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Wiltshire Council
Planning Appeals
Monkton Park Office
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SN5 1ER

Your Ref:
Our Ref: APP/Y3940/W/18/3216228

04 June 2019

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Oliveford Ltd
Site Address: Unit 8, Atworth Business Park, Melksham, SN12 8SB

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>.

If you do not have internet access please write to the Customer Quality Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

We are continually seeking ways to improve the quality of service we provide to our customers. As part of this commitment we are seeking feedback from those who use our service. It would be appreciated if you could take some time to complete this short survey, which should take no more than a few minutes complete:

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours faithfully,

Jenni Ball

Jenni Ball

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Appeal Decision

Site visit made on 9 April 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 04 June 2019

Appeal Ref: APP/Y3940/W/18/3216228

Unit 8 Atworth Business Park, Bath Road, Atworth SN12 8SB

- 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 Oliveford Ltd against the decision of Wiltshire Council.
 - The application Ref 18/04589/FUL, dated 11 May 2018, was refused by notice dated 17 October 2018.
 - The development proposed is extension to existing building (Use Class B8), extension to service road, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Although the original applicant has since vacated the appeal site, the application and this appeal has proceeded on behalf of the freehold owner of the business park, who has a relevant legal interest in the property.
3. An updated version of the National Planning Policy Framework (the Framework) was published in February 2019, after the application was determined by the Council. However, as the alterations are minor, it was not necessary to revert to the parties for comment.

Main Issue

4. The main issue is whether the proposal would be in accordance with the spatial strategy for the area, including with reference to its effect on the living conditions of nearby residential occupiers.

Reasons

Spatial strategy

5. The Wiltshire Core Strategy (CS)¹ comprises a spatial strategy which aims to achieve a sustainable pattern of development by directing development to existing settlements. It does that through Core Policy 1: Settlement Strategy (CP1) and Core Policy 2: Delivery Strategy (CP2). The settlement strategy identifies 4 tiers of settlements: Principal Settlements; Market Towns; Local Service Centres; and, Large and Small Villages.

¹ Adopted January 2015

6. It is proposed to extend an existing building, which forms Unit 8 at the Atworth Business Park, on the edge of the village. Atworth is within the Melksham Community Area and is defined in the CS as a 'Large Village'. CP1 of the CS says that development at 'Large and Small Villages' will be limited to that needed to help meet the housing needs of the settlement and to improve employment opportunities, services and facilities. Although the appeal site is within an existing business park, it is outside the 'limits of development' of the village. CP2 of the CS indicates that development will not be permitted outside the 'limits of development' other than in circumstances permitted by identified 'exception policies' in the CS, which seek to respond to local circumstance and national policy.
7. One of the 'exception policies' is Core Policy 34: Additional Employment Land (CP34), which says that outside the Principal Settlements, Market Towns and Local Service Centres, developments will be supported subject to two sets of criteria, detailed at 'i-iv' and 'a-e'. Each criterion within the first set (i-iv) is followed by the word 'or', save for the last. That indicates that whilst it is necessary for at least one of those criteria to be met, it is not necessary that more than one or that all four are satisfied.
8. The Council takes the view that the proposal does not fully meet any of the criteria, listed from 'i-iv'. Both parties agree that criterion 'ii', which relates to farming and food production, is not met or relevant. The Council's view, in relation to criteria 'I' and 'iii', is that the proposal does not seek to expand an existing business on the edge of a larger settlement and does not relate to a new or existing rural based business, as the unit is unoccupied with the previous tenant having left during the course of the application process. It says that the proposal is speculative, as there is no defined end user.
9. As the second reason for refusal in the Council's decision notice refers to non-compliance with criterion 'iv', I will address that aspect. I agree that a proposal for a modest extension of one unit in a business park could not reasonably be considered of such importance as to be '*essential to the wider strategic interest of the economic development of Wiltshire.*' Therefore, I agree with the Council on that point but, as stated above, there is no requirement in CP34 for a proposal to meet all of the criteria listed from i-iv.
10. It seems to me that the most relevant criterion, in this case, is 'iii', which indicates that developments will be supported that '*are for new and existing rural based businesses within or adjacent to Large and Small Villages.*' However, the wording does not appear to indicate a requirement to identify a specific business that is going to occupy the development or that a business should already be in occupation. Moreover, the latter would be illogical as the policy would equally apply to the construction of a new building. Therefore, given that the development would be the extension of a unit, within an existing business park, adjacent to a 'Large Village', the development would be 'for new or existing rural based businesses'. Accordingly, I consider that the proposal satisfies criterion 'iii' of the first set of criteria.
11. In reaching that finding, I have considered the views of the Council and representations from third parties, as well as the appellant, regarding the interpretation of CP34 and its requirements. The supporting text to the policy acknowledges that: '*The evidence indicates that Wiltshire does not have land available in the right location at the right time to meet business needs and this*

could result in Wiltshire losing business to other locations'.² As a result, CP34 broadly supports the delivery of opportunities for the provision of employment land, in addition to that allocated in the CS, mostly within the Principal Settlements, Market Towns and Local Service Centres but also, outside those settlements, within or adjacent to Large and Small Villages, subject to additional limiting criteria, at 'a-e'.

12. The appellant has also drawn my attention to a planning permission relating to Land North West of Dunkirk Business Park at Southwick.³ That proposal related to the expansion of an existing rural business park, considered to be closely related to a Large Village, with the addition of two units. The relevant Council Officer's Report has been supplied and compliance with criterion 'iii' of CP34 was accepted. Whilst the Officer's Report also refers briefly to supporting evidence of demand for the type of units proposed, that does not appear to have been integral to its analysis of whether the proposal complied with CP34.
13. In any event, the appellant in the appeal before me has presented a reasonable level of evidence of demand for business units of the size proposed, as evidenced in a letter from a commercial property agent⁴ and other information regarding interest from local businesses. Similarly, although I do not agree with all of its conclusions, the Council Officer's Report relating to the appeal proposal recommended approval and found compliance with CP34.
14. Whilst I have found that, a criterion ('iii') in the first set of criteria is met, as required, it is still then necessary to consider whether the proposal meets the second set of criteria in CP34 of the CS, listed from 'a-e'. There, each criterion, save the last, is followed by the word 'and', which indicates that all of them need to be satisfied. The dispute between the parties centres on criterion 'b'. Criterion 'b' indicates that developments will be supported where, amongst other things, they do not *'detract from residential amenity'*. I will consider those aspects below.

Living conditions of nearby residential occupiers

15. The building and the associated service road would be extended to the west, outside the existing boundary of the business park and into part of an adjoining field, to the south of existing residential properties. The existing Class B8 use for storage or as a distribution centre would not change, but it would take place within an expanded building.
16. At present, vehicle movements associated with this part of the business park take place behind or between the buildings comprising the existing units, mitigating any effects on nearby residential properties. However, the proposal would extend the service road, beyond the elongated building and the footprint of units 6 and 7 and provide some additional parking spaces. The extended building, with its increased capacity, could also increase the potential number of vehicle movements, over and above that which serviced the unit in the past.
17. The extended service road would also incorporate a new turning head to enable vehicle manoeuvring, adjacent to a 'goods in/out' entrance and additional parking spaces on the northern side of the building. According to the appellant, the turning head would, at its closest point, be just 2 metres away

² Paragraph 6.9

³ 18/06221/FUL

⁴ Carter Jonas: Letter dated 30 August 2018

from the boundary of the rear garden of the dwelling at 29A Bath Road, the nearest house. There is an existing thicket of vegetation to the south of the garden boundary fence of that property, but a section of this would be removed, reducing its depth, to accommodate the turning head.⁵

18. I had the benefit of assessing the proposal both from the appeal site and from the garden of No 29A. The dwelling is located at the end of a quiet cul-de-sac, well away from the main road running through the village. Whilst the house is further away, the tranquil garden has patio and seating areas, including some towards its southern boundary, adjacent to the turning head. The close proximity of the turning head and service road to the garden would be likely to result in noise and disturbance from commercial and other vehicles accessing the appeal site and manoeuvring in the turning head. There would also be noise from vehicle engines and negative effects from vehicle fumes. That would significantly disturb the peace and enjoyment of occupiers of No 29a, when using their garden. It would also have some negative effects within the house, especially during the summer months when windows or doors to the garden are more likely to be open.
19. As part of the thicket would be removed to accommodate the turning head, any protection that it could provide would be reduced. The position of the proposed earth bund and associated planting would not assist in mitigating the adverse effects of the turning area close to the garden. The occupiers of No 29A have also strongly objected to the proposed development, principally because of vehicle noise and fumes.
20. The Council's appeal statement suggests that there would be negative effects on occupiers of the dwelling at 30 Bath Road, albeit to a lesser degree. However, as that property is to the north west and would be further away from the service road and turning head, I am satisfied that the effects would not be significant.
21. Although the appellant refers to the '*limited number of vehicles that are likely to be associated with this size of unit*', that is not quantified or evidenced in any meaningful way and, given that the future occupier of the site is unconfirmed, I do not find that submission persuasive. The appellant has also suggested, at the appeal stage, the possibility of an acoustic fence to be secured by condition, but limited details and little specific evidence about the efficacy of such an approach has been submitted. Given the position of the turning head there would also be little room for any additional planting. Restrictions on delivery and despatch times were suggested by the Council's Public Protection Officer to be secured by condition, but such a condition could not be too restrictive without potentially compromising efficient business operations at the site.
22. Furthermore, standard restrictions on operating hours, such as during the day and on Saturday mornings, appear to be based partly on an assumption that residential occupiers are more likely to be out of the house or at work during such hours, at least from Monday to Friday. However, that would not necessarily be effective in preventing harm to, for example, retired occupiers enjoying their garden or workers with less conventional working hours. Moreover, Saturday mornings are a time when people are reasonably entitled to expect some respite. Therefore, whilst I have considered if imposing

⁵ Figure 3: Landscape and Visual Impact Assessment (May 2017) prepared by Brian Wooding CMLI

conditions could make the proposal acceptable, given the close proximity of the turning area to the residential garden of No 29A, I am not persuaded that they would sufficiently mitigate the adverse effects.

23. I am aware that the application, which has led to this appeal, is a resubmission of a previous proposal⁶ refused for a different reason, relating to inadequate information about effects on protected species. However, that application was refused, and I do not have full details of the extent of the Council's reasoning, when considering that proposal with respect to effects on living conditions. Although the Council Officer's Report relating to the appeal proposal recommended approval, the Council's Planning Committee reached a different conclusion, including with regard to the effects on the living conditions of neighbouring occupiers. Therefore, whilst consistency in public decision making is important, it is also important and legitimate for me to apply my own planning judgement to this appeal proposal, based on the evidence before me, relevant development plan policies and any other material considerations, which is what I have done.
24. Therefore, I conclude that the proposed development would harm the living conditions of nearby residential occupiers at No 29A, with particular regard to noise, disturbance and fumes from vehicles. It follows, that the proposal conflicts with the CS spatial strategy, set out within CP1 and CP2, as it does not comply with criterion 'b' of 'exception policy' CP34. The proposal would also conflict with paragraph 127. f) of the Framework, which seeks to promote health and well-being and ensure a high standard of amenity for existing and future users.

Other Matters

25. Whilst approval was given for a similar extension to the adjacent unit 9⁷, that is further to the south with its service road and parking area beyond. Therefore, there would not be adverse effects from vehicles or any turning areas equivalent to the appeal proposal.
26. A number of objectors have raised a range of issues, in addition to those dealt with above, including effects on protected species. However, it is not necessary for me to consider those other matters in detail here, as I have dismissed the appeal on other substantive grounds.

Planning Balance and Conclusion

27. The CS and the Framework offer support for business and for a prosperous rural economy. Framework paragraph 83.a) encourages the sustainable growth of all types of businesses in rural areas both through conversion of existing buildings and well-designed new buildings.
28. Paragraph 84 of the Framework says that: *'Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by*

⁶ 17/05785/FUL

⁷ 16/09685/FUL

improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.'

29. The proposed development would offer some benefits, including an economic benefit in the provision of additional business and employment floorspace. However, the appellant describes the scale of the extension as relatively modest which would limit the extent of that benefit, relative to that already generated by the existing unit. It is also suggested that the extension of the service road and the turning head would improve the safety of vehicle manoeuvres within the site. However, that could potentially be achieved by an alternative proposal or design. Overall, those and other benefits associated with the proposal do not outweigh the harm that I have identified to the living conditions of nearby residential occupiers and the associated conflict with CP34 of the CS.
30. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR