



Appeal Decision

Site visit made on 24 October 2023

by **Benjamin Clarke BA (Hons.) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 November 2023

Appeal Ref: APP/J0405/W/23/3320997

Land off Foundry Drive, Tingewick Road, Buckingham MK18 1WW

- 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 W E Black Ltd against the decision of Buckinghamshire Council.
- The application Ref 22/02988/APP, dated 18 August 2022, was refused by notice dated 30 January 2023.
- The development proposed is the change of use from former/approved employment land to residential comprising the erection of 16 dwelling and associated junction/access, parking, amenity space and landscaping.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal documentation included some revised plans. These show limited changes from the scheme formally determined by the Council, I do not believe that it would cause prejudice to any party to determine the appeal with regards to the revised scheme. I have proceeded accordingly.

Main Issues

3. The main issues relevant to this appeal are:
 - the suitability of the site, as a location for a residential development, with particular reference to the requirements of the development plan;
 - the effect of the development upon flood risk;
 - the effect of the development upon biodiversity;
 - whether the development would be energy efficient;
 - whether appropriate living conditions would be provided for the future occupiers of the development, with regards to access;
 - whether the proposal is of an acceptable design; and
 - whether the effects of the development are such that a legal agreement to provide appropriate infrastructure is required.

Reasons

Suitability of the site

4. The appeal site consists of a previously developed area of land on the periphery of an industrial estate. The appeal site was previously used for business

- purposes. Associated buildings have subsequently been demolished. The appeal site is predominantly hard standing. The site is currently accessed from the industrial estate.
5. The site has been used for commercial activity and that planning permission has previously been granted to redevelop the site for a new business development. Although such buildings have not been constructed, it demonstrates the site can be accurately described as an employment site.
 6. In considering this appeal I have been directed towards Policy E2 of the Vale of Aylesbury Local Plan (2021) (the Local Plan) which, amongst other matters, seeks to ensure that sites have been thoroughly marketed as an employment site for appropriate uses, for at least two years with no viable interest.
 7. The appeal documentation includes some information regarding efforts to market the property. However, this predominantly contains submissions from agents. Although this is indicative of a diminishing level of interest in the appeal site by commercial occupiers, it does not meet the requirements of the Policy.
 8. This is because the supporting information to Policy E2 clearly defines the information that should be submitted to evidence a lack of demand for a site. The evidence before me does not include this information.
 9. In result, it is not possible to conclude that all opportunities to reuse the appeal site for commercial activities have been investigated. This means that the proposal would result in the loss of a commercial site, without sufficient justification.
 10. It has been suggested that the appeal site is not within an allocated commercial area. Although this may be the case, the policy should be applied to all commercial sites where economic activity has ceased irrespective of where the appeal site is located. Therefore, it is a policy to which I must give weight to.
 11. This is a concern as there is some evidence before me, which indicates there is a demand for commercial sites within the surrounding area. Therefore, the loss of the appeal site for residential purposes would mean that the development would have an adverse effect upon the general viability and vitality of the local economy as the proposal would not respond to this need. This would generate some harm. These adverse effects would occur even though the proposed development would result in reuse of previously developed land.
 12. I therefore conclude that the proposed development would not represent a suitable location for a residential development. The development, in this regard, would conflict with Policies E2, S1, S2 and S3 of the Local Plan. Amongst other matters, these seek to ensure that the loss of employment sites will not be permitted unless criteria are met; improves the economic conditions in the area; support sustainable economic growth; and accord with the settlement hierarchy.

Flood risk

13. The appeal site is located in Flood Zone 2. It is a requirement of local planning policies and the National Planning Policy Framework (the Framework) that developments do not increase flood risk either on the site or elsewhere in the

wider surrounding area. In this case, the appeal site is adjacent to a relatively large number of homes. In result, there is likely to be a notably large number of people living either within the proposed development, or nearby.

14. Although the appeal documentation includes an assessment of the likely flood risk experienced by the occupiers of the development, this information is not complete. Of particular concern, is the fact that the assessment does not adequately detail how the drains with the development will be connected to the sewerage system.
15. This is important as it would provide certainty as to how the surface water run off would be conveyed away from the appeal site, and the rate of discharge. In result it is not possible to conclude that any surface water collected within the development would be discharged at the appropriate rate.
16. Therefore, the proposed development has the potential to increase water run off to the surrounding area or, potentially, not discharge it at the appropriate rate. This means that the proposed development would potentially result in surface water accumulating on the appeal site, or the wider neighbouring residential area.
17. Therefore, the proposed development has the potential to result in an increase in the level of risk, arising from surface water flooding, on both the appeal site and the surrounding area. This is of particular concern given that the proposed development and some of the neighbouring land involves residential accommodation.
18. In consequence, the proposed development and the neighbouring land would involve uses that are more sensitive to increase flood risk. This means that the proposed development would generate harm in this regard. In result, this lack of certainty means that the matter could not be addressed through the imposition of a planning condition.
19. I therefore conclude that the proposed development would have an adverse effect upon flood risk. The development, in this regard, would conflict with Policies I4 and I5 of the Local Plan; and Policies I3, I4 and I5 of the Buckingham Neighbourhood Development Plan (2015) (the Neighbourhood Plan). Amongst other matters, these seek to ensure that developments minimise the impacts of and from all forms of flood risk; ensure wastewater collection and treatment has sufficient capacity; feature rainwater collection; accord with the Framework; and feature sewerage management.

Biodiversity

20. The proposed development would represent the complete redevelopment of the appeal site. Of note to this appeal is Policy NE1 of the Local Plan which seeks to ensure that new developments deliver a net gain to the overall level of biodiversity.
21. Although the appeal site predominantly consists of hard standing, there are areas of landscaping sited near to the boundaries of the site. This means that these areas have the potential to support some biodiversity, in the form of planting or wildlife.
22. However, the appeal documentation does not include a specific assessment of the existing levels of biodiversity. Although a report has been submitted, this is

written in relatively general terms and, in consequence, does not establish the overall level of biodiversity on the site and how it may be increased.

23. Considering this, it is not possible to establish the level of biodiversity improvements that would need to be delivered in order to accord with the aforementioned development plan policy.
24. Whilst the proposed development would that provide features such as additional landscaping which, for example, may be attractive to wildlife it is not possible to establish whether this would be sufficient in order to deliver the required increase. In consequence, the development would conflict with the development plan in this regard.
25. Furthermore, owing to the general quantum of development, which includes the proposed dwellings, roads, vehicle manoeuvring areas and car parking. In result, it is questionable as to whether the proposed development has sufficient space to accommodate the required biodiversity increase.
26. In reaching this view, I have had regard as to whether a planning condition could be imposed to deliver such improvements to biodiversity. However, without certainty regarding the precise existing level, it is therefore not possible to establish the required net improvement that should be delivered.
27. In result, it would not be possible to draft a condition with sufficient precision to provide certainty as to the level of mitigation that would be required.
28. I therefore conclude that the proposed development would have an adverse effect upon biodiversity. The development, in this regard, would conflict with the requirement of Policy NE1 of the Local Plan. Amongst other matters, this seeks to ensure that developments deliver a net gain in biodiversity.

Energy efficiency

29. The council has drawn my attention to the requirements of Local Plan Policy C3. Amongst other matters this seeks to ensure that new developments meet a hierarchy of energy efficiency.
30. Although the appellant has submitted details of strategies that could be undertaken, these do not contain sufficient information as to whether they are possible to deliver within the appeal scheme. This is because the baseline energy usage levels have not been established. In result, it has not been demonstrated that the suggested strategies would deliver a reduction in the use of carbon.
31. In consequence, I cannot be certain the proposed installations would deliver the necessary energy efficiency to comply with the requirements of the policy and ensure that a more environmentally sustainable development is created.
32. A planning condition could not be imposed to overcome this matter. This is because without certainty as to which mechanisms can be installed within the proposed developments, it is not possible to draught a condition with the requisite amounts of precision. Therefore, the possibility of imposing a condition would not overcome the previously described adverse effects.
33. I therefore conclude that the proposed development would have an adverse effect on energy efficiency. The development, in this regard, would conflict with the requirements of Policy C3 of the Local Plan. Amongst other matters,

this seeks to ensure that all development schemes should achieve carbon emissions reductions.

Living conditions

34. It is a requirement of the Local Plan and the Framework that dwellings are provided to meet the needs of all in the community. This includes residents that may have different access requirements.
35. The submitted documentation, as part of the appeal proceedings includes means by which this could be secured in the development. This has been considered by the Council. This demonstrates that it would be possible to provide sufficient access to all as part of the development.
36. In addition, it would be possible to impose a planning condition that would ensure the development is carried out in accordance with these details and that such access arrangements would be retained throughout the life of the development. This provides certainty that the development would not have an adverse effect in this regard.
37. Such a condition would be directly related to the planning system, related to the development that is being considered, necessary and would also be reasonable in all other respects. Therefore, such a condition would overcome the issues as raised by the council.
38. I therefore conclude that the proposed development would provide sufficient living conditions for the future occupiers of the development. The development, in this regard, would comply with the requirements of H6c of the Local Plan. Amongst other matters, this seeks to ensure that developments meet and maintain high standards of accessibility so all users can use them safely and easily.

Design

39. The appeal site is located on the periphery of an industrial estate, with the surrounding area also including several residential properties. As part of the appeal scheme, access would be via the existing residential developments.
40. Although the proposed developments would see dwellings set back from the highway edge by a relatively small amount, this would reflect the layout of the neighbouring residential developments such as Treble Close and Foundry Drive, which also feature dwellings relatively close to the highway edge. In result, the proposed development would harmonise with the existing residential development to which it would be most closely associated.
41. Furthermore, the proposed development would feature relatively small areas of open space either to the front of some dwellings or to the side of buildings, car parking or vehicle manoeuvring areas. These areas provide an opportunity for landscaping, which would serve to soften the overall effect of the increase in built form arising from the proposed development, despite their size.
42. The proposal would also feature dwellings of comparable designs and proportions to those nearby dwellings. This would include similarly sized private rear gardens. Therefore, within the context of the immediate surroundings of the appeal site, the proposed development would not be incongruous.

43. In addition, the appeal site features landscaping on some of the boundaries. These would be retained post development. These would provide some screening of the developments, which would render it less prominent. Further screening would also be provided by buildings within the vicinity of the site.
44. The appeal site is located on a lower level than some of the roads within the surrounding area. This reduces the overall visibility of the proposed development and further reduces its effects upon the character of the surrounding area. Therefore, I do not believe that the proposed development would be a strident addition to the locality.
45. Furthermore, the proposed development would include footpaths to connect it with residential developments nearby. This ensures that the proposed development would be accessible.
46. The development includes an appropriate number of car parking spaces. These would be in areas that would either be overlooked by the occupiers of the proposed or existing dwellings. Other car parking spaces would be readily overlooked from the public realm in the proposed development.
47. The proposed development would provide garden sizes that are commensurate with the scale of the associated dwellings. These would also be broadly similar in size with the dwellings that have been constructed nearby. Although some of these dwellings would be near to existing landscaping, these would have sufficient levels of light and outlook.
48. In result, the proposed development would be unlikely to lead to an adverse effect upon the surrounding landscaping, including the trees that are adjacent to the site's boundaries.
49. Owing to the scale and layout of the development, the proposal would not have an injurious effect upon the living conditions of the neighbouring properties. Although the proposed development would be near to industrial sites, it would be separated by a distance similar to the existing dwellings. Considering this, I have no reason to believe that the proposed development would prevent appropriate living conditions from being secured for the future occupiers.
50. I therefore conclude that the proposed development would be of an acceptable design. The development, in this regard, would comply with the requirements of Policies BE2 and BE3 of the Local Plan; Policy DHE1 of the Neighbourhood Plan; Vision and Design Statement for Buckingham Supplementary Planning Guide (2001), and the Safety Through Design Supplementary Planning Guide (2001). Amongst other matters, these seek to ensure that new developments complement the physical characteristics of the site and its surroundings; would not unreasonably harm any aspect of the amenity of existing residents and would not achieve a satisfactory level of amenity for future residents; protect existing trees; that a sense of local identity is evident; and feature natural surveillance.

Infrastructure

51. The proposed development would comprise the erection of 16 new dwellings. It is likely that these would be occupied by several residents, including families. In result it is likely that the development would give rise to increased demand for matters such as community facilities, education, and health care. In addition, there would be a need to provide affordable housing.

52. A completed legal agreement has been submitted, which has been signed by the relevant parties. Therefore, there is certainty that were I minded to allow this appeal, the necessary infrastructure to meet the needs of the occupants of the development could be provided.
53. Furthermore, the fact that a completed legal agreement has been submitted would mean that in the event of any breach the council would be able to take enforcement action. This provides a mechanism to ensure that the required infrastructure would be provided at the appropriate trigger points.
54. I therefore conclude that the proposed development would provide a mechanism for the securing of appropriate mitigation and infrastructure. The development, in this regard, would comply with the requirements of Policies S5, I2, I3, and H1 of the Local Plan. Amongst other matters, these seek to ensure that new developments provide appropriate on and off site infrastructure; secure adequate provision of sports and recreation facilities; consider the need for new community facilities and community infrastructure; and provide affordable housing.

Other Matters

55. The evidence before me suggests that the Council cannot currently demonstrate a five-year housing land supply. In consequence, the provisions of Paragraph 11(d) of the Framework are engaged. Amongst other matters, this states that planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is often referred to as the 'tilted balance'.
56. The proposed development would generate additional housing which would add to the local supply. This would also include a level of affordable housing. However, given that the proposed development would be for an additional 16 dwellings, the overall benefit arising from the proposed development is somewhat reduced. In consequence, these can only be given a moderate amount of weight.
57. The proposed development would generate economic activity. This would arise from the construction of the new development, in addition to usage of businesses and services in the surrounding area by occupiers of the proposed development.
58. However, those benefits arising from the construction process would be relatively time-limited and would, potentially, not be local in impact. In addition, the scale of the development is unlikely to result in significant support of local businesses and services. This means that the economic benefits can be only given a limited amount of weight.
59. Conversely, the proposed development would generate significant harm arising from the loss of a business site, the lack of biodiversity improvements, flood risk, the living conditions of neighbouring properties and energy efficiency. These matters collectively carry a significant amount of weight.
60. Therefore, the adverse effects arising from the proposed development would significantly and demonstrably outweigh the benefits and, in consequence, the appeal should be determined in accordance with the provisions of the development plan.

61. Concerns regarding the manner in which the planning application was considered by the Council fall outside of the scope of this decision.

Conclusion

62. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR

Richborough