
Appeal Decision

Hearing held on 8 October 2013

Site visit made on 8 October 2013

by P Willows BA DipUED MRTPI

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

Decision date: 31 October 2013

Appeal Ref: APP/C1950/A/13/2198315

Land at rear of Unit D, City Park, Watchmead, Welwyn Garden City AL7 1LT

- 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 CIP Property (AIPT) Ltd, c/o Aviva Investors against the decision of Welwyn Hatfield Borough Council.
 - The application Ref N6/2012/1654/OP, dated 2 August 2012, was refused by notice dated 19 November 2012.
 - The development proposed is the construction of a B2/B8 (Use Class) unit with ancillary offices, car parking, cycle parking, diverted bridleway and permissive path and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for the construction of a B2/B8 (Use Class) unit with ancillary offices, car parking, cycle parking, diverted bridleway and permissive path and associated works at Land at rear of Unit D, City Park, Watchmead, Welwyn Garden City AL7 1LT in accordance with the terms of the application, Ref N6/2012/1654/OP, dated 2 August 2012, subject to the conditions set out in the attached schedule.

Unilateral Undertaking

2. A unilateral undertaking pursuant to s106 of the Act was submitted by the appellant at the Hearing. The effect of this would be to make a contribution of £8,000 to Hertfordshire County Council towards the provision of public transport in the area. I deal with the merits of this below under *Sustainable transport*.

Procedural Matter

3. The application sought outline planning permission, together with approval for all matters other than appearance and landscaping. Notwithstanding the details in the Design and Access Statement, it was confirmed at the Hearing that the relevant drawings are numbers 5311-025, 5311-026, 5311-028 and 5311-029. Drawing No 5311-028, which shows elevations of the building, is indicative only, and I have treated it as such.

Main Issues

4. The main issues are:

- Whether the proposed development would compromise the purposes of the Urban Open Land designation that applies to the site and, if so, whether the harm arising from this is sufficient reason to withhold planning permission, given the inclusion of the site within a designated Employment Area;
- The effect of the development on local wildlife and nature conservation; and
- Whether a financial contribution to fund sustainable transport measures is necessary in order to satisfy the sustainability aims of local policies and make the development acceptable in planning terms.

Reasons

Urban Open Land

5. The site falls within an area designated as Urban Open Land (UOL) in the adopted Welwyn Hatfield District Plan. Policy OS1 says that planning permission will not be granted within such areas unless it would assist in the maintenance or reinforcement of their function as essential open areas and be of a scale which does not compromise the value of the Urban Open Land. The supporting text says that these areas are considered to be of such significance that they must not be developed other than for minor ancillary facilities.
6. The appeal proposal would see the erection of a new B2/B8 building and associated car parking on a site that is currently free from built development. The development cannot be regarded as minor or ancillary and would plainly not assist in maintaining or reinforcing the function of the site as an open area. The development is therefore at odds with Policy OS1.
7. However, the District Plan must be read as a whole, and the site is also within an Employment Area, wherein Policy EMP2 permits B1, B2, and B8 development. The Council accepts that the intended use is acceptable in principle. Thus, the site is subject to 2 policy designations which pull in opposing directions in terms of the acceptability of the proposed development.
8. In addressing this tension, I have considered the aims of the UOL. At the Hearing the Council considered that the site now fulfils 4 of the functions outlined in the Council's *Open Space Survey* of 2001. In summary, these are being vital to the form and character of the built-up area, providing an important visual and physical break, contributing to any wider green chain or open corridor and being of notable wildlife significance.
9. Yet it seems to me that its function in relation to each of these criteria is very limited. I cannot see that it is vital to the form and character of the area. Rather, its secluded location to the rear of industrial units means that its effect on the character of the area is very slight. It clearly provides a break in development within a built up area but, given its limited prominence and the industrial/business park character of its surroundings, it does not appear to me to be of notable importance.
10. The site was formerly part of a railway line, but is now largely cut off from nearby open land by development. Although there is a permissive path

through to adjoining land within the UOL designation to the south east, this is overgrown and appears little used. As such, the site is seen in isolation rather than as part of a chain or corridor of complementary areas. And as I outline in more detail below, its wildlife significance is now very limited.

11. I appreciate that open areas can be particularly important to the 'Garden City' character of Welwyn and understand the UOL land designations were the subject of public consultation. I am also mindful of the support for the retention of existing open spaces in the *National Planning Policy Framework* (the Framework).
12. However, taking all of the above factors into account, and while I understand that the Council has sought continuing improvements to the UOL centred around Hens Wood near to the appeal site, I find that the contribution the site makes to the objectives for Urban Open Land is now very limited.
13. By contrast, the purpose of Policy EMP2 – to provide land for employment developments – appears as relevant now, if not more so, as when the Plan was prepared. The supporting text for the Policy notes that employment land is a very valuable resource and that Green Belt constraints limit the amount of employment land that is available. Since the adoption of the Plan, the ministerial statement *Planning for Growth* and the Framework have placed a renewed emphasis on the need for the planning system to support economic growth. The scheme would bring forward a new business unit and it is common ground that it would create employment. It is clear, therefore, that the economic benefits of the scheme, and the purpose of EMP2, weigh heavily in favour of the development.
14. The Council argues that Policy OS1 points towards a more limited development of the site. However, from my reading of OS1 and its supporting text, I cannot see that any significant development of the site of a type envisaged by Policy EMP2 would sit happily with it. In my view the development proposed is of an appropriate density for a scheme of this general type and, from my inspection of the site, I do not consider that it would appear unduly obtrusive or out of place in its context. It also makes provision for the retention of the permissive path through the site, and the diversion of the public bridleway that crosses it is not a matter of contention. Accordingly, I do not consider that the development should be resisted on the basis that a smaller-scale scheme would be more appropriate.
15. Weighing all of these factors in the balance, I conclude that, in this instance, planning permission should not be withheld solely on the basis of the conflict with OS1 and the loss of open land.

Wildlife and nature conservation

16. It is agreed that part of the site falls within a Wildlife Site (WS), notwithstanding that it is not shown as such on the District Plan Proposals Map. This is a local designation, also referred to as a County Wildlife Site or Local Wildlife Site. District Plan Policy R15 discourages development which would have an adverse effect on a WS, unless the need for the development outweighs the need to safeguard the biodiversity of the site. The Framework also aims to conserve and enhance biodiversity. This site was designated because of its grassland interest, although the presence of reptiles has also

been recognised. The appeal proposal would see most of that part of the site affected by the WS occupied by the proposed building.

17. Aspect Ecology has surveyed the site and provided evidence on ecology matters for the appellant. Although concern was initially raised by the Hertfordshire Biological Records Centre (HBRC, advising the Council) regarding a lack of a survey during the middle of the summer, further survey work was carried out in July 2013 by Aspect Ecology to address this. At the Hearing, Mr Hicks, for the HRBC, accepted that the work carried out for the appellant was now comprehensive and of a good standard.
18. The July 2013 survey indicates that the number of grassland 'indicator species' recorded at the site were below the threshold that would normally be required to merit WS status. The shortfall in the number of species was marginal, and HBRC recorded slightly different findings. However, it is also clear that the site has suffered over time from scrub encroachment, which has reduced the abundance of many of the species. In his appeal statement, Dr Simpson of Aspect Ecology, advises that the grassland is of 'no more than low ecological value'. This is an important finding, given that the site was designated for its grassland interest. In view of the comprehensive, uncontested background work supporting this, it is a finding I accept.
19. Although there was a significant colony of slow worms (a protected species) at the site, these have recently been moved to another site. Consequently, there is nothing to indicate that the development would now affect any protected species. Furthermore, the final phase of moving the slow worms involved scraping the top surface of the site. As a result, the site is currently largely bare earth, with little visible vegetation. I cannot be sure of the extent to which any of the plant species recorded at the site will have survived this process. However, both sides considered that the extent to which the site would regenerate would depend upon its future management. I have no reason, based either on recent history or the appellant's stated intentions, to suppose that there is any plan to manage the site so as to encourage its recovery in terms of bio-diversity.
20. Overall, it seems to me that the grassland interest of the site is currently very limited, with little prospect of it increasing. I have no reason to conclude that the site is of particular bio-diversity interest for any other reason.
21. Furthermore, that part of the WS that falls within the appeal site is only about 0.21ha in area. This is below the minimum 0.25ha that usually applies to WSs, and development now separates the site from the remainder of the WS (other than the narrow link provided by the permissive path). Additionally, there was agreement at the Hearing that the remaining part of the WS outside the appeal site was not grassland and therefore did not merit its inclusion within the WS. Thus, even if the appeal site were to recover its grassland interest, its small size and isolation would count against its function and viability as a WS.
22. For these reasons, it appears to me that the biodiversity interest of the site is now very limited, with no clear prospect of recovery. Accordingly, notwithstanding the WS designation of part of the site, and despite the lack of any alternative habitat provision away from the site, the development would not cause significant harm to local wildlife or nature conservation interests. Accordingly, I do not consider that the scheme runs counter to Policy R15. Nor

do I find conflict with the Framework, the Natural Environment and Rural Communities Act 2006 or the Wildlife and Countryside Act 1981.

Sustainable transport

23. At the Hearing the Council confirmed that its concerns in respect of Reason 1 of its decision relate solely to the lack of a proposal for a financial contribution towards sustainable transport at the time the planning application was determined. In reaching its view on this matter, it relies on District Plan Policies IM2 and M4.
24. The appellant submitted a unilateral undertaking at the Hearing which all parties considered would meet the Borough and County Councils' objectives if it were to take effect. Nevertheless, I must consider whether the undertaking meets the requirements of the Community Infrastructure Levy (CIL) Regulations 2010, including the requirement that the undertaking is necessary to make the development acceptable in planning terms. I have noted that the undertaking includes a clause linking its coming into effect to my determination on this issue, but it is not necessary for me to consider the effectiveness of that clause.
25. Policy M4 indicates that developer contributions may be required, but refers specifically to development which necessitates alteration to existing or the provision of new transport infrastructure or services. Policy IM2 says that development will be required to provide for the infrastructure, services and facilities which are directly related to it and necessary to the granting of planning permission. It goes on to indicate that this can include off-site improvements, services and facilities necessary as a result of the development in order to avoid placing an additional burden on the existing community and to mitigate any possible adverse environmental impact.
26. It appears to me that both of these policies are concerned with specific, direct impacts arising from developments rather than cumulative impacts arising from developments generally. Yet the County Council is satisfied that the development could be accommodated by the highway network and, at the Hearing, accepted that public transport serving the site is good. None of the evidence before me shows that upgrading existing transport facilities or infrastructure is necessary if planning permission is to be granted for the scheme. Thus, neither policy provides a clear basis for a contribution in this instance.
27. Nevertheless, the Borough Council and County Council argue that, cumulatively, schemes with limited impacts still generate a need for improvements to public transport facilities. The County Council has adopted a document called *Planning obligations guidance – toolkit for Hertfordshire*. This refers to a 'two strand' approach to planning obligations, the second strand of which seeks to gather pooled contributions from smaller developments to offset cumulative impacts. The document, which was the subject of public consultation when it was prepared, sets out an approach to calculating the charges for such developments, based on peak hour traffic generation.
28. Yet I cannot see any clear support for this approach in policies of the District Plan, as outlined above. This limits the weight I attach to the *Toolkit* document in this instance. I am aware that the Borough Council's adopted *Planning Obligations* supplementary planning document (SPD) says that it will support

the County Council in seeking planning obligations for items such as sustainable transport measures. However, it goes on to explain that this will only be where need can be evidenced and the tests in the Community Infrastructure Regulations met. Thus, I am not satisfied that the SPD provides adequate policy support for the contribution sought. It is, in any event, common ground that there is no conflict with the SPD.

29. The County Council advises that it would use the contribution to upgrade a nearby bus stop to make it DDA compliant. Such a measure would be in line with the aims of Hertfordshire's Local Transport Plan and with the Framework, which has sustainable development at its heart and emphasises that the needs of people with disabilities by all modes of transport should be considered. Nevertheless, whatever the merits of the proposal, I do not consider that a need for it arises from the development or that the development would be unacceptable without it.
30. I conclude that it has not been demonstrated that the contribution sought for sustainable transport is necessary, either in terms of the direct impact of the development or due to wider development plan objectives. Accordingly, the unilateral undertaking does not meet with the requirements of the CIL Regulations and I have not attached weight to it in determining this appeal. Given my findings on this matter, (and since a unilateral undertaking has been provided anyway) there is no conflict with Policy IM2 or Policy M4.

Conclusion

31. For the reasons set out above I conclude that the appeal should be allowed. I have attached a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions to address any contamination of the site are necessary to protect the groundwater at the site which, the Environment Agency advises, ultimately forms part of the public drinking water supply. I have imposed a condition requiring the proposed car parking to be provided to prevent environmental or road safety difficulties arising as a result of on-street parking. A condition requiring a habitat mitigation and enhancement scheme is necessary to ensure that the recommendations set out in the appellant's ecological assessment are taken forward in an appropriate manner.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Helen McManus MRTPI	Indigo Planning
Simon Neate MRTPI	Indigo Planning
Dr Dan Simpson CIEEM	Aspect Ecology

FOR THE LOCAL PLANNING AUTHORITY:

Richard Aston MRTPI	Principal Development Management Officer, Welwyn Hatfield Borough Council
Lindsey Lucas MCIHT	Senior Development Officer, Hertfordshire County Council
Martin Hicks BSc CIEEM	Hertfordshire Biological Records Centre

DOCUMENTS

- 1 Suggested conditions - WHBC
- 2 Habitat condition - WHBC
- 3 Unilateral undertaking dated 4 October 2013

CONDITIONS

Standard conditions

- 1) Details of the appearance of the development and landscaping (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) The development hereby permitted shall be carried out in accordance with the following approved plans: 5311-025; 5311-029.

Land contamination

- 5) No development (other than that necessary for the fulfilment of this condition or such other elements as may be agreed in writing with the local planning authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the local planning authority:
 - i) A site investigation scheme, based on the Preliminary Environmental Risk Assessment (Delta-Simons, Project No. 10-3000.02) and a detailed assessment of the risk to all receptors that may be affected, including those off site;
 - ii) An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken;
 - iii) 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 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The scheme shall be implemented as approved.

- 6) If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 7) No occupation of any part of the development shall take place until a verification report demonstrating completion of all 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.

Car parking

- 8) The car parking shown on Drawing No. 5311-029 shall be completed prior to the first occupation of the development, and shall thereafter be retained for its intended use throughout the lifetime of the development.

Habitat

- 9) No development shall take place until a habitat mitigation and enhancement scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be consistent with paragraphs 5.7.6, 5.9.4, 5.9.5 and 5.9.6 of the Aspect Ecology 'Ecological Assessment' dated August 2012 and shall include:
- The purpose, aims and objectives for the scheme;
 - A description of target habitats and range of species appropriate for the site;
 - A selection of appropriate strategies for creating/restoring target habitats or introducing target species;
 - A selection of specific techniques and practices for establishing vegetation;
 - Sources of habitat materials (e.g. plant stock) or species individuals;
 - A method statement for site preparation and establishment of target features;
 - The extent and location of proposed works;
 - Details of aftercare and long term management;
 - Details of the personnel responsible for the work;
 - The timing of the works;
 - Monitoring details;
 - Details of the disposal of wastes arising from the works.

The development shall not be carried out other than in accordance with the approved scheme.