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## Appeal Decision

Hearing held on 1 and 3 December 2015

Site visit made on 3 December 2015

**by Susan Heywood BSc(Hons) MCD MRTPI**

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

**Decision date: 11 February 2016**

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**Appeal Ref: APP/X1355/W/15/3127823**

**Dovecot Hill, South Church, Bishop Auckland, County Durham DL14 6TA**

- 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 Gleeson Developments Ltd. against the decision of Durham County Council.
  - The application Ref DM/14/02040/FPA, dated 8 July 2014, was refused by notice dated 19 February 2015.
  - The development proposed is the erection of 61 no. 2, 3 and 4 bedroom two storey dwellings with associated works.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by Gleeson Developments Ltd against Durham County Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues in this case are as follows:
  - i. whether the development would be compatible with nearby industrial uses;
  - ii. the impact of the loss of the former allotment site on the character and appearance of the surrounding area having particular regard to policy BE14 of the Wear Valley Local Plan;
  - iii. whether the development of the appeal site would comply with the locational principles set out in the National Planning Policy Framework (the Framework).

### Reasons

#### *Policy context*

4. The development plan includes the Wear Valley Local Plan 1997 (the local plan). Policy BE14 seeks to protect open spaces which contribute to the character and amenity of the area. Policy RL2 states that the loss of allotments will not be allowed unless a number of criteria apply. It is agreed by the parties that both policies are consistent with the Framework and I concur.
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However, the Council conceded that policy RL2 is not applicable in this instance because the appeal site, although former allotments, has not been in that use for some time.

5. The Council have recently withdrawn the County Durham Plan (the emerging plan) following a Judicial Review which quashed the Inspector's interim findings. The appellants consider that the core principles in that plan, which sought high housing numbers, have not altered. Nevertheless, the emerging plan is now once again at its early stages of development. The Council are in the process of updating their objectively assessed need for housing. The outcome of that is not yet known. Against this background, I consider that very little weight can be given to the emerging plan and I note that the Council agree with this view.

*Proximity to industrial uses*

6. The site is located to the east of an industrial estate. Two of the units close to the boundary with the proposed dwellings are occupied by engineering firms. The operations at these businesses involve outdoor working including the use of fork-lift trucks to load ovens and pressure cleaning of metal machinery. Shot-blasting takes place within a metal container housed in the yard adjoining the main building at one of the businesses. At the site visit bangs, clatters, bleeps of the fork-lifts, occasional loud voices and the sound of a generator and pressure-washer were all clearly audible from within the appeal site.
7. The appellants have submitted daytime and night-time noise assessments in order to establish the noise levels at the nearest proposed properties and any required mitigation. The assessments concluded that the measured levels were such that a noise barrier of 2.5 metres in height would be required along part of the western site boundary. Acoustic glazing for windows facing the western boundary of the site was also recommended.
8. The surveys demonstrate that, with a 2.5 metre high acoustic barrier in place, the noise levels within the gardens of the nearest properties could be reduced to below 55dB  $L_{Aeq}$  16hr. This would be a level below which the majority of the adult population will be protected from becoming seriously annoyed according to WHO guidelines<sup>1</sup>. It would also comply with the standards in BS 8233<sup>2</sup> for outdoor areas. However, the levels in the garden areas would still be in excess of 10dB higher than the measured background noise level of 39dB  $L_{A90}$  1hr. The advice in BS 4142<sup>3</sup> indicates that this is likely to result in a significant adverse impact, although I note that this is dependent upon context and the compliance with the other mentioned standards must also be considered.
9. Following discussion at the hearing, the appellants' noise consultant conceded that a higher specification of glazing than recommended by the noise surveys, together with suitable ventilation, would be required for westerly facing windows. With this in place indoor noise levels during the daytime would achieve the BS 8233 recommended level of 35dB  $L_{Aeq}$  16hr. Assuming that the noise levels during any night-time working which may take place in the future are the same as the measured levels during the daytime, recommended night-

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<sup>1</sup> World Health Organisation Guidelines for Community Noise

<sup>2</sup> BS 8233:2014 Guidance on sound insulation and noise reduction for buildings

<sup>3</sup> BS 4142:2014 Methods for rating and assessing industrial and commercial sound

time levels of 30dB  $L_{Aeq}$  8hr could also be achieved in bedrooms, with the increased specification of glazing, provided that windows remain closed.

10. At the hearing the owners of two of the adjoining businesses, Steelpro Services Ltd and Teescraft Engineering Ltd, set out their working practices and future, seemingly well-advanced, expansion plans. It seems clear that the noise reports did not take account of some of the activities at the adjoining units. I heard that the shot-blasting activities commenced some 4 months ago at Steelpro and a new oven has been installed which will add a third flue stack to the roof of the lean-to structure closest to the site boundary. In addition, I heard that Teescraft undertake work at the week-end which involves cutting metal outdoors. They are also currently in the advanced stages of negotiating a contract which will require night-time working.
11. The noise surveys were undertaken for limited periods of time on five separate days. They were undertaken before the shot-blasting activity commenced at Steelpro and the daytime survey states that the main noise source was from activity at Steelpro Services. Thus it would appear that the outdoor activities at Teescraft were not captured in the monitoring. No monitoring was undertaken at a week-end when Teescraft stated that they had been carrying out outdoor working. In addition, the night-time noise level has not captured any noise from the flare linked to the use of the third oven during the night. This process has not yet begun, although the oven has been installed. The appellants' noise consultant conceded that a more in-depth survey, covering at least one 24-hour period, would have been helpful for a site of this nature.
12. On the basis of the above, I am not satisfied that the noise monitoring has taken account of all of the noise sources at nearby industrial premises. It was conceded for the appellants that the noise levels in the garden areas of the nearest proposed properties would be on the cusp of the recommended levels in BS 8233 and the WHO Guidelines. I have also noted that noise levels in the gardens would fall into the category where BS 4142 suggests that there would be a significant adverse impact.
13. It is entirely possible that other noisy activities at the industrial premises, which have not been captured in the noise surveys undertaken to date, would result in readings above the levels noted in these surveys. If this occurred, it is likely that noise would exceed the recommended levels and further mitigation may therefore be required over and above that already suggested. This may result in a need to alter the layout of the dwellings in order to reduce the impact to acceptable levels.
14. It was suggested that any need for additional noise monitoring could be dealt with by imposing a suitable condition requiring further assessment. However, the appellants' noise consultant agreed that should this demonstrate that changes in layout were required in order to mitigate and reduce the effects of noise to a minimum, a condition would not be an appropriate way of dealing with the matter.
15. The effects of not adequately assessing the noise levels from the adjoining industrial premises, and therefore potentially underestimating the level of mitigation required, would be likely to lead to a poor living environment for future residents of those properties nearest to the noise generating uses. This would be likely to result in complaints from future occupiers of the properties which could curtail future activities at the industrial premises. I heard that

- restrictions placed on their activities could seriously hamper the ability of nearby industrial occupiers to attract future business.
16. The Noise Policy Statement for England states that noise should be considered alongside other relevant issues and should not be considered in isolation. The proposed development would undoubtedly result in economic, social and environmental benefits. However, in the absence of adequate noise mitigation the development would also be likely to result in harm to each of these strands of sustainable development. In economic terms, it may impact on existing established businesses. This may result in social impacts through a possible reduction in the availability of jobs. In environmental terms the development may produce a poor living environment, which itself can have social consequences for those affected.
  17. In addition to the proximity of the site to existing industrial premises, some of the proposed dwellings would be close to a vacant parcel of land to the north eastern edge of the industrial estate. In accordance with policy I4 of the local plan, the industrial estate is classed as a Prestige Industrial Site. The local plan states that the area is needed to provide high quality, strategically located major industrial sites for B1 and B2 uses. The lack of current constraints on the type of B2 uses which could locate on that land is likely to be a significant positive factor in encouraging inward investment. Policy I4, and the protection of the industrial estate, is in accordance with the Framework's aims to encourage economic growth.
  18. I heard that this vacant parcel of land is owned by Teescraft Engineering Ltd and, whilst there are no current plans for that site, it may be used in the future for expansion of their premises. The introduction of a noise sensitive use such as housing in close proximity to that land would be likely to result in constraints on the future development of that site. This is likely to result in a reduction in the attractiveness of that site for an investor and, at its worst, it could lead to the blighting of that land. At the very least it is likely to result in design compromises and noise controls being placed on any future developer.
  19. Whilst there are existing residential properties, and one extant planning permission, to the north west of this vacant plot, none are as close to that plot as the properties proposed in this appeal. I accept that these properties may place constraints on existing business premises to the north east of Longfield Road (and to the west of the vacant plot). I am not aware of the full background to the granting of planning permission in those cases. However, I did note that, at the time of the site visit, the premises to the north of the industrial estate were not generating the same levels of noise as those adjoining the eastern boundary. That is not to say that the inter-relationship of these uses will not cause difficulties in the future. But, the existence of these dwellings (and extant permission) is not a reason to compound the situation by creating difficulties in other locations on the industrial estate. Indeed, I heard that new properties close to industrial premises to the north west of Longfield Road have led to complaints and difficulties in obtaining planning permission for a subsequent expansion to business premises nearby.
  20. The Framework seeks to avoid such circumstances where existing established businesses have unreasonable restrictions placed on them because of changes in nearby land uses since they were established. It also aims to ensure that investment in business is not over-burdened by the combined requirements of

planning policy expectations. In addition, the Planning Practice Guidance states that noise needs to be considered when new developments would be sensitive to the prevailing acoustic environment.

21. I accept that the Council's Environmental Health Officers considered the noise monitoring to have been adequate in this case and note that the application was recommended for approval by Council Officers. However, it is clear that the concerns of nearby occupiers regarding the proximity of the appeal site to nearby industrial uses was a factor in the Council's ultimate refusal of planning permission. Having regard to the evidence submitted and the discussion which took place at the hearing, I consider that those concerns are well-founded.
22. I conclude therefore that the proximity of the proposed dwellings to the nearby industrial estate would be likely to lead to a conflict between the uses which would harm the living conditions of future residents, lead to potential constraints on existing businesses and reduce the attractiveness of the industrial estate to future investors. This harm is a negative factor to be weighed in the overall balance of considerations in this case.

#### *Loss of open space*

23. I heard that the Council's Open Space Needs Assessment identifies a shortfall of allotments. However, the land is not in public ownership and, although it was formerly leased as allotments, the use ceased some four years ago. From what I heard it seems that there is little prospect of the land returning to allotment use and the Council did not seek to argue that there was any reasonable likelihood of this.
24. Policy BE14 states that open spaces which contribute to the character and amenity of the area will be protected against development. The site is a generally flat, open area mainly colonised by grass and scrub. It is bounded by a road, Dovecot Hill, to the south and by informal open space running alongside the River Gaunless to the north. Industrial units lie to the west and residential properties to the east.
25. From the open space and footpath to the north of the site the land slopes steeply down to the river's edge. The open space on the site is not highly visible from this location due to the changes in level and scrub on the northern site boundary. From further north, the land is seen as an undeveloped 'gap' site within an otherwise built-up envelope. It is not seen as an integral part of the riverside open space.
26. The site is largely screened from Dovecot Hill by a line of trees along the frontage. With the exception of these trees, it does not provide any significant amenity benefit when viewed from the road. The plans show the retention of the majority of the frontage trees. Vegetation also screens the site to a large extent from the footpath to the west, between the site and the industrial area. Much of this vegetation would also be retained in the proposed development.
27. I accept that the existing residents of properties to the east value the open space on the site and would prefer to look out over this than to see it developed as a housing estate. However, that can be said for very many existing occupiers who currently live adjoining an undeveloped area. That does not mean that the area has an intrinsic value in itself in terms of the character or amenity of the area.

28. The surrounding area has a mixed residential and industrial character. There is a wide network of informal open space close to the site. Indeed the Council confirmed that the Open Space Needs Assessment identifies an overprovision of Amenity Open Space in this area. This informal open space includes the land to the north of the site, adjoining the river, which is much more important to the character and amenity of the area than the appeal site.
29. My assessment is that the site is not particularly attractive in its own right and neither is it highly prominent in the surroundings. The land has the appearance of a 'gap' site in an otherwise built-up envelope. It does not contribute to any meaningful degree to the character or amenity of the area and its loss would not cause harm in these respects, particularly bearing in mind the amount of more valuable open space in close proximity.
30. I acknowledge that the site provides a buffer between the industrial uses and the existing residential properties. However, I am not satisfied that there is a need for such a buffer as there is no suggestion that noise from the industrial premises is significant at the boundary with the existing properties to the east. In terms of its impact as a visual buffer, I have addressed the visual contribution made by the site above and conclude that this is limited given the amount of more important open space nearby.
31. On the basis of the above, I conclude that the proposal would not harm the character or amenity of the area and would not therefore conflict with policy BE14. The loss of open space does not therefore weigh against the appeal.

*Location of the site*

32. The site is located within the built up area of Bishop Auckland which has a full range of services and facilities. There are bus stops nearby on Rosemount Road and I heard that a good service exists to Bishop Auckland and beyond. The primary school is accessible using the footpaths through the open space to the north. I accept that these would be less attractive to use during the winter months, but it is not significantly further using the footpaths alongside the roads.
33. The Framework seeks to ensure that patterns of growth are managed to make the fullest possible use of public transport, walking and cycling. I note that the site has been given a suitable classification within the Council's Strategic Housing Land Availability Assessment (SHLAA) and it is notable that, in recommending approval for the application, the Officer's Committee Report stated that the site constitutes a sustainable, accessible location when assessed against the Framework and emerging local plan. The Council's witness also accepted that the site is in a reasonably accessible location.
34. The Council now say that there are more accessible sites available for housing than this one. That may be so, but the Council has accepted that there is no 5 year supply of deliverable housing sites. Therefore, it is clear that the supply of sites in more accessible locations is insufficient to meet the demand for housing. Under those circumstances, I consider the appeal site, which is within the built-up area and identified in the SHLAA as being suitable for development, is in an appropriate location for housing development. This would be in accordance with the Framework's aims to boost significantly the supply of housing.

35. I conclude on this matter that the development of the appeal site would comply with the locational principles set out in the Framework.

*Other matters*

36. The Council accept that, in the absence of an agreed objectively assessed need for housing, they cannot demonstrate a 5 year supply of deliverable housing sites. The appellants state that they focus on building low cost homes for people on low incomes in areas of industrial decline and social and economic deprivation. Although no affordable housing is to be provided in the scheme, the appellants state that their homes are priced so as to be affordable to 90% of local couples who are in full-time employment. The Council does not dispute this. The provision of such homes in an area where there is no 5 year housing land supply is a significant benefit of the scheme.

37. I also accept that the site's development would increase security for the adjoining businesses as there would be a greater degree of surveillance than at present. However, this benefit would be limited due to the remaining presence of the footpath and the 2.5m high acoustic barrier on the boundary of the site which would preclude surveillance from the ground floor of the dwellings. The proposal would also provide a supply of potential employees for adjoining businesses and this would be of some limited economic benefit.

38. The appellants have submitted a S106 agreement and Deed of Variation to secure a monetary contribution towards off-site open space and/or recreational facilities and the implementation of a Training and Employment Management Plan (TEM). The Council have provided information to demonstrate that the former would comply with the Community Infrastructure Levy Regulations in respect of pooled contributions and with paragraph 204 of the Framework. The site is located in an area where there is an identified deficiency in local play space and the development would increase the need for such facilities. Accordingly I consider that, if I were to allow this appeal, this part of the agreement would be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development proposed. I acknowledge that the TEM would provide an economic and social benefit in that it encourages training and use of a local workforce and proposes other community initiatives. Nevertheless, planning obligations are sought only to overcome unacceptable impacts of development. The TEM does not seek to overcome an unacceptable impact. Consequently, that aspect of the agreement is not necessary and I can have no regard to it in the overall balance.

39. Local residents raised concern regarding the impact of the development on highway safety. I noted that Dovecot Hill becomes congested during the evening peak times, when many of the industrial premises appear to close at the same times. However, from what I saw, these peaks are short lived and the traffic appeared to dissipate quickly. This is borne out in the appellants' highways evidence, which concludes that the road capacity is sufficient to accommodate the development without causing significant highway impacts. I note too that the Council's Highway Officers did not consider that there would be unacceptable conflict with industrial and commercial traffic and concluded that it would not lead to severe cumulative highway impact. The proposal would comply with the Framework in this regard and this matter does not therefore provide weight against the development.

40. I have noted above the concerns of local residents regarding the loss of the open space to housing development. However, the proposed dwellings would be located a sufficient distance away from existing properties, and at such an orientation, so as to ensure that they would not cause significant harm to their living conditions through a loss of privacy or by their overbearing nature.

### **Planning Balance and Conclusions**

41. In accordance with paragraph 49 of the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development. The proposed development would comply with local plan policy BE14 and would therefore be in accordance with the development plan in this respect. Paragraph 14 of the Framework states that the development should therefore be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
42. The provision of housing in an area where the supply of housing is lacking is a significant benefit of the scheme. This would contribute to the economic and social aspects of sustainability. Increasing the availability of potential employees in close proximity to the industrial estate would also have a limited degree of economic benefit. The provision of funds through the S106 agreement for the upgrading of local play areas would have some environmental benefits. There would also be a limited benefit of increasing surveillance and therefore security of adjacent business premises.
43. However, the development as currently proposed does not adequately address the existing noise climate in order to ensure that proposed residents are not adversely affected by the activities at the adjoining industrial premises. Failure to do so is likely to cause significant harm to the living conditions of those properties immediately adjacent to the noisy uses. As a result, the existing businesses are likely to be hampered in their ability to carry out their day to day activities and to expand without additional burdens, in the form of noise controls, being placed upon them. The proposal is also likely to reduce the attractiveness of the vacant plot of land to the north east of the industrial estate to an inward investor. Consequently, the proposal would result in dis-benefits in environmental, economic and social terms. When considered having regard to the Framework as a whole, these factors lead me to conclude that the development should not be considered to be sustainable development. Furthermore, these adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
44. Having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Susan Heywood*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Sarah Worthington	Airedon Planning and Design
Nick Treby	Spectrum Acoustic Consultants
David Pearson	Westgate Consulting
Chris Dodds	Gleeson Developments Ltd

### FOR THE LOCAL PLANNING AUTHORITY:

Steven Pilkington	Senior Planning Officer Durham County Council
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### INTERESTED PERSONS:

Kevin Smith	Steelpro Services Ltd
Patricia Pemberton	County Councillor
John Bradley	Teescraft Engineering Ltd
Fredy Bourdais	Plastics Mouldings Northern Ltd
Elizabeth Sowerby	Land owner
Arthur Sowerby	Land owner
Alan Hutchinson	Local resident
Mr Lloyd	Local resident
Mr Savage	Local resident

## **DOCUMENTS**

- 1 Council's notification of hearing and circulation list
- 2 Appellants' list of witnesses
- 3 Appeal ref: APP/X1355/W/15/3005376 submitted by Council
- 4 Development plan statement from Cllr Neil Foster, Cabinet member for economic regeneration, submitted by Appellants
- 5 CIL compliance statement, submitted by Council
- 6 Suggested wording for noise condition, submitted by Appellants