



Appeal Decision

Inquiry Held on 16 January 2018

Site visit made on 16 January 2018

by G D Jones BSc(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 February 2018

Appeal Ref: APP/E3525/W/17/3183051

EMG Motor Group site, Tayfen Road, Bury St Edmunds IP33 1TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Kingsway Homes Ltd against St Edmundsbury Borough Council.
 - The application Ref DC/16/0730/FUL, is dated 8 April 2016.
 - The development proposed is the erection of 46 no. apartments with commercial unit (A1, A2, A3 or B1(a) use) at ground floor level, communal landscaped podium garden, accesses, undercroft parking, landscaping and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 46 no. apartments with a commercial unit (A1, A2, A3 or B1(a) use) at ground floor level, communal landscaped podium garden, accesses, undercroft parking, landscaping and associated infrastructure at EMG Motor Group site, Tayfen Road, Bury St Edmunds IP33 1TB in accordance with the terms of the application, Ref DC/16/0730, dated 8 April 2016, subject to the conditions contained within the Schedule at the end of this decision.

Application for Costs

2. At the Inquiry an application for costs was made by Kingsway Homes Ltd against St Edmundsbury Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council did not defend the appeal as reflected in the Statement of Common Ground between the main parties (the SoCG) and the proof of evidence of its only witness. The Council also confirmed that, had the appeal not been lodged, it would have granted planning permission for the proposed development subject to conditions and planning obligations.
4. The SoCG also contains a schedule of suggested conditions that are agreed by the main parties but also identifies a further condition, relating to the provision of electric charging points for vehicles, which was suggested by the Council but which was disputed by the appellant. However, during the Inquiry the appellant confirmed that, notwithstanding the SoCG, it now agreed with that suggested condition such that by the time the Inquiry started there were no remaining areas of dispute between the main parties.

5. A Unilateral Undertaking, dated 12 January 2018, made under S106 of the Town and Country Planning Act 1990 (the UU) was submitted shortly before the Inquiry opened. During the Inquiry the appellant confirmed that the UU supersedes an earlier legal agreement within the evidence, dated 19 December 2017.

Main Issue

6. In light of the extent of common ground between the main parties, the main issue is whether there are any other considerations that might indicate that the appeal should be dismissed.

Reasons

7. Notwithstanding the Council's position on the proposed development, concern has been expressed locally, including by some of those who spoke at the Inquiry, in respect to several considerations. These included the effect of the development on the character and appearance of the area, on the living conditions of neighbours and on highway safety, as well as in respect to parking and congestion.
8. In respect to character and appearance these concerns include that the building would have an excessive scale and height and dominate the surrounding area, the scheme would be out of character with its context and Bury St Edmunds at large, and would represent a missed opportunity if it were to be built. Concerns were also raised over detailed matters of design including facing materials. In regard to living conditions the concerns raised include the building's effect on light to and outlook from neighbouring homes as well as the effect of any overlooking from residents of the development leading to potential loss of privacy; noise, pollution and dust from vehicle movements; and noise and disturbance from the proposed commercial uses.
9. In terms of highway matters it was suggested that the proposed access to Ipswich Street might be relocated to Tayfen Road to discourage potential 'rat running' along Ipswich Street and Peckham Street. In broader terms concerns are raised that the development would harm highway safety, cause more congestion and place greater pressure on on-street parking, which is said to be already problematic.
10. These matters are largely identified and considered within the Council officer's report on the appeal development. They were also before the Council when it prepared its evidence and when it submitted its case at the Inquiry. The Council did not conclude that they would amount to reasons to justify withholding planning permission. I have been provided with no substantiated evidence which would prompt me to disagree with the Council's conclusions on these matters subject to the planning obligations and the imposition of planning conditions.
11. The development would bring about the remediation and more efficient use of a prominent previously developed site, which the evidence indicates is heavily contaminated and from my observations is somewhat unsightly. In some respects the scheme would contrast with many of the surrounding buildings. For instance, there are no nearby structures as high as the five-storey portion of the proposed building at the corner of Ipswich Street and Tayfen Road. The proposed continuous built form along the site's principal frontage would also

- contrast with the more varied street scene in this part of Tayfen Road. Nonetheless, subject to the careful control of facing materials, the development would represent a very marked improvement on the appearance of the existing site as a car sales use such that the character and appearance of the area would be much enhanced as a result of the scheme.
12. The appeal site stands on much lower ground than the houses to the rear in Peckham Street which back on to the site. Consequently, the scale of the development, when perceived from these neighbouring properties, would be somewhat diminished. The proposed built form is set a reasonable distance away from the rear elevations of the nearest neighbouring buildings such that, while outlook from and light to these properties would be changed as the result of the development, a reasonable relationship would be achieved. This conclusion is supported by a report within the evidence which assesses the development's effect on daylight and sunlight.
 13. Outlook from the rear of the proposed development would be constrained by a series of measures. These include that the habitable rooms of the proposed flats would be positioned beyond internal circulation corridors that would be located adjacent to the rear elevation of the proposed building. Two sets of screens, in the form of perforated metal mesh panels and metal cladding with wire mesh, would also be employed on each side of these corridors. These measures, combined with the building's proposed siting relative to existing nearby properties would ensure that the appeal development would not result in an unacceptable degree of overlooking of neighbouring occupants.
 14. I note that the Council's environmental health service was consulted on the appeal planning application and that it did not conclude that the development would have any significant effect on the living conditions of neighbouring residents. Subject to the imposition of appropriate conditions I see no reason to disagree. Similarly, the County Council, as local highway authority, has not objected to the scheme subject to certain provisions that are proposed to be controlled via planning obligations and conditions. On this basis, in the absence of any substantiated evidence to the contrary, I have found no good reason to believe that development would have any significant effect on highway safety, congestion or parking.
 15. Concerns have also been raised locally that the development would affect local property values and that it is being proposed with the objective of making a profit for the developer. However, other than in respect to the scheme's viability, these are not matters for my consideration in the determination of an appeal made under section 78 of the Town and Country Planning Act 1990.
 16. The proposals would bring a number of benefits as set out in the evidence of both main parties, some of which I have identified above. I have also found no reason to disagree with the Council's conclusion that the scheme accords with the development plan. On this basis, having regard to paragraph 14 of the National Planning Policy Framework, the development proposals should be approved without delay.

Other Matters

17. In the event that planning permission were to be granted and implemented the UU would secure a contribution for the provision of primary school places, open space / play equipment, highways works, bus stops and library facilities. The

Council and the County Council have both produced documents, which address the application of statutory requirements to the planning obligations within the UU and also set out the relevant planning policy support / justification. At the Inquiry I was also advised by the Council that the obligations of the UU would not result in the pooling of more than five obligations for any one infrastructure project or type of infrastructure through planning obligations and there is no evidence to the contrary.

18. I have considered the UU in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I consider that the obligations therein would be required by and accord with the identified Policies. Overall, I am satisfied that the obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms.

Conditions and Conclusion

19. I have been provided with a schedule of conditions which is agreed by the main parties, including in respect to amendments as discussed during the Inquiry. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly. For the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would be necessary. This condition also includes reference to the planning application form and other application documents in respect to drainage. Their inclusion would be necessary to control the proposed facing materials to help the development harmonise with its context and in the interests of flood prevention.
20. Conditions requiring adequate remediation of any contamination affecting the site would be necessary to safeguard the health and well-being of future occupiers. A single condition to control surface water drainage would be necessary to safeguard against flood risk, in the interests of highway safety and to protect the environment. For these reasons (except for highway safety) a condition to control any penetrative construction methods would also be necessary. Conditions would be necessary to ensure that features of archaeological interest are properly examined / recorded.
21. To protect the living conditions of local residents, conditions would be necessary to control hours of working during construction, the provision of the screening measures outlined above, and the trading hours of and cooking odours from the proposed commercial premises. A condition would also be necessary to ensure that the proposed biodiversity enhancement is implemented. To help provide an acceptable living environment for residents of the development, a condition to secure noise attenuation and ventilation would also be necessary. The approval and implementation of a scheme for the provision of fire hydrants would also be necessary in the interests of occupants' safety. Conditions to control off-site highways works, the position of access gates and the provision of on-site parking and manoeuvring space would be necessary in the interests of highway safety.
22. To promote sustainable modes of transport, conditions to secure the implementation of a Travel Plan and the provision of on-site electric vehicle charging points would be necessary. To provide certainty, to protect the

character and appearance of the area, and in the interests of highway safety, a condition would be necessary to secure the proposed refuse/recyclable storage facilities. A condition to limit water consumption rates per dwelling would be necessary to protect the environment. To protect the character and appearance of the area, a condition to maintain the proposed landscape works would also be necessary.

23. I conclude, for the reasons outlined above, that the appeal should be allowed subject to the identified conditions.

G D Jones

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Whipps, Solicitor, Holmes & Hills LLP	Instructed by Jo Hooley, St Edmundsbury Borough Council
He called ¹	
Marrianna Hall MSc(Hons)	Senior Planning Officer, St Edmundsbury Borough Council

FOR THE APPELLANT:

Christopher Young of Counsel	Instructed by Stephen Hinsley, Tetlow King Planning Ltd
He called ²	
Stephen Hinsley BA(Hons) MRTPI	Senior Director, Tetlow King Planning Ltd
John Stebbing	John Stebbing Architects Ltd
DipArch(Hons) RIBA	

INTERESTED PERSONS:

Charles Coldrey	Local Resident
Jill Anderson	Local Resident
David Nettleton	Borough Ward Councillor

DOCUMENT submitted at the Inquiry

- 1 Application for Costs by the Appellant against the LPA, dated 16 January 2018

¹ As there were no matters of dispute between the main parties by the time the Inquiry opened, Ms Hall was not 'called' as such but did contribute to the 'roundtable' session on planning obligations and conditions

² Both of the appellant's witnesses gave evidence in chief but were not cross-examined by the Council

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/E3525/W/17/3183051:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in complete accordance with the details shown on the following approved plans and documents, as received by the Council on 11 April 2016 *unless otherwise stated below*:
 - Dwg No 2057.05A Existing Site Plan
 - Dwg No 2057.06A Existing Site
 - Dwg No 2057.101C Proposed Ground Floor
 - Dwg No 2057.102B Proposed First Floor
 - Dwg No 2057.103B Proposed Second Floor
 - Dwg No 2057.103B Proposed Third & Fourth Floor
 - Dwg No 2057.104B Proposed Fifth Floor & Roof
 - Dwg No 2057.14C Proposed Sections
 - Dwg No 2057.15C Proposed Elevations
 - Dwg No 2057.17A Proposed Flat Types
 - Dwg No 2057.18A Proposed Visuals
 - Dwg No JSTEB 418/2-001 REV C-1 Concept Hard & Soft Landscape Proposals – Ground & 1st Floor
 - Dwg No JSTEB 418/2-002 REV A Concept Hard & Soft Landscape Proposals – Green Roofs
 - Dwg No 284/2015/SK-01 Proposed Surface Water Drainage Layout & Details
 - Application Form
 - Flood Risk Assessment and Drainage Strategy
 - Micro Drainage report (Porous car park) *received on 8 August 2016*
 - Micro Drainage report (Subbase storage) *received on 8 August 2016*
- 3) No development shall commence until the following components to deal with the risks associated with contamination of the site have each been submitted to and approved in writing by the local planning authority:
 - (i) A site investigation scheme (based on the approved Preliminary Risk Assessment within the approved Desk Study), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
 - (ii) The results of a site investigation based on (i) and a detailed risk assessment, including a revised Conceptual Site Model; and
 - (iii) Based on the risk assessment in (ii), an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete and arrangements for contingency actions. The plan shall also detail a long term monitoring and maintenance plan as necessary.
- 4) No occupation of any part of the development shall take place until a verification report has been submitted to and approved in writing by the local planning authority demonstrating the completion of the works set out in the remediation strategy approved under Condition 3(iii). The long term

- monitoring and maintenance plan approved under Condition 3(iii) shall be updated and be implemented as approved.
- 5) If during development contamination not previously identified is found to be present at the site then no further development (unless otherwise approved in writing with the local planning authority) shall be carried out until a remediation strategy has been submitted to and approved in writing by the local planning authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.
 - 6) No development shall commence until a scheme for surface water disposal has been submitted to and approved in writing by the local planning authority. Infiltration systems shall only be used where it can be demonstrated that they will not pose a risk to groundwater quality. The development shall be carried out in accordance with the approval details.
 - 7) Penetrative construction methods shall not be used unless otherwise previously approved in writing by the local planning authority. The development shall be carried out in accordance with any such approved details.
 - 8) No development shall commence until the implementation of a programme of archaeological work has been secured, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the local planning authority (LPA). The scheme of investigation shall include an assessment of significance and research questions and:
 - (i) The programme and methodology of site investigation and recording;
 - (ii) The programme for post investigation assessment;
 - (iii) Provision to be made for analysis of the site investigation and recording;
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - (v) Provision to be made for archive deposition of the analysis and records of the site investigation;
 - (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation; and
 - (vii) The site investigation shall be completed prior to development, or in such other phased arrangement, as approved in writing by the LPA.
 - 9) No buildings shall be occupied until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the local planning authority in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 8 and the provision made for analysis, publication and dissemination of results and archive deposition.
 - 10) Site demolition, preparation and construction works shall only be carried out between the hours of 08:00 and 18:00 Mondays to Fridays and between the hours of 08:00 to 13:30 Saturdays. In any event no site demolition, preparation or construction works shall take place on Sundays or Bank Holidays without the prior written consent of the local planning authority.
 - 11) The perforated metal mesh panels and the metal cladding with wire mesh on the southeast (rear) elevation of the building as shown on drawing no.

- 2057.14C shall be fully installed prior to any of the dwellings being first occupied and shall be retained thereafter as approved.
- 12) Prior to the first occupation of any of the dwellings hereby permitted biodiversity enhancement measures shall be installed in accordance with the details submitted with the application and as shown on drawing numbers JSTEB 418/2-001 REV C-1 and JSTEB 418/2-002 REV A unless alternative details are submitted to and approved in writing by the local planning authority prior to first occupation.
 - 13) No work of construction above slab level shall commence until details of noise attenuation and ventilation measures for the dwellings hereby approved have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in full prior to the dwellings to which they relate being first occupied.
 - 14) No work of construction above slab level shall commence until a scheme for the provision of fire hydrants has been submitted to and approved in writing by the local planning authority (LPA). No part of the development shall be brought into use until the fire hydrants have been provided in accordance with the approved scheme. Thereafter the hydrants shall be retained in their approved form unless the prior written consent of the LPA is obtained for any variation.
 - 15) No part of the development shall be occupied until details of the works to be carried out along the Tayfen Road frontage of the site within the public highway have been submitted to and approved in writing by the local planning authority. The approved works shall be implemented in full prior to the first occupation of any part of the development, including any necessary Traffic Regulation Order which forms part of the proposals. Thereafter the works shall be retained in the approved form.
 - 16) The areas within the site shown on drawing number 2057.101C for the purposes of manoeuvring and parking of vehicles shall be provided prior to the dwellings/commercial unit to which they relate being first occupied. Thereafter those areas shall be retained and used for no other purposes.
 - 17) Not less than three months prior to the first occupation of any dwelling, details of the contents of a Residents Travel Pack shall be submitted to and approved in writing by the local planning authority and shall include walking, cycling and bus maps, latest relevant bus and rail timetable information, car sharing information, personalised travel planning and a multi-modal travel voucher. Within one month of the first occupation of any dwelling, the occupiers of each of the dwellings shall be provided with the approved Residents Travel Pack. The Residents Travel Pack shall be maintained and operated as approved thereafter.
 - 18) The refuse and recycling bins storage areas shown on drawing number 2057.101C shall be provided in their entirety prior to the dwellings/commercial unit to which they relate being first occupied and shall be retained and used thereafter for no other purpose.
 - 19) Gates shall be set back a minimum distance of 5 metres from the edge of the nearest carriageway and shall open only into the site and not over any area of the highway.

- 20) The commercial unit hereby approved shall not be open for customers outside the hours of 06:00 to 23:00.
- 21) Prior to the commercial unit being brought into use for any Class A3 purposes, a ventilation system and system to control odours from any cooking process shall be installed in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. The details shall include measures to abate the noise from the systems and a maintenance programme for the systems. Thereafter the systems shall be retained and maintained in complete accordance with the approved details unless the prior written consent of the local planning authority is obtained for any variation.
- 22) No individual dwelling hereby approved shall be occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with for that dwelling and shall not be exceeded thereafter.
- 23) All planting shown within the approved details of landscaping shall be carried out in the first planting season following the commencement of the development, or within such extended period as may first be approved in writing by the local planning authority (LPA). Any planting removed, dying or becoming seriously damaged or diseased within five years of planting shall be replaced within the first available planting season thereafter with planting of similar size and species unless the LPA gives written consent for any variation.
- 24) The areas within the site shown on drawing no. 2057.101C for the purposes of manoeuvring and parking of vehicles shall be provided prior to the dwellings/commercial unit to which they relate being first occupied. Thereafter those areas shall be retained and used for no other purposes.
- 25) No work of construction above slab level shall commence until details of the provision of electric vehicle charging points to serve the dwellings have been submitted to and approved in writing by the local planning authority. The approved electric charging points shall be provided prior to the dwellings to which they relate being first occupied and shall be retained thereafter as approved.