution, no evidence was presented of elevated concentrations of pollutants that might give rise to any health concerns for residents of the proposed dwellings. The Council did not put forward any

technical rebuttal of the Appellant's air quality assessment, which concluded that 'pollution concentrations across the site are predicted to be below the relevant air quality objectives and that the introduction of residential units would not result in an increase in exposure to elevated pollution concentrations'.

19. I therefore conclude that the development would not give rise to any significant harm to the living conditions of occupiers of the development, or conflict with CS Policy DP22.

Effect on amenity of users of the open space

20. The access road to the site would be located adjacent to an existing open space. It is essentially a recreational field that has been designated as a 'Field in Trust', an outdoor space to be used by members of the public. A multi use games area has also been provided. Many local residents objected on the grounds that the provision of an access road would reduce the size and quality of this open space and lead to potential highway safety concerns.
21. The Appellant has clarified that the access road land falls within a different ownership to the Field in Trust and has not itself been designated as such. The committee report accordingly recognised that there would be no reduction in the size and quality of the designated area. I note that the recreational land together with the land over which access to the site would be formed has recently been designated as an asset of community value (ACV) under the Localism Act. However, it is open to a planning authority to decide whether listing as an ACV is a material consideration if a change of use is submitted considering all the circumstances of the case.
22. In this case, the provision of an access would not reduce the area designated for recreational use, including the multi-use games area, which would be retained. I acknowledge that the creation of an access in this location would, to a limited extent, increase the perception of severance between the field and the residential estate adjoining it. However the planning history of the site is an important material consideration, and it is clear that an access along the same route was previously granted planning permission to serve a commercial development of the site. The Council states that former Local Plan Policy EM10 envisaged the use of Cooper Close as the access to the site, and the road was constructed to a high standard to accommodate such use. Access considerations were not cited as a cause of concern when the Council refused permission for the use of the appeal site for container storage.
23. It is also relevant to the determination of the appeal that there would be some enhancement of open space provision through these proposals, with the existing and proposed open space being located adjacent to one another. Such provision would accord with CS Policy CSP 13. Landscaping proposals would include the erection of railings and new planting along the access road, which would create an appropriate separation feature. I do not consider that appropriately designed railings would result in significant harm to the character of the open space and its relationship with existing development.
24. Residents were also concerned that the provision of a new access would give rise to road safety considerations. However many users of the open space already have to cross existing roads to access it, and I do not consider that the additional length of road would give rise to material concerns in respect of

highway safety, having regard to the limited additional traffic of an essentially domestic nature generated by the proposal. The Appellant points out that traffic calming features designed to slow traffic can be introduced at the detailed design stage. There was no objection to the proposal from the County highways consultee, although a reduction in width to 5.5 metres was recommended to reflect the use of the site for residential rather than commercial purposes. This could be ensured by the attachment of a suitable condition.

25. On the basis that the area of the existing open space would not be reduced and would remain fully accessible to the community it serves, I conclude that the proposal would not cause material harm to the amenity of users of the open space.

Other matters

26. The Appellant has submitted a S106 obligation in the form of a unilateral undertaking in respect of the provision of affordable housing on-site. The scale of provision has been agreed with the Council, and I consider that the submitted obligation meets the relevant statutory tests and is a positive benefit which weighs in favour of the scheme.

Conditions

27. The Council prepared a list of draft conditions in the event of the appeal being successfully. Where necessary I have amended these in the interest of clarity and precision.
28. The application is in outline (except for the access) so that conditions requiring the submission of reserved matters are required, along with a timetable for the submission of details and commencement of the development, are necessary. Access is not a reserved matter, so a condition requiring the access to be provided in accordance with the approved drawings is also needed. A condition dealing with renewable energy provision is needed in the interest of reducing carbon emissions, in accordance with Policy CSP 14 of the CS. Conditions requiring the construction of the access road and the approval of a Construction Management Transport Plan are necessary in the interests of highway safety, and to minimise inconvenience to existing residents and road users. The site was previously developed so it is necessary to attach conditions to avoid the potential for contamination. Conditions designed to minimise surface water run-off are needed to avoid any increase in off-site flood risk. A scheme of archaeological work is needed to mitigate the potential for damage to the historical record. An Ecological Mitigation Strategy and a Landscape and Ecological Mitigation Plan are needed to protect the ecological interest of the site. As the site adjoins the M23, express conditions are needed to protect the integrity of the motorway and the safety of users from any adverse effects. These include any works to the bund and acoustic fencing that may be necessary to protect the living conditions of occupiers of the proposed development, drainage works, and lighting and measures to prevent the blowing of dust and debris. A condition requiring approval of a scheme for the parking of vehicles is necessary as the application is in outline and the parking requirement will depend on the number of dwellings approved. Conditions addressing surface water infiltration are needed to avoid the risk of groundwater contamination.

Conclusion

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

David Richards

INSPECTOR

Richborough Estates

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Except as required by any other condition attached to this permission, access to the site shall be constructed in accordance with the following drawings: 3748/101 dated Oct 2014 and 3748/110 – Rev C dated 3 February 2015.
- 5) The reserved matters shall include details demonstrating how the development would satisfy the 20% reduction of carbon emissions through renewable resources. The renewable energy provision shall thereafter be implemented and retained in accordance with the approved details.
- 6) No development shall start unless and until a detailed scheme for the construction of the proposed vehicular access to Cooper Close, including a timetable for implementation, has been submitted and approved in writing by the local planning authority. The development shall thereafter be carried out strictly in accordance with the approved scheme.
- 7) No development shall start until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of:
 - a) Parking for vehicles of site personnel, operatives and visitors
 - b) Loading and unloading of plant and materials
 - c) Storage of plant and materials
 - d) HGV deliveries and hours of operation
 - e) Construction vehicle routeing to and from the site
 - f) Measures to prevent the deposit of materials on the highway
 - g) Before and after construction condition surveys of the highway and a commitment to fund the repair of any damage caused
 - h) On-site turning for construction vehiclesThe development shall thereafter be carried out in accordance with the approved CTMP.
- 8) No development shall start until the following components of a scheme to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the local planning authority:
 - a) A preliminary risk assessment which has identified all previous uses, potential contaminants associated with those uses; a

conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination of the site.

- b) A site investigation scheme based on (a) above to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
 - c) The results of the site investigation and detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of remediation measures required and how they are to be undertaken.
 - d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identifying requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.
- 9) No development shall start until such time as a scheme detailing the flood resilience and resistance measures of the site, to mitigate the identified potential for flood risk, has been submitted to and approved in writing by the local planning authority. The scheme must include details of:
- a) Provision of compensatory flood storage including specifics of location volume and methodology;
 - b) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven;
 - c) Finished floor levels to be set no lower than 600 mm above ordnance Datum (AOD);
 - d) Investigation into additional off-site benefits to reduce the risk of flooding in Smallfield Village.

The mitigation measures shall be fully implemented prior to occupation in accordance with timing/phasing arrangements embodied within the scheme, and thereafter retained.

- 10) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development have been submitted to and approved in writing by the local planning authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 100 year critical storm plus 30% climate change will not exceed the lower discharge rate of 4.8 l/s as stated in section 8.2 of the submitted FRA. The scheme shall also include:
- a) A clearly labelled drainage layout plan showing pipe networks, incorporating the attenuation storage ponds/tanks and sustainable urban drainage scheme techniques proposed;
 - b) Details of the attenuation and the discharge control system;

- c) Details of how the scheme shall be maintained and managed after completion.

The development shall thereafter be carried out in accordance with the approved scheme.

- 11) No development shall start until the applicant has secured the implementation of programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority.
- 12) No development shall start, including demolition or ground works or vegetation clearance carried out, until an ecological mitigation strategy (EMS) has been submitted to and approved in writing by the local planning authority. The EMS shall include:
- Any necessary updates to the base data;
 - Retention and protection of existing habitats during construction;
 - Habitat removal and reinstatement;
 - Provision for wildlife corridors, linear features and habitat connectivity;
 - Tree, hedgerow, shrub and grassland planting and establishment (taking on board Surrey Wildlife Trust's comments on new planting);
 - Bat lighting strategy; and
 - Species rescue and translocation, e.g. reptiles. This will include a more detailed examination of the two options available (retention in situ or movement off site).

The development shall thereafter be carried out in accordance with the approved EMS.

- 13) No development shall start, including demolition, or ground works or vegetation carried out, until a Landscape and Ecological Management Plan (LEMP) has been submitted to and agreed in writing by the local planning authority. The LEMP will include:
- Description and evaluation of features to be managed;
 - Aims and objectives of management;
 - Appropriate management options for achieving aims and objectives;
 - Prescriptions for management actions;
 - Preparation of a work schedule (including and annual working plan capable of being rolled forward over a five-year period); and
 - Details of the body or organisation responsible for implementation of the plan.

The development shall thereafter be carried out in accordance with the approved LEMP.

- 14) No development shall start until a detailed drainage scheme has been submitted to and approved in writing by the local planning authority, which shall consult with Highways England on behalf of the Secretary of State for Transport prior to the approval of such details. The scheme will demonstrate that the rate of water run-off from the development site into the water course running beneath the M23 Motorway will be no greater

with the development in place than the rate of run-off without the development. No part of the development shall be occupied until the approved drainage scheme has been implemented in full. Once constructed, the drainage scheme shall thereafter be retained in good order in perpetuity.

- 15) No development shall start until a detailed noise attenuation design and construction scheme including the design, structural calculations, construction method and phasing of the noise attenuation wall and fence have been submitted to and approved in writing by the local planning authority, who shall consult with Highways England on behalf of the Secretary of State for Transport prior to the approval of such details. The noise attenuation measures shall be constructed in accordance with these approved details and thereafter retained in good order in perpetuity.
- 16) No works shall commence on site until a Road Restraint Risk Assessment Process has been undertaken for the noise attenuation measures adjacent to the M23 in accordance with TD 19/06 of the Design Manual for Roads and Bridges and approved in writing by the local planning authority, who shall consult with Highways England on behalf of the Secretary of State for Transport prior to the approval of such details. No works to remove the noise attenuation bund or to construct the noise attenuation wall and fence shall commence until the Secretary of State for Transport has confirmed in writing that the outcomes of the agreed Road Restraint Assessment Process have been implemented in full.
- 17) No works shall commence until a Construction Management Plan, to include details of measures to prevent dust and debris from being blown or otherwise deposited onto the M23 Motorway, has been submitted to and approved in writing by the local planning authority, who shall consult with Highways England on behalf of the Secretary of State for Transport prior to the approval of such details. The construction of the development shall thereafter be carried out in accordance with the approved Construction Management Plan.
- 18) No works shall commence on site until a lighting framework has been submitted to and approved in writing by the local planning authority, who shall consult with Highways England on behalf of the Secretary of State for Transport prior to the approval of such details. The lighting framework shall include details of measures to prevent lighting from the development from impacting upon the safety of drivers on the M23 Motorway during construction and occupation. The development shall be carried out in accordance with the approved lighting framework and thereafter retained as implemented.
- 19) The development hereby approved shall not be occupied unless and until space has been laid out within the site for vehicles to be parked in accordance with a scheme to be submitted to and approved in writing by the local planning authority. Thereafter the parking/turning spaces shall be retained for their designated purpose.
- 20) The development hereby approved shall not be first occupied until a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation has been 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 to demonstrate that the site remediation criteria have been met. It shall also include a long term monitoring and maintenance plan for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action as identified on the verification plan. The long term monitoring and maintenance plan shall be implemented as approved.

- 21) If during development, contamination not previously found on site is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until the developer has submitted, and obtained written approval in writing from the local planning authority for a remediation strategy detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.
- 22) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.

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