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PLANNING SERVICES

9-3 NOV 2013

Appeal Decision

Site visit made on 23 October 2013

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 13 November 2013

Appeal Ref: APP/V2255/A/13/2197279

**Former RAF Mast Site, Courtenay Road, Dunkirk, Faversham, Kent
ME13 9LH**

- 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 Russell Cutmore against the decision of Swale Borough Council.
- The application ref no SW/11/1370, dated 27 October 2011, was refused by notice dated 8 February 2013.
- The development proposed is described on the application form as: 'Erection of a data storage facility (B8) and permanent historical exhibition (D1)'.

Formal Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in determining this appeal are the implications of the proposed development for:
 - the living conditions of neighbouring residents, with particular reference to privacy, light and outlook; and
 - objectives of securing sustainable development and protecting the countryside from non-essential development.

Planning Policy

3. The development plan includes certain policies of the Swale Borough Local Plan 2008 (LP) that have been saved following a Direction made by the Secretary of State. Although the Appellant's submissions make reference to policies found in the South East Plan 2009 (SEP), an Order to partially revoke this came into force on 25 March 2013. Consequently, the SEP policies cited no longer have effect.
4. Paragraph 215 of the National Planning Policy Framework (NPPF) advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. I find no significant conflict with the NPPF in respect of any of the saved LP policies cited insofar as they are applicable to this case. I will therefore give them full weight for the purposes of my decision.
5. The Appellant also makes reference to draft statements and policies in the emerging Revised Local Plan (June 2013) (RLP). However, having regard to paragraph 216 of the NPPF, the fact that this plan has yet to be the subject of

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an Examination in Public and an absence of information relating to unresolved objections in relation thereto tempers the weight that I am able to attach to these statements and policies.

Reasoning

6. The appeal site comprises the south-eastern part of a square compound that encompasses the Dunkirk Radar Tower and associated outbuildings, which in turn form part of the former RAF Dunkirk Chain Home Radar Station. The compound lies outside, but immediately adjacent to, the built up area of the village of Dunkirk as defined by the LP. The subject site is located to the immediate south of the tower, which is a Grade II listed building. The former Radar Station is a Scheduled Ancient Monument (SAM). However, this designation does not include the appeal site and takes in only the north-westernmost corner of the wider compound.
7. Planning permission is sought for the erection of a two storey building of modern design, to be positioned within 7 metres of the site's road frontage and 4 metres from the southern boundary with 7 Courtenay Road. It would accommodate a data storage facility on the ground floor, providing secure wireless data storage via the tower site and through high specification cabling available along the M2/A2 corridor. The first floor would house a permanent exhibition reflecting the site's wartime heritage and an associated teaching/seminar room. The scheme is presented as a means of generating a revenue stream sufficient to fund the maintenance of the listed tower.

Living conditions

8. I give little credence to the notion that the proposal would have significant adverse implications for the living conditions of those residing in the wider area by reason of increased site activity. A data storage facility of this kind would be relatively low key in terms of staffing requirements, whilst the level and nature of activity on the site could be controlled by means of a planning permission. Moreover, the exhibition/teaching element of the envisaged mixed use would be a somewhat specialist attraction unlikely to draw large numbers of visitors at any one time, as reflected by the Appellant's intention that viewing would be 'by appointment only'. Such arrangements could also be secured by condition.
9. My concern is focussed instead on the likely impact of the proposed building on the residential amenity of the occupiers of the neighbouring dwelling, No 7. This is a bungalow set a long way back from the road, such that it has a relatively small enclosed rear garden and a much larger front garden. Although the latter is partially visible from the public highway through the gateway to the property, it is largely screened from view by a high frontage hedge. It is readily apparent from the layout of the garden and the presence of decking and seating that it functions as the occupiers' primary external amenity area.
10. I am satisfied that the windows in the southern elevation of the building need not result in a loss of privacy to the neighbours. The Appellant advises that these would be set above eye level in relation to the first floor of the building and, although this has not been demonstrated by means of sections, it is nonetheless clear that measures such as obscure glazing and controls over the means of opening the windows could be applied if necessary. I also find that,

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as the proposal would be located to the north of No 7, its effect on light to that property would not be significant.

11. However, notwithstanding this, I find that neither the Appellant nor the Council's officers have paid sufficient regard to the likely effect of the appeal development on the amenity value of No 7's front garden, having focussed instead on the distance between the proposed building and the kitchen window in the side elevation of the dwelling. I agree that the effect of the proposal on the view through the latter, whilst certainly significant and negative, would not in itself give grounds for dismissing the appeal. Nonetheless, the resulting erosion of outlook from the property's principal external amenity area would be far more serious.
12. The part of the proposed building closest to No 7 would tower over the boundary hedge at an eaves height of more than 6 metres, yet would be less than 4 metres distant from it. Apart from the initial setback from the road, it would extend parallel to this boundary for the whole depth of the front garden. Having inspected the appeal site from this viewpoint, I find that this relationship would be severely harmful to the outlook presently available from No 7's principal external amenity area. The building would appear unduly oppressive and dominant and would greatly erode the enjoyment that could be derived from the use of the garden. Whilst I appreciate that the radar tower is not particularly neighbourly, its lightweight lattice structure and greater distance from No 7 nonetheless ensure that its impact on the occupiers of the latter is more muted.
13. The careful use of materials and existing vegetation, even if supplemented with additional planting, would not constitute adequate mitigation. Planting is, by its very nature, impermanent and could, at best, provide only a temporary screen. The fact that a well-established tree within the appeal site and close to the boundary would almost certainly be lost as a consequence of the proposal adds to my concern, albeit that this alone would not give grounds for dismissal. It would take some years for a replacement specimen to make a similarly valuable contribution to the appearance of the site and it is questionable whether there would be sufficient space between building and boundary to enable it to do so.
14. I conclude that the proposal would cause unacceptable detriment to the living conditions of the occupiers of 7 Courtenay Road by reason of loss of outlook from their primary external amenity area. It is therefore contrary to saved LP Policy E1.

Countryside and sustainability

15. The Council suggests that the location of the appeal site outside the defined built up area of the village renders the proposal unacceptable in principle and has negative implications for sustainability. However, this is a tenuous and somewhat spurious argument.
16. As previously indicated, the site immediately abuts the built-up area and this, necessarily, tempers concerns that might otherwise arise regarding the effects of development on the wider countryside or the drawing of vehicular traffic into the rural area in contravention of sustainability principles. In any event, in respect of the latter it must be borne in mind that the definition of sustainable development promoted in the NPPF encompasses a much wider range of

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considerations, including the protection of the historic environment and contributing to the economy, which the appeal proposal would help to fulfil. Indeed, a presumption in favour of sustainable development is inherent in the NPPF. I note that there is a bus service in close proximity, albeit described by the Council as infrequent, that would be likely to reduce reliance on the private car for transport. It is also pertinent that the site is under-utilised brownfield land which the proposal would help to bring back into active use. I therefore find no serious conflict with saved LP Policies SP1, SP3, SP5 or T5, draft RLP Policy CP1 or the NPPF in this particular regard.

17. I acknowledge that a data storage and exhibition facility does not necessarily demand a rural location. However, such a simplistic approach pays insufficient regard to the particular attributes of the appeal site, as the radar tower itself dictates the logic of the locational choice. The height of the tower is such that it provides a clear line of sight to London that would facilitate wireless data transfer. The scheme would also take advantage of the high quality underground fibre optical network that already serves the site. Moreover, it would not only highlight the historic role of a significant heritage asset but would also provide a means of funding its maintenance. The availability of an alternative site with similar attributes in the wider locality strikes me as most unlikely.
18. The Appellant builds a very strong case on this basis for departing from saved LP Policies E6, SP5 and SH1 and the NPPF in this regard and I am satisfied that there is no sound reason for taking issue with the arguments thus presented. Indeed, I find that there would be good reasons for the project to go ahead somewhere on this site even if the financially-based 'enabling' argument pursued by the Appellant were to be disregarded. I therefore conclude that the unique set of circumstances associated with the appeal scheme provides solid grounds for departing from locational policies in the development plan and the NPPF.
19. This being so, the proposal would not set a precedent for widespread development outside village confines to the cumulative detriment of the countryside or undermine sustainability objectives. Nonetheless, notwithstanding this conclusion, I consider that the harm to the living conditions of neighbouring residents significantly and demonstrably outweighs the benefits of the appeal scheme and that for this reason alone the proposal should not go ahead in its present form.

Other Matters

20. I have considered all the other matters raised. As previously indicated, the Appellant presents a credible case for taking advantage of the existing assets of the former RAF site and, whilst financial considerations are not in themselves determinative, there is much to be said for deriving income from the scheme which would help to maintain the listed tower. Having said this, I am not persuaded by the evidence before me that the appeal scheme is by any means essential to the wellbeing of the existing structure or that the attributes of the proposal, individually or cumulatively, override the importance of safeguarding the amenities of the neighbouring residents.
21. I am aware that the Appellant does not own the whole of the square compound in which the tower is located and acknowledge that this must, necessarily, impose restrictions on layout and design. However, this in itself is not a reason

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for setting aside other interests of acknowledged importance. In any event, it has not been shown that it would not be possible, by means of an alternative layout and/or different design, to accommodate a building within the parameters of the appeal site that would meet the Appellant's requirements yet safeguard the living conditions of the neighbouring occupiers.

22. The appearance of the proposed building is very much at odds with the conventional residential architecture found in the immediate vicinity. However, it is well-designed in itself and a residential-style pastiche would read as particularly odd in what is essentially an industrial-type setting dominated by the radar tower. The building would read primarily in relation to the utilitarian setting of the former RAF compound and, this being so, would be acceptable in visual terms. Indeed, it would enhance the setting of the listed building whereas a design more akin to that of a dwelling would appear incongruous and detract from this. I therefore find no serious conflict in this regard with saved LP Policies E1, SP2, SP5, E14 or E19, draft RLP Statement 9 or Policy CP7 or the NPPF.
23. The building would be too distant from the edge of the SAM to have an adverse effect on its setting. I am also satisfied that the specialist reports submitted by the Appellant address adequately the archaeological and ecological interests associated with the site and thus find no conflict with saved LP Policies E11, E16 or SP2 in this regard. Whilst I have noted the objections submitted by several local residents, activity associated with the proposal would not be of sufficient intensity to generate problems of highway safety, on-street parking or harm to the designated rural lane contrary to saved LP Policies T1, T3, T4, E1 or RC7. Other aspects of local concern, such as the effect of external lighting and hours of operation, could be controlled by conditions.
24. I have taken into account the support for high quality communications infrastructure and expansion of electronic networks found in the NPPF, on which the LP appears to be silent, and have no reason to consider the proposal contrary to saved LP Policies E9 (landscape protection), B2 (new employment), RC1 (helping to revitalise the rural economy) or U3 (renewable energy) or draft RLP Statement 4 (tourism). I find saved LP Policies E24 (alterations and extensions) and C1 (community facilities), although referred to by the Council, to be of limited relevance to my decision. I am also aware that the planning application received the support of officers of the Council and a recommendation of approval. However, neither these nor any other matters are of such significance as to outweigh the considerations that have led to my conclusion on the issue of living conditions.

Conclusion

25. For the reasons given above I conclude that the appeal should be dismissed.

Alan Woolnough

INSPECTOR