The Planning Inspectorate

Appeal Decision

Hearing Held on 18 July 2017

Site visit made on 18 July 2017

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Decision date: 3 August 2017

Appeal Ref: APP/W1715/W/16/3165529
The Piggeries, Allington Lane, West End, Southampton SO30 3HP

- 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 Mr Amjad Dbss against the decision of Eastleigh Borough Council.
- The application Ref O/16/78314, dated 4 April 2016, was refused by notice dated 22 July 2016.
- The development proposed was described on the application form as: 'Use of land for B1(b) and (c) and B2'.

Decision

1. The appeal is dismissed.

Procedural Matters

The nature of the proposal

2. The application form description only refers to a change of use. However the form confirms that it is an outline application which must necessarily include works since a change of use on its own cannot be made in outline. It is clear from the revised description on the appeal form (which adopts that used by the Local Planning Authority on the decision notice) that the development would also include building, engineering or other works. The development should be more fully described as an outline application for: *'Redevelopment of existing agricultural site to light industrial uses (use class B1b, B1c) and general industrial (use class B2)' including access from Allington Lane'*. The appeal has been determined on that basis.

Access

3. Apart from the principle of development, the outline application includes the access to be provided from Allington Lane with the other matters reserved for subsequent determination. Details of the access are shown only on a drawing which was included in a Transport Statement that accompanied the application. Whilst there have been recent unauthorised works to alter the access these are not necessarily exactly the same as that drawing.

Land ownership or control

4. The only submitted application drawing is a site location plan showing the site edged in red. At the hearing the Appellant's agent acknowledged that his client

also controls an adjacent industrial estate known as Seddul Bahr together with an area of unused agricultural land to the west. A plan showing that land edged blue was submitted at the hearing. Another drawing showing the site layout is agreed to be only indicative. At the hearing the agent suggested that a second vehicular access might be provided through the Seddul Bahr estate but that is not the basis on which the planning application was made and it has not been the subject of any consultation with interested persons or the highway authority.

5. The application and appeal were made in the name of Mr Amjad Dbss who was declared on the forms to be the only landowner of the appeal site. At the hearing Mr Dbss' agent clarified that the land is held in the ownership of Solent Real Estate Ltd of which Mr Dbss is stated to be a director, together with a Mr A Mittal who, on behalf of that company, signed a unilateral planning obligation under S106 of the Act that was submitted prior to the hearing.

The scale of development

6. There has been some confusion over the intended scale of development. The amount of floorspace proposed in the application was not included in the application description. Moreover the planning application form stated that there would be 'no' non-residential floorspace. That statement is an obvious error given the nature of the proposal and it would have been obvious to interested persons that it was proposed to develop new floorspace.

7. The site has an area of about 1.15ha. The Planning and Design and Access statement accompanying the planning application stated at paragraph 6.2 that there would be 30,000 sq m of floorspace with 35% site coverage. However those figures are also incorrect as 30,000 sq m equates to 3ha and the Appellant confirmed that there would be no more than 2 storeys of development (including mezzanine floors for the upper level).

8. The appeal form refers to 22,000 sq m of development but that figure is also incorrect. at the hearing it was clarified that the Appellant first intended to provide 30,000 sq ft (2,787 sq m) of floorspace (gross external area). The Council consulted upon and determined the application on that basis including consideration of the traffic impact, employment provision and likely visual impacts. That amount of floorspace would be consistent with the indicative layout submitted with the application provided that about 300 sq m of floorspace would be at first floor level.

9. At the appeal stage the Appellant sought to amend the application to one for 20,000 sq ft (1,858 sq m). However that amendment was opposed by the Council and was not accepted as the basis for the appeal. An appeal should not be used as a means of evolving a scheme, particularly where amendments could prejudice the interests of other persons who would not have had the opportunity to comment on the amended scheme which in this case would have different traffic, economic, environmental and other impacts or benefits. The signed Statement of Common Ground confirms that the appeal scheme proposes the provision of 2,787 sq m of floorspace and it has been determined on that basis.

Policy and Legal Context

10. Statute requires that the appeal is determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes the saved policies of the Eastleigh Borough Local Plan Review (2001-2011) (2006) (the LPR).

11. A draft Plan to replace the LPR was submitted for Examination but is not proceeding following the conclusions of the Examining Inspector mainly in relation to housing issues. A new draft plan remains at an early stage of preparation and the Statement of Common Ground agrees that only limited or very limited weight can be given to either document.

12. An important material consideration is national policy including the National Planning Policy Framework (the Framework).

13. It is acknowledged by the parties that there is potential for development to affect wildlife species that have statutory protection and also to affect the nearby River Itchen Special Area of Conservation which also has legal protection.

Main Issues

14. The main issues are considered to be:

    (a) the adequacy of the accessibility of the site by different modes of transport including whether there are opportunities for improving sustainable travel modes;

    (b) whether the quantum of development can be accommodated on the site and what would be its effect on the character and appearance of the area;

    (c) whether a suitable scheme for sustainable urban drainage for the proposed development can be provided which ensures that the hydrological and ecological interests of the River Itchen Special Area of Conservation are protected;

    (d) whether there is sufficient information concerning protected species and whether effects on reptiles and great crested newts can be satisfactorily, avoided, mitigated and/or compensated;

    (e) what effect the development may have on the amenities of adjoining residents with particular regard to noise;

    (f) whether there is an overriding need for business development in the area.

Reasons

<u>Accessibility and Sustainable Travel</u>

15. The appeal site lies in the countryside well away from any defined urban settlement and where LPR Policy 1.CO would only permit limited forms of development that do not include new business development. This development would be in conflict with that policy.

16. Even where development would accord with other plan policies, LPR Policy 100.T sets out various transport criteria including (in summary) that the development: is, or could be, well served by public transport, cycling and walking; includes measures to minimise its impact on the existing transport network; and, where a large number of journeys are likely, is located to minimise travel demand and provide a choice of transport mode.

17. Policy 100.T is generally consistent with national policy in the Framework in that it supports patterns of development to facilitate the use of sustainable modes of travel (paragraph 30). This is in order to reduce carbon emissions, pollution and congestion. However it is not fully consistent with other provisions in the Framework. In particular paragraph 29 of the Framework acknowledges that the opportunities to maximise sustainable transport will vary as between urban and to rural areas such as this. Also paragraph 32 provides that development should only be prevented on transport grounds where the residual cumulative impacts of development (after mitigation) are 'severe'.

18. Allington Lane is a busy rural road without footways and lacking any public transport provision. It would not be safe to walk along the road to reach settlements or public transport, especially during the hours of darkness. A suggestion by the Appellant that some form of minibus service could be provided is not supported by any evidence of its practicality or viability. Journeys by workers or business clients to and from the site are likely to involve a wide variety of destinations which would be difficult to serve by such means. The scope for car-sharing is also likely to be limited for the same reason and because the site would likely be occupied by many small businesses making it more difficult to manage a scheme than if there were a single employer.

19. The only alternative to travel by car or van would be cycle use. The area is generally flat and there are a number of settlements within a reasonable cycling distance for commuting purposes. The Appellant points out that the Borough Council has previously identified Allington Lane as suitable for cycling. However whilst that may be true for leisure cycling that typically occurs in daylight and outside normal working hours when traffic would be lighter. There was evidence from local persons at the hearing of recent local traffic growth, especially at peak hours and including large vehicles (to which this development would also contribute) and that many vehicles exceed the 50mph speed limit. These conditions would be likely to deter some cyclists, especially during the hours of darkness or in poor weather.

20. The submitted S106 Obligation includes a sum of £55,000 towards improvements to the Allington Lane/Fair Oak Road junctions and for pedestrian and cycle infrastructure improvements, all as requested by the Highway Authority. However it is not clear how much of that money would be available for pedestrian and cycle infrastructure. Neither is it clear what measures could be implemented that would materially encourage the use of sustainable modes to access the appeal site. In particular the payment is unlikely to be sufficient to fund either a safe pedestrian link to the site or significant cycle infrastructure. A hump-backed railway bridge to the north of the site is too narrow to allow simultaneous 2 way traffic movements with potential for congestion. But the Highway Authority was said at the hearing to consider permanent traffic lights at the bridge to be unnecessary. The only other

suggestion made at the hearing is that there could be some signage to aid cycle safety but that would be unlikely on its own to encourage cycle use.

21. It is concluded on this issue that the appeal site is not well served by public transport or walking and that the scope for significant use of cycles is limited by safety considerations that are unlikely to be significantly mitigated by the S106 payment. The proposal would therefore be in conflict with LPR Policy 100.T.

22. Policy 100.T would have been in place when the Borough Council recently permitted both the more intensive use of the adjacent gypsy caravan site and the redevelopment of the adjacent Seddul Bahr Industrial Estate. However the gypsy site development would only have modestly increased movements by car or van. The Seddul Bahr estate would already have generated significant traffic before its redevelopment whereas the appeal site does not.

23. Taking account of the likely traffic generation and the location of the appeal site in a rural area, I judge that there would be harm associated with reliance on travel by car and van with only limited cycle use. However whilst there is conflict with Policy 100.T, the impact would not of itself be severe in the terms of the Framework, even when the cumulative impacts of the adjacent developments are taken into account. Nevertheless the identified harm would need to be weighed with any benefits of the scheme.

Drainage

24. LPR Policy 45.ES requires in summary that development proposals incorporate adequate measures for the disposal of surface water drainage including, where practicable, source control techniques and sustainable drainage systems.

25. LPR Policy 25.NC would not permit development that would adversely affect a habitat of importance for wild fauna and flora unless: the benefits of development outweigh the adverse impacts; the adverse impacts are unavoidable; and appropriate measures are undertaken which would mitigate or compensate for any adverse impact.

26. There are no mains surface water drains in the area and the site would drain into ditches that would connect to watercourses in the nearby River Itchen Special Area of Conservation. The conservation objectives for the SAC include maintaining or restoring qualifying habitats and the habitats of qualifying species. Development of the mainly greenfield appeal site with hard surfacing would risk altering the rate of flow of water into the watercourses. The construction activities and industrial character of the proposed development creates a risk of pollution of the watercourses.

27. The Council has completed a Habitats Regulations Assessment Screening Proforma under the Conservation of Habitats and Species Regulations 2010 which concluded that there is inadequate information to assess the impacts on the River Itchen SAC. In particular there is a lack of hydrology and contamination information and the proposed drainage arrangements do not meet criteria set out in the Council's strategic HRA or its agreement with Natural England which is the relevant expert body.

28. The Council accepts that the pollution risks at the construction stage could be addressed by an appropriate planning condition. However the proposal determined by the Council lacks details of a surface water drainage system

that would be reasonably assured to provide the excellent water quality in perpetuity which the Council and Natural England consider to be necessary to prevent significant adverse effect from the cumulative impacts of development. In particular this is said to require a low maintenance naturalised triple filtration system. That would likely to require a significant amount of space on site that could not be accommodated alongside the amount of development proposed in the application. At the hearing the Appellant suggested that space might be available on the adjacent land to the north west that is controlled by the Appellant. However there is a lack of hydrological information about that site to establish whether an effective scheme could be devised that met the conservation objectives. In particular the Council considers that the water table on that low lying land is likely to be too high to allow capacity to be created there to attenuate drainage flows from the site.

29. In the absence of the necessary information to make a Habitat Regulations Assessment and without details of a drainage scheme that would suitably address the conservation objectives of the SAC the development would contravene LPR Policies 45.ES and 25.NC and would not satisfy the requirements of the Habitats Regulations.

Protected Species

30. LPR Policy 24.NC will not permit development where it would adversely affect species or habitats which are protected by legislation, unless appropriate measures are proposed which would acceptably mitigate the impact on those species.

31. The appeal site has been identified as a habitat for reptiles and is also within 500m of sites occupied by Great Crested Newts. The Statement of Common Ground confirms the Council's agreement that the potential impact on Great Crested Newts can be adequately mitigated by a contribution to works to enhance the habitat for such newts on public land within the nearby Itchen Valley Country Park. The submitted S106 obligation makes provision for such a contribution.

32. Slow worms are a protected species and have been found on the site. It is likely that they were present in greater numbers before recent clearance works. The site still provides some suitable habitat for slow worms and it has not been demonstrated that there is a suitable alternative site for the translocation of the species and which does not already support its capacity population of slow worms. In particular, the Council's biodiversity officer points out that the land to the north west controlled by the Appellant is mostly wetter and may not provide suitable habitat. Neither has it been the subject of an ecology survey.

33. Whilst it would in theory be possible to retain an area of protected habitat on the appeal site, there is a lack of agreement as to how much land would be appropriate and there is insufficient information before me to make that assessment. Nevertheless it is likely to be a larger area than could be accommodated within the submitted indicative layout and neither is it likely to be compatible with the wetter areas that would be associated with a sustainable drainage system.

34. As there are no appropriate measures before me to adequately mitigate the impact on protected slow worm species, the proposal contravenes Policy 24.NC.

Quantum of Development

35. LPR Policy 59.BE provides amongst other things that development takes full and proper account of its context, incorporates an appropriate land use, and is appropriate in its scale, layout, design, siting and density. LPR Policy 18.CO provides that development which fails to respect or has an adverse impact on the intrinsic character of the landscape will be refused. LPR Policy 20.CO identifies areas for landscape improvement and will not permit development which would prejudice such improvements or would themselves be detrimental to the quality of the landscape in these areas. The appeal site lies within such an area.

36. As the application is in outline it does not include details of the buildings and other works that would allow precise assessment of their actual environmental and other impacts. However it is important to consider what the likely impacts could be of the type of development proposed before an outline planning permission is granted.

37. The appeal site is located in an area of countryside which includes a number of employment premises including industrial, storage and other commercial uses. The area nevertheless retains a rural or semi-rural character as perceived from Allington Lane because the business premises are typically set back from the road and are often wholly or partially screened by trees and hedgerows. Where there is development along the road frontage this mostly comprises isolated dwellings. The appeal site itself is an area of disused and overgrown agricultural land with a roughly triangular shape. Unsightly vehicles, shipping containers and a mobile home are stored on part of the site and there are piles of rubble in places. There is no evidence before me that this storage is authorised. Recent alterations to the access and the erection of a steel palisade fence around the site perimeter have not been approved and have tended to further urbanise the site's appearance, contrary to the LPR objectives to improve the landscape.

38. The site is bounded to the north east by the gypsy site, which is mainly open, behind which are the Seddul Bahr industrial units. To the south west the White Harmony dwelling occupies a large open garden on the road frontage. There are older industrial workshops behind that dwelling that are typically of limited height and which are not readily visible from the road.

39. The indicative layout for the appeal site shows an unusual arrangement of typically small and frequently detached buildings, some with complex footprints. It may be contrasted with the more conventional terraced business units recently erected on the adjoining Seddul Bahr estate. The Seddul Bahr and adjacent White Harmony Acres industrial estates are set well back from Allington Lane from where the scale of development is not readily apparent. That helps to maintain the area's semi-rural character. However the indicative layout for the appeal site would include much more prominent buildings and parking areas close to Allington Lane. The indicated narrow planting strips on the frontage would not disguise the concentrated urban character of the development.

40. Elsewhere within the site only small areas of isolated landscaping are indicated, often in locations where they would be vulnerable to damage from vehicles. They would have little effect in softening and screening the buildings or in maintaining some rural character.

41. The planning application form failed to identify how many parking spaces were proposed but a large number of spaces are shown on the indicative layout. Whilst it is claimed that there would be adequate parking and that there would be room for all vehicles to turn within the site, it is not clear how and where large vehicles would turn and what provision there may be for loading and unloading without obstructing other vehicles.

42. The indicative layout submitted with the application did not identify any locations for on-site balancing ponds for drainage or for any areas of retained habitat on site for protected species. Neither were any locations identified off-site. If on-site provision for either purpose is needed (which appears likely – see above), then there would be a significant impact on the amount of land that would be available for buildings, roads, parking and other amenity landscaping.

43. During the appeal an alternative layout was submitted which is indicative of the amount of land that might be needed on site to accommodate balancing ponds. But it does not also show space for reed beds and it does not address all the above matters. In any event it would have entailed a substantial reduction in the footprint of the buildings. In turn it is likely that the amount of floorspace within the buildings would have been much less than the 2,787 sq m of floorspace in the application as agreed at paragraph 4.2 of the Statement of Common Ground. Given the nature of the B1b, B1c and B2 development proposed with its likely requirements for workshop space and adequate headroom, I do not consider that it would be realistic to assume that all of the floorspace would be multi-storey as was suggested at the hearing or that this could be achieved without including buildings of excessive height and prominence in the landscape.

44. It is concluded that there is a lack of evidence that a development of 2,787 sq m of floorspace could be achieved on this site whilst: having a satisfactory impact on the semi-rural character and appearance of the area (including adequate landscaping); accommodating the necessary parking, loading and turning requirements; and making adequate provision for sustainable surface water drainage and for any necessary on-site measures for protected species.

45. It is concluded that the development could not accommodate that quantum of floorspace and that it contravenes LPR Policies 59.BE, 18.CO and 20.CO.

Residential amenity

46. LPR Policies 59.BE(vii) and 29.ES include criteria to protect noise sensitive premises such as dwellings.

47. The planning application includes B1 development which ought to be suitable to carry on in a residential area and also B2 industrial development which may not be suitable. The Council and the Appellant have agreed a condition which restricted the location of the B2 uses to the rear part of the site I agree would suitably address the risk of noise disturbance to residents from B2 activities.

48. Whilst the siting of B1 buildings either side of the access road might provide some additional screening from the noise of traffic movements, as the Council would wish, I do not consider that to be necessary as background noise for the adjoining residents would already include similar or greater traffic noise from

Allington Lane itself. Moreover the access road would be set away from both boundaries.

49. It is concluded on this issue that suitable planning conditions and siting could provide neighbouring residents with adequate protection from noise such that there would be no conflict with relevant LPR policies in that regard. However that does not outweigh my conclusions on the other issues above which do amount to an overall conflict with the development plan.

Need for Business Development

50. The above reasoning identifies various forms of harm that would be likely to arise from the development and an associated overall conflict with the development plan. However the Appellant points out that the adopted development plan policies for the supply of employment development are out of date. The Council accepts that the need for such development is not met by the adopted policies. Whilst the emerging local plan may seek to rectify that shortfall, little weight can as yet be accorded to it and it is unlikely to be adopted until 2019 with delivery of relevant proposals in an adopted plan only coming forward after that date. There is evidence that the Council has resolved to permit a mixed scheme of housing and employment at Chalcot Farm and Land West of Thornton Heath but the Council acknowledges that this may take some years to be delivered.

51. In these circumstances national policy is a material consideration and it provides at paragraph 14 of the Framework 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 as a whole or unless specific policies in the Framework indicate development should be restricted.

52. Dealing with the last point first, Footnote 9 of the Framework specifically draws attention to paragraph 119 which provides that the presumption in favour of sustainable development in paragraph 14 does not apply where development requiring appropriate assessment under the Habitats Directive is being considered. That applies here.

53. The policies identified above and which are contravened are generally consistent with national policy and are not themselves out of date. Even if the need for development were in principle considered to outweigh the policy objection to development in this location, there would remain a need to mitigate the identified harm through a different design and layout which addressed the shortcomings of the indicative layout. In those circumstances the claimed employment and other economic benefits could not be fully achieved in a detailed scheme because this quantum of development could not be achieved. Any different scheme that sought to address the deficiencies in the appeal proposal would need to be considered on its own merits.

Other Matters

54. The Borough Council and the Highway Authority do not object to the development on the basis of the amount of motorised traffic that it would generate and have not identified any safety or congestion issues in that regard. Neither were any related written submissions made by interested persons during the appeal process. However concerns were raised by residents who

attended the hearing and by Councillor Tennent who spoke on their behalf. These concerns mainly relate to: recent growth in traffic in Allington Lane; issues of speeding above the 50mph limit; the non-enforcement of weight restrictions that are intended to control through traffic; and the cumulative impacts of further development proposed in the wider area through the emerging Local Plan.

55. It was estimated at the hearing that the appeal proposal would potentially generate an increase of about 3% in daily traffic movements. There is no evidence before me as to the cumulative impact of all developments and little weight can be accorded to other developments that have yet to be permitted. In these circumstances traffic impacts would not warrant a reason to dismiss the appeal.

56. Neither these nor the other matters raised outweigh the reasons that have led to the conclusions on the other issues.

Conclusions

57. For the above reasons it is concluded that the development would contravene the development plan. The environmental harm outweighs any social or economic benefits such that this would not be a sustainable development in the terms of the Framework. The appeal should therefore be dismissed.

Robert Mellor

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ian Donohue BA(Hons) MRTPI	Planning Consultant Director of Southern Planning Practice

FOR THE LOCAL PLANNING AUTHORITY:

Mr David Huckfield MRTPI	Senior Planning Officer, Eastleigh Borough Council
Ms Debbie Salmon	Biodiversity Officer, Eastleigh Borough Council

INTERESTED PERSONS WHO SPOKE AT THE HEARING:

Cllr B Tennent	Member of Eastleigh BC, Hants CC, Hedge End PC
Mr Cowdrey	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1 Plan showing land controlled by Appellant edged in blue (APP)
2 Additional policies referred to in the Statement of Common Ground (LPA)
3 Cabinet Report of 20 July 2017 concerning emerging Local Plan (LPA)
4 Photographs of Seddul Bahr Industrial Estate prior to recent redevelopment (APP)
5 Plan showing areas of nearby habitat (LPA)