

Town and Country Planning Act 1990
Section 78 Appeal
by
Oakhill Group Ltd

Land at former Hartwells Garage Site, Newbridge Road, Bath

“Outline application with all matters reserved except for access and layout comprising the demolition of the existing buildings on the site; construction of replacement buildings ranging in height from 3 to 5 storeys providing a mixed use development comprising up to 104 residential units (Class C3 Use), up to 186 student bedrooms (Sui Generis Use), and a commercial retail unit (flexible A1/A3 Use); formation of new vehicular access from Newbridge Road, construction of new access ramp, and provision of vehicle parking spaces; provision of new shared bicycle and pedestrian sustainable transport route through the site and formation of new access and linkages on the eastern and western boundary; and provision of hard and soft landscaping scheme across entire site”

STATEMENT OF CASE ON BEHALF OF THE RULE 6(6) PARTY:

Standard Life Assurance Limited
Owners of
The Maltings Industrial Estate

28th October 2020
PINS Ref: APP/F0114/W/20/3258121
LPA Ref: 19/01854/OUT

Introduction

1. This statement of case is made on behalf of Standard Life Assurance Limited (“SLA”) – owners of The Maltings Industrial Estate (“The Maltings”), an active commercial site directly adjacent to the appeal site – which objects to the Appellant’s proposed scheme. SLA received Rule 6(6) status on 1 October 2020. This statement relates to the effect of the proposed development on The Maltings, primarily (but not solely) with regard to the right of way across The Maltings which is proposed as an access route for the scheme.
2. The Statement of Case submitted on behalf of Bath and North East Somerset Council (“The Council”) explains the chronology of the application, reasons for refusal, a site description and planning history, and a list of relevant policy.¹ That information is adopted but not repeated here.
3. In short summary, whilst the Appellants have a right of way across The Maltings, the proposal would result in the significant intensification of the use of this access route across SLA’s property, to the detriment of the industrial estate’s operations. Although this is an outline scheme, access is being dealt with as part of this appeal and is not a reserved matter for future determination. It is therefore crucial that sufficient information and certainty is provided at this stage. The impact of the scheme on The Maltings has not been adequately assessed by the Appellant.

Overdevelopment

4. The application site is allocated under Policy SB15 of the Core Strategy & Placemaking Plan (2017) (Hartwells Garage, Newbridge), which includes the development requirement for *“around 80-100 dwellings, which could include a variety of specialist older persons housing types but not student accommodation, where this would prejudice the achievement of Policy DW1 and B1 in respect of boosting the supply of standard market and affordable housing.”*²

¹ At paragraphs 1.2-3.6.

² Policy DW1 includes provision to accommodate an increase in the supply of housing by around 13,000 homes. Policy B1 includes the strategy for enabling development of approximately 7,020 new homes.

5. The site is also identified in the Council's Strategic Land Availability Assessment 2013 (SHLAA) and forms part of the authority's five-year housing land supply, with an indicative capacity for 80 dwellings.³
6. Because of the inclusion of the proposed student accommodation, the scheme significantly exceeds the indicative capacity set out under Policy SB15 and in the SHLAA. This indicates the proposals amount to overdevelopment.
7. A direct consequence of the overdevelopment of the site is various design compromises such that the main access to the site from Newbridge Road is not sufficient for the needs of the development. Buildings in the scheme have been designed in such a way that HGVs and refuse vehicles cannot access the rear of the site from the Newbridge Road frontage, and the scheme layout has resulted in parking facilities (Car Park 2) not being accessible from the site's main entrance from Newbridge Road. A better designed lower density scheme would have ensured sufficient height could be achieved at the Newbridge Road entrance for HGVs and refuse vehicles, and that all resident parking was accessible from Newbridge Road. The result of these compromises is that the scheme relies on an access point over third-party land, The Maltings Industrial Estate.
8. A site of the size and configuration of the application site, which includes a substantial frontage (approximately 115 metres) to Newbridge Road, should be able to accommodate all of its access/egress and servicing requirements without the need to rely on a right of way over third-party land.
9. The proposed access arrangements for delivery and servicing vehicles and for the nine parking spaces in Car Park 2 via The Maltings Industrial Estate therefore represent poor planning and design, and so conflict with Objective 2 and Policy CP6 and D2 of the Placemaking Plan. There is also conflict with Policy D3 which states, congruent with paragraph 182 of the NPPF, that new development should be designed in a way that does not adversely prejudice existing development or compromise adjoining sites; and Policy D4 which states that the impact of parking provision on connectivity should be resolved to avoid poor quality routes and poorly defined streets.

³ Ref: New.1.

10. As further detailed below, the proposed arrangements do not accord with Policy ST7(1) of the Core Strategy and Placemaking Plan, which states at (a)-(d) that development will be permitted providing “...*(a) highway safety is not prejudiced; (b) safe and convenient access to and within the site for pedestrians, cyclists and those with a mobility impairment is provided or enhanced; (c) suitable vehicular access; and (d) no introduction of traffic or excessive volume, size or weight onto an unsuitable road system...*”.
11. As such, the scheme is not in accordance with paragraph 127 of the NPPF, which requires planning policies and decisions to optimise the potential of every site to accommodate and sustain an *appropriate* amount and mix of development. In this case, appropriateness should be considered by reference to, inter alia, parking provision, site layout and impacts on the local area.
12. The effect of overdevelopment on the layout of the scheme and the result of reliance on access via The Maltings relates primarily to reason for refusal 2, however the unacceptable effects on The Maltings go beyond the scope of the Council’s reasons for refusal.

Highways access and parking

13. The proposed development, involving change of use from commercial to residential and considerable intensification of the appeal site, is likely to intensify the use of the existing access route through The Maltings, which would have an adverse impact on the operations of the existing industrial units and is unacceptable.
14. No evidence-based comparison has been made between previous and future projected levels of traffic using the access route through The Maltings. Such an assessment would determine whether there would be intensification of use and a detrimental impact on the operations of The Maltings.
15. At present, although the owner of the appeal site has a right of way across The Maltings, this access has been secured outside of normal working hours by locking the gates at the entrance, and so there is no all-hours free flowing traffic. Hartwells presently have a key

to the main gate to The Maltings which is currently kept locked overnight. The appeal scheme would result in a far greater number of parties having access to the main gate and the ability to open it, which would compromise the security of The Maltings.

16. As per paragraph 182 of the NPPF, existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Therefore, the 'agent of change' (here, the Appellant) must provide sufficient mitigation measures to ensure that complaints from occupants of the scheme about noise and disturbance from activities at The Maltings do not lead to restrictions being imposed.
17. There is likely to be conflict between delivery/refuse vehicles serving the appeal site and tenants of the industrial estate, particularly given the narrow access point for such vehicles in this location, which is directly in front of one of the industrial estate units, the occupiers of which are clearly entitled to unfettered access to their unit. The Appellant has not provided sufficient information to demonstrate that the proposed servicing and deliveries access through The Maltings can be provided and function satisfactorily without impacting negatively, or necessitating restrictions on, the existing operation of the industrial estate.
18. The result of the above is that intensification of the access route via The Maltings would have a detrimental effect on the occupiers of The Maltings, and is therefore contrary to NPPF paragraph 182 and unacceptable.
19. The proposed parking for the scheme is an under-provision that is not in accordance with adopted minimum standards and would likely result in significant overspill parking in the local area, particularly when combined with the lack of parking for the student accommodation element of the proposal. This would have a detrimental effect on The Maltings. The right of way is a right of access, not a right to park. There are unresolved concerns regarding the ability to police unauthorised parking on The Maltings by residents of the appeal scheme given that they will have access to the Maltings for the use of the right of way. Given that there is no physical demarcation between the right of way and the rest of The Maltings site, there will need to be a system of management in place to prevent new residents from using The Maltings for private parking. Such a management plan over The Maltings would require the consent of SLA.

20. The scheme and its supporting documents provide no detail to ameliorate SLA's concerns in relation to:

- Times when the main gate to The Maltings would be used, and the identity of those who would have access to the gate;
- How traffic flow through The Maltings would be managed, and measures which would be put in place (a) to mitigate impact on tenants of The Maltings and (b) having due regard to the health and safety considerations that would arise from car drivers (and their passengers) traversing third party land that is not adopted highway and is used by a variety of types and sizes of manoeuvring HGV and other commercial vehicles;
- How traffic management would work alongside the existing security within The Maltings;
- Personal safety concerns regarding use of a concealed entrance out of hours/at night;
- How smaller delivery vehicles (that are supposed to use the Newbridge Road access) and other vehicles would be prevented from driving through The Maltings; and
- How the rules in the draft Access Strategy would in practice be enforced, and what sanctions would be imposed on those who do not comply.

Appropriate management and mitigation of the above matters would clearly require the consent of SLA.

21. Proposed servicing arrangements also appear to suggest that refuse bins would have to be wheeled from the bin store across the pedestrian and cycle sustainable transport route (STR) to Car Park 2, which creates a potential conflict that does not presently exist, and further demonstrates the poor design of the scheme.

22. In addition to the detrimental planning impacts of the access route through The Maltings, intensification of the use of the right of way which increases the burden on The Maltings could give rise to the right to injunct or suspend the easement. This eventuality presents an obstacle to the ability of the scheme to be implemented, and therefore goes to the issue

of deliverability of the scheme. Resolution of this obstacle requires agreement between SLA and the Appellant, which is not in place at present.

The need to secure any solution by agreement

23. Securing appropriate arrangements for the use, maintenance and management of the access route via The Maltings is essential for the delivery of the appeal scheme.
24. Measures required to resolve the above issues relating to the access route via The Maltings would require the consent of SLA:
 - i) Because the right of way over The Maltings is not sufficient to properly provide access to the development; and
 - ii) To enable the necessary maintenance and management of the right of way for the purposes of the development.
25. The above matters would need to be secured via legal agreement as they relate to land which falls outside of the application boundary and the Appellant's ownership and control. Use of a condition would be inappropriate, since SLA's agreement is required to facilitate the above matters, and given the presently proposed arrangements there is no prospect of this being forthcoming.

Amenity

26. Paragraph 180 of the NPPF requires planning policies and decisions to ensure new development is appropriate for its location and in doing so mitigate and reduce to a minimum any potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life. However, the appeal scheme does not provide suitable mitigation to protect the residential amenity of future occupants of the scheme.
27. Designing suitable mitigation requires first an accurate and comprehensive assessment of the noise sources and receptors. The Noise Assessment submitted with the application concludes that acceptable noise ingress levels can be achieved with regard to both road

traffic and industrial activities. However, it makes an unevidenced assumption that industrial noise sources will only occur during the working day. The Maltings is not restricted by operating hours, with noise levels typical of an established industrial estate, including noise from sources such as deliveries, machinery and plant. SLA is therefore able to let units at The Maltings to tenants that carry out industrial operations and/or storage and distribution activities at any time of day. Locating new residential properties close to the boundary with The Maltings is likely to result in complaints about noise, and the Noise Assessment undertaken does not sufficiently explore this.

28. In line with paragraph 182 of the NPPF, existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Therefore, the Appellant, the ‘agent of change’, should provide appropriate mitigation measures to ensure that the scheme would not impact on the operations of tenants of The Maltings Industrial Estate, through complaints leading to restrictions being imposed on The Maltings. Such mitigation measures could include ensuring adequate distances between the residential accommodation and the existing sources of noise, and putting in place any other necessary mitigation. Consistent with this, Policy D3 (Criterion M) requires developments to be designed in a way that does not adversely prejudice existing development or compromise adjoining sites.
29. Furthermore, the Noise Assessment uses data from May 2010 for Survey Positions A and B. Given the age of this data, it is outdated and invalid for the purpose of this application as it does not reflect the current noise levels in these locations.
30. A thorough assessment of noise sources and receptors must be undertaken, and measures for mitigation so as to safeguard both new residents’ amenity and continuity of operations at The Maltings must be shown to be effective and must be secured.

Conclusion

31. For the above reasons, the Rule 6(6) party will therefore respectfully invite the inspector to dismiss this appeal.