The Planning Inspectorate

Appeal Decision

Site visit made on 25 October 2011

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 1 December 2011

Appeal Ref: APP/W1715/A/11/2157400
Site F, Hamilton Business Park, Botley Road, Hedge End, Southampton SO30 2JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Hargreaves Properties Ltd and Locksley Securities Ltd. against the decision of Eastleigh Borough Council.
- The application Ref X/11/68593, dated 1 February 2011, was refused by notice dated 7 July 2011. The application sought outline planning permission for *Extension of time period for the implementation of an extant permission (0/07/60590)* for *demolition of existing buildings and redevelopment of the site to provide flexible business accommodation (B1/B2/B8) not exceeding 3732 sqm of accommodation together with a new access to Manaton Way and relocated access to Botley Road* without complying with a condition attached to planning permission Ref 0/10/68088, dated 17 January 2011.
- The condition in dispute is No. 6 which states that: *There shall be no trade counter or retail uses within the development hereby permitted without the prior grant of planning permission from the Local Planning Authority.*
- The reason given for the condition is: *To control the impact of the development*.

Decision

1. The appeal is allowed and planning permission is granted for outline planning permission for *Extension of time period for the implementation of an extant permission (0/07/60950)* for *demolition of existing buildings and redevelopment of the site to provide flexible business accommodation (B1/B2/B8) not exceeding 3732 sqm of accommodation together with a new access to Manaton Way and relocated access to Botley Road* at Site F, Hamilton Business Park, Botley Road, Hedge End, Southampton SO30 2JR in accordance with the application Ref X/11/68593 dated 1 February 2011, without compliance with condition number 6 previously imposed on planning permission Ref 0/10/68088 dated 17 January 2011 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Main Issue

2. The main issue in this appeal is the effect that removing or varying the disputed condition would have on: a) the Council's policy objective of sustaining the vitality and viability of established retail centres; and b) the range and variety of premises available for employment use in the locality.

Reasons

Procedural matters

3. The planning permission on which the disputed planning condition is attached was to extend the time period for the implementation of an earlier, 2007, extant permission. That earlier application had also been subject to the disputed condition. In 2011 a reserved matters application, pursuant to the 2007 permission, was permitted for the layout, scale, appearance and landscaping of Units B and C.

4. Condition No. 6 applies to the full amount of floorspace that has been permitted. It is clear from the application description quoted in the bullet points above and taken from the application forms, that, contrary to the Council's decision notice and its appeal statement, it is sought to free the entire development from this restriction. It is on this basis that the appeal has been determined.

Background and Reasoning

5. The appeal site comprises a substantial parcel of cleared land within a predominantly commercial and industrial area. A large out of town retail/warehouse area occupies much of the wider locality.

6. The Eastleigh Borough Local Plan Review (2001-2011) supports the development of employment land for employment purposes. Policy 118.E of the Plan indicates that a change of use to use other than B1, B2 or B8 will only be permitted if it does not, either by itself or cumulatively with other changes on the same development site, adversely affect the employment base either by markedly reducing the potential choice of employment in the local area or by significantly reducing the range and variety of premises or sites available locally for employment purposes.

7. Policy 134.TC of the Local Plan says, amongst other things, that out-of-centre development for town centre uses, which includes retail, will only be permitted provided: there is a demonstrable need for the development; there are no suitable viable and available sites for the proposed use in a centre or edge of centre location having demonstrated realistic flexibility on the scope for disaggregation; it will not undermine the vitality and viability of existing town and other centres; and will not increase reliance on the car.

8. The Council seeks through these Policies to: protect the employment base in the District; ensure the vitality and viability of the town and other centres; and prevent an unsustainable pattern of retail development. A change of use of B1, B2 or B8 uses to retail in this out-of-centre location could potentially have a harmful effect on all these counts. However, removal of the disputed condition would not lead to such a change of use. The development on the appeal site would remain flexible business accommodation within classes B1, B2 or B8. A retail use of these premises would require planning permission even in the absence of the disputed condition.

9. What it appears that the condition would do is prevent ancillary trade counter or showroom/retail uses. However, paragraph 91 of Circular 11/95 on conditions advises that conditions of this kind can be burdensome. It says that they should not normally be imposed on permissions for manufacturing or service industry except where they are designed to preclude or regulate

activities giving rise to hazard, noise or offensive omissions. No such considerations are said to apply in this case.

10. With regard to protecting the employment base the site would, even in the absence of the disputed condition, remain as a business site providing a potentially wide variety of employment uses. Any ancillary showroom/retail use or trade counter should not greatly impact on the employment potential of the sites. To the extent that removing the condition would provide further flexibility for those seeking to occupy the site there could even be some benefit in ensuring that the site is developed and put to its permitted use.

11. On ensuring the vitality and viability of the town and other centres there is no evidence that the flexible business accommodation provided should, even with ancillary trade counter or showroom/retail elements, be a town centre use. Indeed, in an enforcement appeal decision on a site nearby, the lead appeal being APP/W1715/C/06/2027362, it was held that even a mixed B1, B8 and A1 use was not a town centre use.

12. That being so I consider Local Plan Policy 134.TC, and its reference to need, sequential site searches and disaggregation, to be of limited relevance in this case. In this context I also note that in the appeal decision referred to above, the Inspector considered that even if disaggregation was to be taken into account, that is whether there are elements which could reasonably and successfully be located on a separate sequentially preferable site or sites, there was no realistic basis on which the retail element of the mixed use could be physically disaggregated as it was so interlinked with the B8 use. In my view that would apply with even greater force in the current case where, even with the removal of the disputed condition, the site would remain flexible business accommodation (B1/B2/B8) with any retail elements purely ancillary to that.

13. It is concluded that removing or varying the disputed condition would have no detrimental effect on: a) the Council's policy objective of sustaining the vitality and viability of established retail centres; and b) the range and variety of premises available for employment use in the locality.

14. In arriving at this conclusion I have had regard to the fact that although it is sought to remove the restriction impose by the disputed condition on the entire development the catalyst for seeking this appears to be the fact that Magnet wish to occupy one of the units to be built on the site. They wish to have what is described as an ancillary trade counter and showroom and have given details of the size of these areas relative to the unit as a whole. However, my conclusion is based on the broader merits of removing the disputed condition and it is not for me to determine the lawfulness of an occupation of a unit by a particular occupier in the absence of the disputed condition.

15. I have had regard to the draft Proposed National Planning Policy Framework (NPPF) and the observations of both parties on it. However, the weight to be attached to that document is limited by its consultation draft status and the fact that current Government Guidance remains in place. The observations made do not alter my conclusions above on the main issue.

Conditions

16. As I am minded to allow the appeal I have considered whether the condition suggested by the appellant should be imposed. This was that "Any ancillary showroom shall not exceed 25% of the floorspace of any unit". However, I

consider that determining whether or not a use is ancillary may depend on more than just floorspace and that such matters are best left for consideration on a case by case basis. No other conditions have been suggested. However, it is necessary to ensure that this new permission is subject to the conditions previously imposed in so far that they are still subsisting and capable of taking effect.

Conclusion

17. It is for the reasons given above that the appeal is allowed.

R J Marshall

INSPECTOR