



Appeal Decision

Site visit made on 25 June 2018

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2018

Appeal Ref: APP/H0738/W/18/3197970

Returnable Packaging Services Limited, Low Lane, High Leven TS8 0BW

- 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 RPS Ltd and Outpace Ltd against the decision of Stockton-on-Tees Borough Council.
- The application Ref 17/1912/OUT, dated 18 July 2017, was refused by notice dated 8 February 2018.
- The development proposed is an outline application for up to 40no. residential units.

Decision

1. The appeal is allowed and planning permission is granted for up to 40no. residential units at Returnable Packaging Service Limited, Low Lane, High Leven TS8 0BW in accordance with the terms of the application, Ref 17/1912/OUT, dated 18 July 2017, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The application was submitted in outline form with all matters reserved for future consideration. In addition to the site location plan which was submitted with the application, a 'landscape framework plan'¹ was also submitted. This plan provides an indicative representation of existing and proposed vegetation and planting within and around the appeal site, and an indication of the proposed site entrance location. An 'indicative site layout'² was also included within the appellant's Design and Access Statement (DAS) demonstrating how residential development could be set out. It is clear that the Council considered the proposal on an outline basis with all matters reserved, and so therefore shall I.
3. The application was originally described in the terms set out in the banner heading above. However, in the interests of precision and avoiding the superfluous I have adopted a slightly revised description in my decision, above. I am satisfied that to do so does not cause disadvantage to any party.
4. The appellant has submitted a unilateral undertaking made under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). This undertaking secures a proportion of the total number of dwellings as affordable housing, and financial contributions towards primary and secondary education, highways mitigation measures at the junction of Low

¹ Drwg No: 03.07.17 RevA

² Paragraph 4.9, page 9 – Design and Access Statement, July 17

Lane and Thornaby Road and transport provision in the form of relocation of bus stops. I shall return to this matter later.

Main Issues

5. The main issues are the effects of the proposed development on:
- The character and appearance of the surrounding area; and
 - Pedestrian safety and the free flow of vehicular traffic.

Reasons

Character and appearance

6. The appeal site is currently occupied by industrial and warehouse style buildings, with car parking, open storage and circulation space surrounding them. The site lies within a broadly triangular 'island' formed by the local road layout around the junctions of the A1044 (Low Lane) and High Lane. Together with the adjacent public house and car showroom and forecourt within the triangular wedge, the site forms part of a distinct, developed commercial area.
7. Whilst agricultural fields provide the immediate surroundings to this triangular area, it nonetheless lies close to the expanding settlement of Ingleby Barwick. Although currently standing detached from the settlement, the significant presence of the existing, expansive industrial area of Ingleby Barwick lies a short distance to the north. I have also been advised of recently approved residential development on land a short distance to the west and northwest of the appeal site³. The small village of Maltby lies a short distance to the east of the appeal site, separated from the site by intervening fields and the significant presence of the A19 dual-carriageway in a deep cutting.
8. The site is described by the Council as being 'located within a Strategic Gap⁴ and beyond the Green Wedge of Ingleby Barwick'. Policy CS10(3)i) of the Stockton-on-Tees Borough Council Core Strategy Development Plan Document (CS) states that the separation between settlements and the quality of the urban environment will be maintained through the protection and enhancement of the openness and amenity value of, amongst other things, strategic gaps between the conurbation and the surrounding towns and villages.
9. The strategic gap is outlined on the Council's Core Strategy Strategic Diagram (CSSD)⁵, an extract of which has been submitted by the appellant, and which indicates the broad extent of the 'strategic gap'. However, given the indicative nature of that diagram I am not persuaded that it defines, with any degree of precision, the exact boundaries of the strategic gap. In reaching this conclusion, I am mindful of the findings of a previous judgement⁶ in this regard. The Council have not disputed the appellant's annotation of the CSSD showing the location of the appeal site relative to the strategic gap and, despite the imprecise nature of the CSSD's notations, I have no reason to question the placement of the site's location on that extract.

³ LPA Ref No: 15/0931/OUT

⁴ Stockton-on-Tees Core Strategy Strategic Diagram

⁵ Paragraph 5.4, page 9 – Full Statement of Case –Figure 5.1 Core Strategy Strategic Diagram

⁶ Tiviot Way Investments v SOS for DCLG and Stockton-on-Tees Borough Council, July 2015 (ref: [2015] EWHC 2489 (Admin)

10. However, even if it were to be the case that the site lies within the broad extent of the strategic gap, I do not consider that the site demonstrates the values of openness or amenity value that CS policy CS10(3)i) seeks to maintain, protect or enhance. Instead, the site hosts an existing commercial operation consisting of warehouse-type buildings with areas of open storage. Beyond the site but contained within the triangular area bounded by the immediate road network, is a substantial public house and a large commercial car showroom. All three are surrounded by extensive areas of hardstanding given over to the storage of materials and vehicles and vehicle parking.
11. The existing commercial buildings have a squat appearance, typical of industrial and commercial buildings. However, together with the more traditional and substantial form of the public house, they are clearly visible within the surrounding landscape and from a number of viewpoints, as demonstrated in the appellant's Landscape and Visual Impact Appraisal⁷ (LVIA). In this respect, amongst the open fields that currently surround the triangular wedge to its south and east, the developed site and adjoining premises sit somewhat incongruously.
12. However, I am advised that permission exists⁸ for the development of land directly opposite the site for housing development and it is clear that new development is advancing, or is due to advance, eastwards along Low Lane towards the appeal site. Despite the indicated inclusion of a green wedge and landscaping buffer around the eastern portion of the housing land to the north of the site, the continued development of this broad swathe of land would significantly alter the context in which the site would be seen and understood.
13. In terms of maintaining openness, the proposal would substitute one form of built development for another. Whilst this would undoubtedly result in differing characteristics and differing built form, the site does not currently provide any particular amenity value, nor by virtue of the buildings, storage and car parking, is it particularly open. Thus, whilst representing change, I am not persuaded that such change would be harmful or contrary to CS policy CS10(3)i).
14. Of the various viewpoints assessed in the LVIA, the Council have greatest concern regarding viewpoint 7, located on the public right of way that joins High Lane along the southern side of the triangular wedge. The public right of way discharges directly onto High Lane. The Council note that due to the low-level single storey warehouse buildings currently within the site and the neighbouring showroom / forecourt site, rooftops are absent from view and the vista is, as a consequence, open.
15. However, the substantial roof structure of the public house is visible in views to the right and the existing dwelling in views to the left from this viewpoint. In closer views, whilst it is likely that the proposal would be likely to result in structures that would fill the visual gap at the footpath's end, I am satisfied that detailed assessment of the reserved matters would mitigate any impact in the medium to longer term. In any event, the immediate foreground to this view, namely the formally laid out pub car park, lighting columns and boundary fencing are all conspicuous features and ones that clearly set the context in which the appeal proposal would be seen. Thus, the character and appearance

⁷ TPM Landscape for ELG Planning – June 2017 Rev A

⁸ LPA Ref No: 15/0931/OUT

of the site, and views of it from viewpoint 7, are not in my view defined by any sense of openness, but rather the manifestations of a developed and established commercial area. The proposal would introduce a residential element into this area, but that would not be harmful to the overall understanding of the area surrounding the site, nor would it be one that would be harmfully out of place.

16. Having regard to a recent judgement⁹ regarding interpretation of the term 'isolated' in relation to new dwellings in the countryside, I do not consider the appeal site to be isolated, or the proposal to result in an isolated residential development. The site is adjoined on two sides by existing commercial development and substantial built structures and, on the opposite side of High Lane, another dwelling. Pavements with street lighting provide a direct link to facilities a short distance to the southwest including schools and a convenience store, whilst I have also noted the longer term intentions of the residential development on the northern side of Low Lane to provide a local centre and footpath network leading to it from Low Lane.
17. Even if I were to conclude that the site lies within the Strategic Gap, which is not entirely clear given the imprecise nature of the Core Strategy Strategic Diagram, the site is neither open nor does it possess any significant amenity value. However, these are the landscape features that CS policy CS10(3)i) seeks to protect to ensure separation between settlements. I can appreciate the role of a strategic gap when approaching the site from the elevated position of the bridge over the A19 when coming from Maltby. However, the already developed form of the appeal site and its adjoining sites is a distinct and existing feature in the foreground of views towards the expanding form of Ingleby Barwick. Nor would the proposal result in the closing of the gap between Ingleby Barwick and Maltby, or the site and Maltby, as it is already part of the developed area constrained by the local road network and the triangular wedge within which it lies.
18. I do not consider the site to be isolated or the proposal to result in an isolated residential development, either now or in the longer term in the context of consented schemes. I accept that there will be some short term change to the character and appearance of the site, and its position within the surrounding landscape. However, I am satisfied that the scope of the outline application and reserved matters will allow the character and appearance of the site to be successfully managed in its transition from one form of built development to another. The proposal would not be in conflict with CS policy CS10(3)i), or the Framework, in terms their aims of maintaining openness, preventing the coalescence of settlements and avoiding isolated new dwellings in the countryside.

Pedestrian safety and the free flow of vehicular traffic

19. The Council have not sought to rely upon development plan policy with regard to their second reason for refusal. Nor has reference been made to the Framework. However, it is argued by the Council that as insufficient evidence has been submitted with regard to the impacts of proposed mitigation measures, the capacity of the highway network to cater for the proposed development cannot be assessed.

⁹ Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin).

20. There is, however, no dispute between the main parties that the methodology applied to determine anticipated vehicle trip generation figures is robust, that a suitable access could be achieved at the indicated access point and that the proposal would be unlikely to result in a severe impact on the highways network. Furthermore, despite it also being agreed that pedestrian trip generation would be low, that any pedestrian crossing would be used infrequently and that the impact of a signalised crossing on traffic movement would be correspondingly low, the Council nonetheless restate concerns over the potential impact of the proposal on traffic flow.
21. Whilst I accept that the exact impact of the proposal in these terms may not have been exactly quantified on the basis of the submissions, I am mindful of the Framework's position regarding refusing proposals on highways grounds. Framework paragraph 109 clearly states that development proposals should only be refused on highways grounds *'if there would be an unacceptable impact on highway safety, or the residential cumulative impacts on the road network would be severe'*. From the evidence before me, I am not persuaded that the Council have adequately demonstrated that that would be the case.

Planning Obligation

22. The appellant has submitted a signed and dated unilateral undertaking made under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). This undertaking secures a proportion of the total number of dwellings as affordable housing, and financial contributions towards primary and secondary education, highways mitigation measures at the junction of Low Lane and Thornaby Road and transport provision in the form of relocation of bus stops. I have considered the UU and its provisions against the provisions of the Framework and Planning Practice Guidance (the Guidance).
23. CS policy CS11 sets out the Council's approach to seeking planning obligations to contribution towards the cost of providing additional infrastructure, and to meeting social and environmental requirements. It states that, when seeking contributions, priorities will be provision of highways and transport infrastructure, affordable housing, sport and recreation facilities.
24. The Council have not responded to the appellant's UU, nor did they provide a statement of case in relation to the appeal, instead relying upon their officer report to set out their case. Nonetheless, I note that the officer report addresses planning contributions in relation to affordable housing, highways, open space and primary and secondary education provision.
25. CS policy CS8 sets out the Council's approach to affordable housing and housing mix. It states that, amongst other things, developers will be expected to provide affordable housing within a target range of 15-20%. The Council are satisfied that the proposal would provide an adequate proportion of affordable houses, and that they would be of an appropriate tenure mix. I am satisfied that the affordable housing provisions would meet the appropriate tests and have taken this element of the UU into account and attached weight to it in reaching my decision.
26. Turning to the financial contribution towards of highways and transport, the Framework is clear that priority should first be given to pedestrian and cycle movements within the scheme and to enable safe access to neighbouring

areas, and to access public transport. The UU makes provision for a contribution to pedestrian crossing facilities to access the pavement along Low Lane and for the relocation of public transport facilities on the road to the east of the site. Although I have not been referred to any specific development plan policy regarding such matters, CS policy CS11 makes general provision in such areas, whilst the Framework sets out its approach to ensuring safe and inclusive access to developments. I am satisfied that these contributions would meet the appropriate tests and have taken this element of the UU into account and attached weight to it in reaching my decision.

27. Finally, with regard to education contributions, it is noted that there was no objection to the proposal from the Local Education Authority. Nor have I been presented with any substantive evidence to demonstrate that the capacity of local schools, particularly that of secondary schools, is limited, or indeed upon what policy basis such contributions will be sought or have been calculated. The Council acknowledge that the refusal of the application on the basis of impact on local education infrastructure could not be warranted and it seems to me therefore that this element of the UU is not necessary in order to make the development acceptable. It therefore fails the tests set out and I have not taken it into account as a reason for granting outline planning permission.

Other Matters

28. I note that the Council cannot currently demonstrate a 5 year supply of housing land. I have also noted the concerns of objectors that there is too much housing being built locally and that there is a lack of demand for such housing. I have not, however, been presented with any substantive evidence to support such concerns, and as such I am mindful of the Framework's presumption in favour of sustainable development and the Government's objective of significantly boosting the supply of housing.
29. Local residents also object to the proposal on a wider basis, including in respect of setting a precedent for development south of Low Lane, loss of a light industrial unit and increased noise and disturbance in Maltby. I have carefully considered the objections received but note that they did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.
30. In addition, I have considered the appeal entirely on its own merits and in the light of all the information before me; any future proposals nearby would have to be considered in the same manner. Hence, allowing the appeal would not set a precedent for further similar development in the area. Thus, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be over-riding issues warranting dismissal of the appeal.

Conditions

31. I have considered the suggested conditions against the provisions of the Framework and the Guidance. Where necessary I have amended them in order to meet the provisions of the tests set out therein.
32. In addition to the standard reserved matters and time limit conditions applicable to outline planning permissions, I agree that a condition specifying the approved plan provides certainty. Conditions regarding the management

and disposal of surface and foul drainage, and compliance with the submitted Flood Risk Assessment & Surface Water Management Strategy are necessary in order to minimise risk of flooding.

33. Conditions regarding ground conditions and a construction management plan are necessary in the interests of living conditions of future occupiers of the development (given the site's previously developed nature) and highway safety, respectively. A condition governing the hours of construction activity and deliveries is necessary in the interests of living conditions of occupiers of nearby properties, whilst a renewable energy condition is necessary in the interests of sustainable living and climate change.

Conclusion

34. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall be in accordance with the following approved plan: Location Plan.
- 5) The development hereby approved shall not be commenced on site, until a scheme of 'Surface Water Drainage and Management' for the implementation, maintenance and management of the sustainable drainage scheme has first been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and the scheme shall include but not be restricted to providing the following details;
 - Detailed design of the surface water management system, (the surface water discharge from this development must be restricted to 6.13l/s)
 - A build program and timetable for the provision of the critical surface water drainage infrastructure
 - A management plan detailing how surface water runoff from the site will be managed during construction Phase
 - Details of adoption responsibilities; and
 - Management plan for the Surface Water Drainage scheme and any maintenance and funding arrangement;

A maintenance plan detailing how the surface water management system will be maintained during the construction phase.
- 6) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) & Surface Water Management Strategy report: 4770/FRA01C, dated January 2018, revision C, dated 16/1/18 and the following mitigation measures detailed within the FRA;
 - Discharge rate from the site must be restricted to 6.13l/sec;
 - The final site layout must ensure that there is sufficient area of public open space to accommodate the required attenuation volumes;
 - No surface water storage structures are to be located within the curtilage of residential properties.

The mitigation measures shall be fully implemented prior to the occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any period as may subsequently be agreed, in writing, by the local planning authority.

- 7) No dwellings should be occupied until the approved surface water management system for the development is in place and fully operational. A maintenance plan must also be submitted and approved in writing by the Local Planning Authority, detailing the management arrangements of the Surface water scheme for the lifetime of the development.
- 8) Development shall not commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water. Thereafter the development shall take place in accordance with the approved details.
- 9) As part of the reserved matters application, the scheme shall be designed to ensure the recommendations as detailed in Section 6 of the submitted LA Environmental; / ELG Planning 'Assessment of Noise Levels and Noise Amelioration Measures' report are undertaken, unless otherwise agreed in writing with the local planning authority.
- 10) Prior to the commencement of development details of on-site renewable energy equipment shall be submitted to the local planning authority which details how the predicted carbon savings emissions of the development will be reduced by at least 10%, above and beyond what is required to comply with Part L Building Regulations. Before the development is occupied the renewable energy equipment as approved shall have been installed and brought into use to the written satisfaction of the local planning authority. The approved scheme shall be maintained in perpetuity thereafter unless otherwise agreed in writing by the local planning authority.
- 11) Construction works associated with the development hereby permitted shall be carried out in accordance with a Construction Management Plan (CMP) which shall first have been submitted to and approved in writing by the local planning authority. The CMP shall include (but not be limited to):
 - Access proposals (including HGV routes) and HGV trip profile;
 - Areas proposed for staff parking during construction;
 - Dust Suppression;
 - Avoidance and removal of mud on the road;
 - Off highway parking of delivery vehicles; and
 - Appropriate mitigation measures.

Development shall be carried out in accordance with the approved CMP.

- 12) Prior to the commencement of work, the recommendations as outlined section 7 "Recommendations for Ground Investigation" in the FWS Geological & Geo-Environmental Consultants 'Preliminary

Contamination Risk Assessment on Land at Low Lane, Maltby, Ingleby Barwick' risk assessment report shall be undertaken and a full intrusive ground investigation risk assessment be completed in accordance with a scheme to assess the nature and extent of any contamination on the site (whether or not it originates on the site) to include for ground contamination screening and ground gas production, and an appropriate risk assessment undertaken. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- A survey of the extent, scale and nature of contamination;
- An assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwater and surface waters, ecological systems, archaeological sites and ancient monuments; and
- An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The required remediation scheme shall be implemented in full.

- 13) Following completion of measures identified in the remediation scheme approved in accordance with condition 12 above and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval. The approved monitoring and maintenance programme shall be implemented.
- 14) If during the course of any phase of the development contamination not previously identified is found to be present, then no further development within that phase shall be carried out until the developer has submitted to, and obtained written approval from the local planning authority, for a remediation strategy detailing how the identified contamination is to be dealt with. The remediation strategy shall be carried out as approved.
- 15) No construction activity or deliveries shall take place outside the hours of 0800 to 1800 Monday to Friday, 0900 to 1300 on Saturdays, nor at any time on Sundays, Bank or Public Holidays.