



Appeal Decision

Hearing Held on 13 October 2020

Site visit made on 5 November 2020

by Roger Catchpole BSc (hons) PhD MCIEEM IHBC

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

Decision date: 6 November 2020

Appeal Ref: APP/N4205/W/20/3249126

Units 40-45 Waters Meeting Business Park, Britannia Way, Bolton BL2 2HH

- 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 Mr Michael Boys (B&E Boys Brother Investments Ltd) against the decision of Bolton Metropolitan Borough Council.
 - The application Ref: 05207/18, dated 20 December 2018, was refused by notice dated 20 September 2019.
 - The development proposed is the construction of 5 No. Units for B1/B2/B8 usage together with associated access road, service areas, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for 5 No. Units for B1/B2/B8 usage together with associated access road, service areas, car parking and landscaping at Units 40-45 Waters Meeting Business Park, Britannia Way, Bolton BL2 2HH in accordance with the terms of the application, Ref: 05207/18, dated 20 December 2018, subject to the conditions set out at the end of this decision.

Application for Costs

2. At the Hearing an application for costs was made by Mr Michael Boys (B&E Boys Brother Investments Ltd) against Bolton Metropolitan Borough Council. This application will be the subject of a separate decision.

Main Issue

3. The main issue is the effect of the proposal on the comprehensive and viable development of the 'Crompton Way / Bolton Point' mixed use development site.

Reasons

4. The appeal site is located on a raised plateau of undeveloped land within an existing employment site, Waters Meeting Business Park. It lies to the east of existing development on this site and to the south of a recently developed residential estate. The sole access to the business park is via Britannia Way to the south. All roads within the park are private and access is restricted with a security point situated at the main entrance. The sole access to the residential development to the north is from Compton Way via Sandleigh Drive and Kentfield Drive. This road has a short spur at the south western corner of the residential site that provides a potential access point to the business park.

Kentfield Drive is sinuous and of more restricted width in comparison to Sandleigh Drive and conforms to a typical residential road layout.

5. The Kentfield Drive spur was constructed in order to facilitate a link road to mitigate congestion arising from the residential development on Compton Way which forms part of the A58 'ring road'. The Council maintains that there are existing capacity issues on this route at two main junctions, the first being at the Blackburn Road (A666) intersection and the second being at the Tonge Moor Road (A676) intersection. These roads carry traffic along a north-south axis with the former located to the west of the appeal site whilst the latter is located to the east.
6. The link road between the residential development and the business park has not been implemented. This provision was secured through a s106 planning obligation in 2014. The first schedule of the obligation indicates the location of the entry (B) and exit points (C) to the business park. Point B is located where the Kentfield Drive spur has been constructed whilst point C is located on the embanked southwestern corner of the appeal site. I observed from my site visit that this exit point, were it to be constructed, would be onto Britannia Way in between two facing access points to other commercial sites.
7. The obligation was associated with two different planning applications. The first was a full planning permission for the residential development to the north (Ref: 91081/13) that has since been fully implemented and an outline permission for industrial development (Ref: 91080/13) that has since lapsed. The area of this lapsed permission overlaps with the current proposal which comprises five industrial units, that would vary in size between approximately 468 m² and 562 m². This proposal would utilise the existing main entrance to the business park. Consequently, a separate access would not be constructed at the south west corner of the appeal site nor would any dedicated link road be established from the Kentfield Drive spur.
8. The application was refused against officer recommendation on the grounds that it would prevent the construction of the link road that was deemed to be necessary to make the overall development of the Crompton Way/Bolton Point site acceptable in planning terms. More specifically, to ensure that the wider, mixed-use site does not have an adverse impact on the highway network through a lack of suitable transport infrastructure or limit the best use of existing infrastructure. It maintains that the proposal is therefore contrary to policy P6AP of Bolton's Allocations Plan 2014 (BAP) and Strategic Objective SO6 of the Bolton's Core Strategy Development Plan Document 2011 (CS).
9. The officer report relating to the residential development (Ref: 91081/13) indicates that whilst it was the Council's intention to secure a local distributor route through that site, it nevertheless abandoned seeking a protected line because of 'risks to achieving the regeneration of the site in a timely manner'. As a result, the residential site developer implemented a housing estate road layout rather than a distributor road layout. Technical evidence relating to the current proposal¹, highlights the fact that the width and layout of Kentfield Drive does not meet the Council's own design standards for a Category 4 local distributor road. Further evidence² also suggests that it would not be a

¹ Hearing Statement Highway Rebuttal, 20 June 2020, DTPC (Northwest)

² Audit of Technical Note Submitted Towards Application 05207/18, 13 September 2019, AECOM Ltd

- suitable route for commercial vehicles given its residential setting, construction and curvature at various locations along its route.
10. These facts were not contested at the Hearing with the Council suggesting that the use of Kentfield Drive as part of a link road would be the 'least worse' option given safety issues associated with the wider road network. The Council also suggested that it would mainly serve local traffic associated with the residential site and that a 'normal road' would be acceptable. However, there would be nothing to stop cars from other residential areas to the north using Kentfield Drive as a regular southbound route in order to avoid congestion elsewhere. This could lead to a significant increase in vehicle movements than would otherwise be the case along Kentfield Drive. The Council has not undertaken any traffic flow modelling that would lead me to conclude otherwise and has, instead, relied upon unsubstantiated assumptions.
 11. Were this to occur, I have little doubt that a link road would pose an unacceptable risk to highway safety bearing in mind the number of driveways, limited road width and associated parking manoeuvres that currently occur in between Sandleigh Drive and the point at which the route would enter the business park. These impacts would be irrespective of any commercial vehicle use that the Council has suggested could be restricted. Whilst the practicality of these restrictions has been questioned by the appellant, I do not consider them further as I am satisfied that the layout of Kentfield Drive is fundamentally unsuitable for anything other than local car movements directly associated with the residential estate.
 12. Given the above, the residential development could be viewed as having already compromised the 'best use of existing infrastructure'. Even if this were not the case, I do not find that the current proposal would prevent the delivery of a link road. This is because a route through land owned by the appellant would still be possible. The Council confirmed at the Hearing that there are no highway grounds for presuming that the proposed road layout of the appeal scheme could not be utilised for this purpose. Although the Council expressed a preference for the most direct route from point B and C, I can find no reasonable grounds for this preference given the fractional amount of time that the small diversion through the proposed scheme would entail. Consequently, I can find no conflict with Strategic Objective SO6 of the CS.
 13. The 2014 officer report notes that the residential development would put more pressure on 'over capacity' junctions and that the link road would be needed to tackle local congestion on the strategic road network to the north of the town centre. This point was also re-iterated in the Council's statement of case. Whilst only a snapshot, I observed some local congestion but note that the waiting times at key junctions were not excessive. Moreover, the Council confirmed at the Hearing that the link road was not needed to relieve severe road traffic impacts arising from the original applications. Paragraph 109 of the National Planning Policy Framework 2019 states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
 14. Turning to highway matters as they relate to the current proposal, paragraph 24 of the officer's report clearly states that the Council's own highway engineers had 'no reasonable objections' on highways grounds to the

- principle of the development. Paragraph 66 also states that the scheme 'mitigates its own highway impacts'. The report goes on to conclude that the highway impact of the proposed development would be acceptable and that there would be a 'negligible impact on capacity issues on Compton Way'.
15. It was confirmed at the Hearing that the committee minutes from the 19 September 2019 do not alter these facts or suggest that the refusal of the scheme is in any way linked to the movements that would be generated. Consequently, I am satisfied that there would be sufficient transport infrastructure provision and that the proposal would not in any way compromise the comprehensive development of the site. As a result, I can find no conflict with policy P6AP of the BAP.
 16. Planning law³ requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Since I can find no conflict with the development plan, I now turn to the principal material consideration of this case which is the implementation of the 2014 s106 agreement. I consider this on the assumption that the scheme would not prevent the construction of a link road at some future date, as set out in my preceding comments.
 17. At issue is the degree of nexus between the current proposal and the obligation and whether there are reasonable grounds for refusing the proposal in the absence of a link road. Although contributions were also sought for improvements to the wider road network, these would be paid through a unilateral undertaking that accompanies the current scheme.
 18. The appellant confirmed at the Hearing that the purpose of the undertaking was related to clause 7.14 of the original obligation whereby some of its provisions can be released by a future agreement. As such, it is not necessary to make the current scheme acceptable in planning terms nor directly related to the development bearing in mind the negligible road traffic impact identified by the appellant⁴ and the views of the Council's own case officer. Consequently, I do not take it into account as a reason for granting planning permission.
 19. To be clear, this appeal does not involve an application to discharge or modify the original planning obligation under s106(a) of the Town and Country Planning Act 1990 (as amended) (the Act). Consequently, whether or not the obligation no longer serves a useful purpose falls beyond the scope of an appeal made under s78 of the Act. Furthermore, whether or not the granting of planning permission at appeal would breach the terms of the obligation is not a planning matter.
 20. The extent to which what are essentially private, legal rights under contract law may prevent or prohibit the proposed development are a matter for the Courts to decide. This also applies to the differing interpretation of the terms of the obligation between the main parties. In any event, the obligation continues to be enforceable in accordance with its own terms and the grant of permission for this scheme would not materially affect this fact. When asked why no

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

⁴ Transport Statement, December 2018, DTPC (Northwest)

enforcement action had been taken at the Hearing, the Council replied that it was simply 'never considered' and did not offer any other reason.

21. Given the above, I conclude that the absence of a link road, as required under a s106 agreement dated 26 November 2014, carries negligible weight in the planning balance and that this is clearly outweighed by the economic benefits of the scheme in terms of meeting future employment needs at a time of rising unemployment.

Conclusion and Conditions

22. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 55 of the Framework. In addition to the standard time limit condition [1], a condition requiring the development to be carried out in accordance with the plans is necessary to ensure that it is implemented as approved [2]. Two further conditions relating to site-based investigations are necessary to ensure the safety and suitability of the site in relation to any remedial works that may be required to address the coal mining legacy and any land contamination that may be present [3-4]. Conditions relating to landscaping, the use of matching materials and lighting are necessary to prevent light pollution and ensure an acceptable appearance to the scheme [5, 9 and 10]. A condition relating to a crime prevention and a sustainable development plan are necessary in the interests of crime reduction and to further sustainable development goals [6]. A surface water drainage condition is also necessary to control the risk of flooding [7]. A condition ensuring the provision of 50 car parking spaces is necessary to ensure that road safety is not compromised by vehicles parking on the highway [8]. One further condition relating to construction hours is necessary to preserve the living conditions of nearby residents with respect to noise [11].
23. For the above reasons and having regard to all other matters raised I conclude that, subject to appropriate conditions, the appeal should be allowed.

Roger Catchpole

INSPECTOR

CONDITIONS

- 1) The development hereby permitted shall begin no 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: Phase 1 Location Plan (18250 P100), Block Plan (18250 P102), Drainage Strategy (18320 C-50) and Proposed Plans and Elevations (18250 P103).
- 3) Prior to the commencement of development, a scheme of intrusive site investigations as recommended in the Preliminary Risk Assessment (BEK-18479-1 dated December 2018) shall be undertaken, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity. A report of findings arising from the intrusive site investigations and any remedial works and/or mitigation measures considered necessary shall be submitted to and approved by the Local Planning Authority. Such remedial works and/or mitigation measures as are approved shall be implemented in full prior to the commencement of any above ground works.
- 4) Prior to commencement of development, a site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority to assess the nature and extent of any contamination on the site and in accordance with the recommendations of Section 7 of the Preliminary Risk Assessment (BEK-18479-1 dated December 2018). The investigation and risk assessment must be undertaken in accordance with Model Procedures for the Management of Land Contamination (CLR 11) and a written report of the findings must be produced. The written report shall include:
 - a survey of the extent, scale and nature of contamination;
 - an assessment of the potential risks to human health, property or the environment; and
 - an appraisal of remedial options and the identification of a preferred option which includes details of testing methodology for any soil or soil forming materials to be brought onto site.

A Verification Report shall be submitted to and approved in writing by the Local Planning Authority prior to first use of the development hereby approved. It shall validate that all remedial works undertaken on site were completed in accordance with those agreed in writing with the Local Planning Authority.

- 5) Trees and shrubs shall be planted on the site in accordance with a landscape scheme to be submitted and approved in writing by the Local Planning Authority prior to the development being first brought into use. The scheme shall be based on the submitted landscaping scheme and specification but shall also take account of the comments of the Council's Landscape Architects. The approved scheme shall be implemented in full and carried out within 6 months of the occupation of any of the buildings or the completion of the development, whichever is the sooner, or in accordance with phasing details included as part of the scheme and subsequently approved by the Local Planning Authority. Any trees and shrubs that die or are removed within five years of planting shall be

replaced in the next available planting season with others of similar size and species.

- 6) No unit shall be occupied unless the following details have been submitted to and approved in writing by the Local Planning Authority:
- evidence that the security measures contained within para 5.07 of the submitted Crime Prevention Plan have been implemented in full; and
 - evidence that the sustainable development measures listed in the bullet points of the Executive Summary of the submitted Sustainability Statement by B&R Consulting Engineers have been implemented in full.

Such measures shall be implemented as approved and retained thereafter.

- 7) No building hereby permitted shall be occupied until the drainage scheme for the site has been completed fully in accordance with the details shown within the Drainage Strategy (18320 C-50). The drainage scheme shall be retained thereafter.
- 8) Before the approved development is first brought into use no less than 50 car parking spaces shall be marked out and provided within the curtilage of the site in accordance with approved plan (18250 P102). Such spaces shall be made available for the parking of cars at all times and retained thereafter.
- 9) The external surfaces of the buildings hereby permitted shall be of a similar colour, texture and size of those of the existing buildings at the existing B&E Boys Waters Meeting site and shall be retained thereafter.
- 10) Notwithstanding any submitted plans, no external lighting or floodlighting shall be installed that would result in an illumination value of more than 5 LUX at the nearest residential property.
- 11) Construction and site clearance works shall take place only between hours of 07:30 to 17:00 on Monday to Friday, 08:00 to 12:00 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

APPEARANCES

For the Appellant:

Mr J Barrett	Counsel	BA (hons) MMU Grays Inn
Mr A Davies	Highways Consultant	MSc CMILT MCIHT MAPM
Mr D Connolly	Planning Consultant	BA (hons) DipTP MRTPI

For the Council:

Mr M Mansell	Principal Development Officer
Cllr J Walsh	Chair of Planning Committee
Ms N Raby	Senior Council Lawyer