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## Appeal Decision

Hearing held on 3 May and 27 June 2017

Site visits made on 2 May and 26 June 2017

**by Tim Wood BA(Hons) BTP MRTPI**

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

**Decision date: 28 July 2017**

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**Appeal Ref: APP/W0340/W/16/3160689**

**Station Yard, Station Road, Hungerford, Berkshire RG17 0DY**

- 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 Rowlands Construction against the decision of West Berkshire Council.
  - The application Ref 16/00787/FULD, dated 17 March 2016, was refused by notice dated 1 July 2016.
  - The development proposed is the construction of 8 dwellings with associated new bin/cycle store, access road, landscaping and parking.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of 8 dwellings with associated new bin/cycle store, access road, landscaping and parking at Station Yard, Station Road, Hungerford, Berkshire RG17 0DY in accordance with the terms of the application, Ref 16/00787/FULD, dated 17 March 2016, subject to the conditions set out in Schedule 1 of this decision.

### Preliminary Matters

2. The Hearing was adjourned on 3 May in order that matters relating to the access to the site could be clarified and, where possible, differences resolved between the appellant and the Council. Additional documents were produced which resulted in a number of matters being agreed by the Council such that the only remaining highways/access issue that remained unresolved is that discussed below.
3. I undertook unaccompanied site visits prior to both sitting days and it was agreed at the Hearing that there was no need to undertake an accompanied visit.

### Main Issues

4. The main issues in this appeal are;
  - The effects of the proposal in relation to the loss of employment/industrial land
  - Whether the proposed access is acceptable
  - The suitability of the means to provide for affordable housing.

## **Reasons**

### ***Loss of employment/industrial land***

5. The appeal site is within a Protected Employment Area (PEA) as set out in Policy CS9 of the Core Strategy. In addition Policy ADPP5 relating to Economy identifies PEAs in Hungerford as providing important employment opportunities. The Council refers to Berkshire Functional Economic Market Area Study (FEMA) and the Economic Development Needs Assessment (EDNA) both of 2016. The FEMA indicates that the need for B1(c)/B2 (industrial) floorspace during the period 2013 to 2036 is likely to decline and that demand for B1(a) and (b) (offices) would continue to some degree and that the centres which are likely to be a focus for such provision are Newbury and Theale, due to access to the existing office stock and proximity to the M4. The EDNA also recognises that this has an effect on the quality of office provision and that the ability of areas such as Hungerford to attract higher value occupiers is limited.
6. The appellant refers to planning permission granted at the appeal site for the construction of a 3 storey office (B1) building in 2009 and renewed in 2012. This permission has since lapsed. The appellant provides some evidence from local agents that indicates that the site has been marketed since 2011. They state that 47 expressions of interest were received. However, none of these parties were able to formulate a viable scheme and no-one progressed with the development. Additional evidence was presented at the Hearing which indicated that the likely level of rent achievable would be insufficient to support development of the site for the approved scheme.
7. From what has been presented, it seems to me that Hungerford is not considered to be the best nor a particularly attractive location for offices, either by the local authority or from information within the EDNA. Whilst some likely demand is indicated, the clear signal from the appellants' attempts to develop the site is that the scheme of offices for the site is highly unlikely to be progressed on economic grounds. In this context, the site may be seen as an under-used resource which is within an accessible location. Paragraph 22 of the NPPF states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose. It adds that, in such circumstances, applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities. In this context, I consider that the protection of the site for employment generating uses is very unlikely to lead to its development for such a use and would mean that the site would remain undeveloped and would make little or no meaningful contribution to the town. Therefore, its protection under the above policies is outweighed by these other matters and I consider that the principle of the proposed development is acceptable.

### ***Whether the proposed access is acceptable***

8. The access for the appeal site is taken from Station Road and then crosses the Station car park, before entering the main part of the appeal site. The appellant has a right to an access over the car park of not less than 15 feet in width (also expressed as 4.572 m). It is evident that the existing access is narrower than this at certain points, including a short section of about 3.4m in width. The Council points out that the route of the access and its width at its

junction with Station Road is less than that advised in Manual for Streets. The Council also considers that the route for pedestrians entering the site is not ideal where it would be necessary to cross a section of the existing car park. It should be noted that throughout the discussions the possibility of the development of the site for offices (as had previously been granted) was referred to as a fall-back position. That planning permission has now lapsed and is not currently capable of implementation. However, the Council did not seek to argue that such a scheme would be unacceptable now and, taking account of its stance at the appeal, it seems highly likely that the Council would not oppose such a scheme if it were to come forward.

9. I observed the access to the car park as well as vehicles passing through it at both of my visits and I noted the flow of pedestrians entering and leaving the car park. Although I accept that I witnessed only a limited window of activity, at no time did I observe any conflict between vehicles or pedestrians, even at the identified narrow sections. Additionally, I did not observe any vehicles having to wait on the adjacent highway which may give cause for concerns in relation to the proximity of the nearby rail crossing. The Council were unable to provide any evidence of any observed problems in any of these respects (although I do acknowledge that as the site is private land the likelihood of a formal report of accidents is unlikely).
10. I observed that cars were consistently driven at very modest speeds within the car park, no doubt due to drivers being aware that other cars and pedestrians are present. In addition, the pedestrian route was well used by people entering and leaving the car park.
11. The appellants have indicated that the appeal scheme would be likely to give rise to considerably fewer vehicle and pedestrian movements than the previously permitted office scheme. This was not disputed by the Council, although they did point out that the flow from the appeal scheme in the morning and the evening would be likely to run in the opposite direction to the use of the car park by commuters. Whilst this may well be the case, the very modest numbers of vehicles likely to be generated by the proposal within the morning and evening peaks would not be sufficient to render the scheme unsafe in this respect.
12. In my view it is highly pertinent that the uncontested vehicle and pedestrian movements from the proposal would be significantly below what would be likely from an office/commercial use of the site. In this sense it seems clear to me that the proposal would have a very marginal effect on vehicle and pedestrian flows which, firstly, would not be of the same magnitude as the office scheme and, secondly, would be so little that I find that they would have no unacceptable effect on the flow and safety of vehicles or pedestrians in and around the appeal site. Therefore, I find no conflict with Policy CS13 of the Core Strategy.

### **Other Matters**

13. A considerable part of the Hearing was taken up in discussion about the Council's housing land supply position, which was disputed by the appellant and the Council. I have determined that the proposal is acceptable, as set out above, due to the likely futility in seeking to protect the appeal site for employment uses. This view has been taken, initially in isolation of the housing land supply situation. My view is that, even if the Council can demonstrate a

suitable supply of housing land, the proposal is still acceptable as the protection afforded by the above policies is outweighed by the lack of likelihood of a commercial development going ahead. Alternatively, if the Council could not demonstrate a suitable supply of housing land my conclusion would be reinforced. In these circumstances it is not necessary for me to conclude whether the Council can demonstrate a suitable supply of housing land as it would have no bearing on my decision.

14. The appellant has submitted a Unilateral Undertaking (UU) which relates to firstly, the provision of a turning area on land outside the appeal site but within the appellant's ownership and, secondly to provisions for affordable housing. The Council is satisfied that the provisions relating to the turning area are acceptable and, for my part, I consider that it is necessary and acceptable. The dispute regarding the affordable housing contribution relates to the point at which the payment is required. The UU provides for the Affordable Housing Contribution to be paid to the Council upon "practical completion" (defined in the UU as the issuing of a final certificate or a completion certificate under the Building Regulations) of the 8<sup>th</sup> dwelling. The Council's concern is that the developer could complete 7 dwellings and leave the 8<sup>th</sup> unfinished so that a final or completion certificate cannot be issued (but allegedly capable of letting out the property) and so avoid the need to make the payment.
15. The Planning Practice Guidance (PPG) makes reference to provisions for affordable housing in rural areas (including within AONBs as is the case here) for, amongst other things, the justification for an affordable housing contribution for small schemes. I am satisfied that this applies in this case, and is not disputed by the parties. The PPG states that, in these circumstances payment is commuted until after completion of the scheme. The guidance in the PPG would appear to be unambiguous and I find the scenario which is set out by the Council to be an unlikely one and does not give rise to a realistic fear that the sum will remain unpaid if the development goes ahead. Therefore, I shall take account of this part of the UU which I consider complies with the CIL Regulations.

### **Conditions**

16. I have had regard to the advice in the PPG in considering the need for and acceptability of conditions in relation to the proposed development. The Council and the appellant have set out a schedule of conditions which were largely agreed at the Hearing. A condition requiring compliance with the approved drawings is necessary so that the development is undertaken in its consented form. So that the proposal has a satisfactory appearance within its setting conditions relating to landscaping, hard surfacing, means of enclosure, materials for the buildings and exterior lighting are necessary and reasonable.
17. Future residents will need to be provided with the approved car parking provision, cycle stores and refuse/recycling stores in a timely manner and I shall include conditions to require these matters are provided prior to first occupation of the first dwelling. In order to protect future residents from external noise, a condition requiring sound insulation is included.
18. Taking account of the previous uses of the site, I have included a condition which puts in place a requirement to implement an agreed scheme of remediation should contamination be found on the site. So that the proposal is not exposed to a risk from flooding and so that its effects on surrounding land

are acceptable in this regard a scheme of sustainable drainage is necessary. Taking account of the location of the site and the surrounding land uses I shall include a requirement for a construction method statement so that the implementation of the scheme does not give rise to unreasonable disturbance in the area. Finally, taking account of the relatively modest sized gardens, I agree that it is justifiable to remove permitted development rights for additions and extensions to the dwellings.

**Conclusion**

19. For the reasons set out above, the appeal is allowed.

*S T Wood*

INSPECTOR

### **SCHEDULE 1, Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: C11907.15.001 Rev F; C11907.15.02 Rev B; C11907.15.051 Rev N; C11907.15.200 Rev C; C11907.15.201 Rev C; C11907.15.300 Rev C; C11907.15.101 Rev B; C11907.15.102.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) No development above foundation level shall take place until details and samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 5) Any contamination that is found during the course of construction of the approved development shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 6) Construction work shall not take place until a scheme for protecting the proposed dwellings from noise from the external noise shall have been submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any part of the development is occupied and retained thereafter.
- 7) The dwellings hereby permitted shall not be occupied until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

- i) means of enclosure;
- ii) boundary treatment;
- iii) hard surfacing materials;
- iv) schedules of plants, noting species, sizes and proposed numbers/density
- v) an implementation programme and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment;

The landscaping works shall be carried out in accordance with the approved details in accordance with the agreed implementation programme. Any trees, shrubs or plants that die or become seriously damaged within 5 years of the completion of the development shall be replaced in the following planting season by plant(s) of the same size and species.

- 8) No dwelling shall be occupied until space has been laid out within the site in accordance with the approved drawing No C11907.15.051 Rev N, for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for the parking of vehicles.
- 9) No dwelling shall be occupied until details of the facility for cycle storage has been submitted to and approved in writing by the local planning authority and the approved facility has been provided. The facility shall thereafter be kept available for the parking of bicycles in its approved form.
- 10) No development shall take place until details of the provision for storage of refuse/recycling materials have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved provision has been provided on site and it shall be retained thereafter.
- 11) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation.
- 12) No exterior lighting shall be installed until details of any exterior lighting have been submitted to and approved in writing by the local planning authority. The exterior lighting shall be installed in accordance with the approved details and thereafter retained and no additional exterior

lighting shall be installed without the prior written consent of the local planning authority.

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, roof extensions or out buildings shall be erected within the curtilage of any dwellinghouse.

## **APPEARANCES**

### FOR THE APPELLANT:

L Durrant  
S Miles  
K Archard  
T Price  
M Rowlands  
D Rowlands

### FOR THE LOCAL PLANNING AUTHORITY:

M Butler  
R Turner  
B Little  
S Conlon  
S O'Donoghue

### INTERESTED PERSONS:

M Crane, Hungerford Town Council