



Appeal Decision

Site visits made on 4 March 2016 & 8 April 2016

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 31 August 2016

Appeal Ref: APP/W4515/W/15/3137995

Land at Backworth Business Park, Ecclestone Close, Station Road, Backworth, North Tyneside, NE27 0RX

- 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 The Northumberland Estates against the decision of North Tyneside Council.
 - The application Ref 12/00637/FUL, dated 11 April 2012, was refused by notice dated 12 May 2015.
 - The development proposed is the change of use of existing vacant employment land to residential (Class C3) and the construction of 65 residential units (including 13 affordable homes) with associated road infrastructure, structural landscaping, gardens, and public amenity space.
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Procedural Matters

1. The originally submitted planning application was made for *the construction of 67 residential units (including 17 affordable homes)*. However, it is evident on the basis of the submissions that during the course of the planning application the overall quantum of development was altered to that described within the description of the appeal proposals as set out above. Corresponding amendments to the layout of the development were also made.
 2. It is also evident from the Schedule of submitted plans and documents that a number of further revisions were made to the proposed development during the course of the planning application, and that a number of additional technical documents and submissions were presented to the Council in order to address outstanding queries and consultation responses. These submissions included Development and Land Valuation Appraisals, a Vegetation Survey and Ecological Assessment, as well as further Noise Assessments to supplement the originally submitted document, and amendments to the proposed layout of the development to incorporate alterations to landscaping and noise mitigation measures. On the basis of the submitted evidence, these submissions and documents have been addressed by the parties and my decision has therefore also taken them into account.
 3. I note that a Draft Section 106 Legal Agreement was submitted during the course of the planning application, and was duly considered by the Council in reaching its decision on the proposed development. A completed legal agreement has been received during the course of the planning appeal which addresses the need for a contribution towards local highway works, the provision of an off-site grassland site, and the provision, securing and phasing of affordable housing as part of the proposed development.
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4. Further to the undertaking of the accompanied visit to the appeal site and adjoining land and premises on 4 March 2016, it was agreed with the parties that a further unaccompanied site visit would be undertaken. This visit took place early on the morning of 8 April 2016 to allow a further assessment of the existing noise environment and activities related to the neighbouring industrial unit occupied by Keenan Processing Ltd.

Decision

5. The appeal is dismissed.

Background and Main Issue

6. The appeal site is comprised of an area of land to the east of the B1322 and occupies an area of approximately 4.44 hectares. The land is open in character and forms part of the undeveloped element of the Backworth Business Park. Access to the site from the B1322 is provided from Ecclestone Close, with existing workshops located close to the road frontage. A further two-storey building adjacent to the appeal site and Ecclestone Close is occupied as offices, with a neighbouring industrial building and plot accommodating Keenan Processing Limited (Keenan's), who undertake fruit and vegetable wholesaling. On the boundary to the north of the site is residential development on Cleverley Drive, Telford Close, and Shrewsbury Drive.
7. On the basis of the evidence placed before me, the Development Plan is comprised of the saved policies of the North Tyneside Unitary Development Plan 2002 (the UDP). In determining the planning application, the Council noted that the site was allocated for new employment uses in accordance with saved Policy LE1/3(10) of the UDP. However, as a consequence of the conclusion of an Employment Land Review undertaken in 2015 that North Tyneside possesses sufficient employment land to meet its needs until 2037, Backworth Business Park was indicated to be 'retained/released' for mixed use development, with the Council accepting the release of the undeveloped land for non-employment uses.
8. Further to the conclusion regarding the release of the site from employment use, the Council's evidence also indicates that it is unable to demonstrate a five-year supply of deliverable housing sites. Therefore in accordance with the requirements of paragraph 49 of the National Planning Policy Framework (the Framework), the proposal should be considered in the context of the presumption in favour of sustainable development, with the policies for the supply of housing considered to be out-of-date.
9. In reaching its decision, the Council has not raised any objections on the basis of issues related to contamination, biodiversity, archaeology, flood risk, character and appearance, or highway matters. However, the Council has expressed concern over the relationship between the proposed residential dwellings and the existing industrial unit at Keenan's. In particular, regard has been had to the impact of noise and disturbance from the industrial unit on the proposed adjoining residential uses, as well as the potential for consequential unreasonable restrictions to be placed upon the operation of the industrial unit through the introduction of a nearby noise sensitive use. It is noted by the Council that Keenan's factory benefits from an unrestricted planning permission in respect of working hours.

10. As a consequence, the main issue is whether the living conditions of the future occupiers of the proposed development would be harmed, having regard to noise and disturbance, and whether the proposals would place unreasonable restrictions on the adjoining industrial use.

Reasons

11. The appellant submitted a Noise Assessment prepared by Noise & Vibration Associates (NVA) and dated 15 February 2012 with the planning application, with further iterations prepared and submitted during the course of the application on 28 January & 11 March 2015. The submissions have been prepared as a means of assessing the impact on the proposed residential development of noise sources in the area, including road traffic noise and noise from nearby industrial units on Backworth Business Park. In addition submissions were made during the course of the planning application on behalf of Keenan's by Apex Acoustics, which provide further measurements and assessments of noise emissions from the industrial unit as well as a critique of the work undertaken by NVA on behalf of the appellant.
12. Whilst it is clear from the submissions that there are various noise sources within the locality of the appeal site, it is common ground that the focus is on the principally assessed noise generating activity relating to Keenan's industrial unit. On the basis of the submitted evidence, and my own observations of the site on 8 April 2016, the operations associated with Keenan's use can be expected to commence as early as 0400 hours with the arrival of refrigerated delivery vehicles and large commercial vehicles (LCVs). Furthermore, at the time of my site visit and not uncommon on the basis of the submitted evidence, activities at the unit itself commenced from 0510 hours with the movement of a fork-lift truck within the yard area, with associated noise related to the movement of pallets for the loading of vehicles, and equipment, as well as activities within the unit.
13. It is evident from the technical submissions of the appellant and the interested party that whilst there is not a dispute over the broad source of noise or that it is the early morning hours which are most critical, a clear disagreement exists over the methodology, accuracy and specific detail of the measurements, and whether such assessments should be considered to be representative of the existing situation. In this respect, I note that whilst the appellant has concluded that the proposed residential development would be subject to industrial noise of the order of 56 dB(A) , the interested party has countered with a much higher assessed figure of 71 dB(A) . Whilst I would share some of the appellant's concerns regarding the latter measurement, particularly in light of the absence of an existing background of noise complaints from residents bordering the appeal site, I note that both sets of measurements would significantly exceed the background noise level of $35 \text{ dB(A)} LA_{90}$, which the Council accepts to be representative of the background noise level for the area at the key times.
14. The appellant has accepted the need for noise amelioration and mitigation, and being mindful of *World Health Organisation (WHO)* guidance, I note the recommended maximum noise levels for bedrooms and external areas would be exceeded without such measures. These are highlighted within the technical appeal submissions as; ensuring habitable room windows do not face directly towards Keenan's; the provision of screening in the form of an acoustic

- landscape buffer and fencing to attenuate noise in outdoor areas and at ground floor level; and the incorporation of Building Envelope Sound Insulation and Sound Attenuated Ventilation to the primary affected residential units.
15. I have carefully considered the impact of the proposed mitigation and whether it would provide an appropriate basis to safeguard the living conditions of future residents. From a technical standpoint, I am broadly satisfied that it would be possible to incorporate mitigation measures which would provide a technical solution for the reduction of external noise levels to within acceptable parameters at times when outdoor areas are likely to be in use. Furthermore, having regard to the evidence placed before me, I consider it reasonable to conclude that the ameliorative measures would also provide a technical basis to ensure that internal noise levels remained within acceptable parameters for bedrooms of *30 dB (A)* with no exceedance of the *L_{max} 45 dB (A)*, in accordance with WHO guidelines.
16. Despite the conclusion on the technical submissions, I have a significant concern over the impact that the proposed mitigation of the noise would have on the living conditions of future occupiers. The incorporation of sealed window units and mechanical ventilation would address the technical aspects of the issue, but the inclusion of such would undoubtedly diminish the quality of the living conditions available to the affected properties, a point which is conceded by NVA in their February 2016 submission in support of the appellant's statement. In this respect I would agree with the Council that it would not be unreasonable for future occupiers of all dwellings to expect to be able to open windows to naturally ventilate their properties without the need for, or reliance upon, technical and mechanical assistance to maintain a reasonable standard of living conditions. I have been particularly mindful in this regard of the national Planning Practice Guidance which advises that it is undesirable for material changes in behaviour to be caused by noise, such as the need for keeping windows closed for most of the time. I consider this to be particularly the case given the family nature of much of the proposed accommodation that would be affected.
17. The industrial nature of the disturbance and in particular the sudden occurrences of bangs, reversing beepers and other noises, would undoubtedly have a great impact on the living conditions of residents were windows to be open during the early morning. In this respect, I would concur with the Council that it would be likely that there would be complaints regarding noise generation from Keenan's factory, and consequentially restrictions on the business would be considered as necessary. Furthermore, the introduction of a neighbouring residential use would undoubtedly place a disproportionate restriction on any future plans that Keenan's may have to extend the operation within the site, which I note includes a substantial area of open and unused land, albeit that I accept that there is no evidence of such an intent at this point. In this respect, I am mindful of paragraph 123 of the Framework which states *that planning policies and decisions should aim to recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.*
18. I have had regard to the appellant's contention regarding the inappropriateness of Keenan's relying on the public highway to load vehicles. However, whilst I do

not consider this to be an issue of any particular significance for the appeal in highway terms, given the layout of Keenan's site I am satisfied that even were vehicles to be loaded within the site that it would not have any significant impact on the relationship between the activities associated with the site and the proposed residential use.

19. I have noted the appellant's references to examples of residential development in other Council areas where the incorporation of such ameliorative measures has previously been accepted. In respect of the site on Land at East Bank, Ouseburn, Newcastle, I note that the submissions do not clarify the land use circumstances around the initial acceptance of the principle of residential development on the site, with the appendices merely serving to highlight the acceptance of such technical measures within a far denser urban context. Furthermore, in respect of the other sites within Northumberland, Newcastle and South Tyneside, the information submitted is in the form of technical reports in support of the development, which solely emphasise the contention of the various consultants that such a technical solution would be possible, rather than providing context of confirmation as to the circumstances of the decision-making. I also note from the consultation response of the Council's Environmental Health team that the hours of operation and frequency of disturbance would not be comparable in nature to the appeal site.
20. In reaching my conclusions, I have carefully considered whether the proposed mitigation and amelioration, secured through the use of conditions, would result in a satisfactory resolution of the outstanding issue. However, I am not persuaded that the proposed incorporation of the measures detailed above would result in an acceptable standard of living conditions for future occupiers, and that the proposed residential use of the appeal site would be likely to result in unreasonable restrictions being placed on the nature of the operations of the existing business at Keenan's. The proposal would therefore not accord with saved Policies H5 and H11 of the UDP, which require proposals for housing development be approved where the proposal is acceptable in terms of its impact on adjoining land uses. Furthermore, the proposed development would conflict with paragraph 123 of the Framework as the change in the land use would be likely to place unreasonable restrictions, in terms of noise and disturbance, on any potential expansion of Keenan's established business.

Other Matters

Other Possible Harm

21. In determining this appeal, I have a statutory duty, under Sections 66(1) & 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the impact of the proposal on the special architectural and historic interest of the setting of the nearby heritage assets. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
22. In this regard, I have considered the impact of the development on Dairy Cottage, a Grade II Listed Building to the south-west of the appeal site, and the adjacent Backworth Conservation Area to the north and west, which the junction between Ecclestone Close and B1322 sits within. I am mindful that both the setting of Dairy Cottage and the conservation area have in the past been defined by the presence of the buildings and infrastructure related to

Backworth Colliery on the appeal site, which was indicated as being operational from the early 19th Century until the cessation of mining in the late 1970's, with the removal of buildings, railway lines and sidings taking place in the 1990's. However, I am satisfied that Dairy Cottage, which the appeal site is located within the setting of, would not be adversely affected by the proposal due to the intervening distance and the physical separation of the appeal site, and that the proposed residential development would not result in an uncharacteristic form of development in the context of the conservation area. As a consequence, I am satisfied that the significance of the heritage assets would not therefore be diminished by the proposal as it would not detract from the setting, and would not therefore conflict with the policies of the Framework which seek to conserve and enhance the historic environment.

23. In addition to the above and the main issues, interested parties have also raised concerns over several other matters, including highway safety, the impact of the proposed development on biodiversity, the potential for loss of privacy for neighbouring occupiers, and the setting of a precedent for similar development.
24. In respect of highway safety and traffic congestion, I am mindful that the appellant submitted a Transport Assessment, which highlighted the need for small-scale local improvements to the highway network to mitigate the impact of the traffic generated by the development, but that no objection was raised by the Highway Authority or the Council. On the basis of the submitted evidence, I am also satisfied that the impacts of the proposed development can be mitigated in this respect.
25. Turning to biodiversity, the proposals would see the loss of a part of the Eccles Grassland Extension Local Wildlife Site (LWS), which was designated for its species rich grassland. However, on the basis of the evidence and recent surveys it would seem that the previous value of the grassland as habitat has significantly diminished to the extent that it would no longer meet the designation criteria. Nevertheless, the appellant has proposed off-site mitigation in the form of an alternative site as an enhancement to replace the loss of the existing habitat. Whilst the surveys undertaken did not reveal any protected species which would be directly affected by the development, I note that the proposed development would incorporate measures to enhance the biodiversity value of the site.
26. On the basis of the evidence placed before me and my observations on the appeal site itself, I am satisfied that the proposed development would relate acceptably to existing residential development on adjoining land, with the layout of the wider development and intervening distances resulting in a satisfactory layout. Furthermore, I note that it is argued that allowing this appeal would set an undesirable precedent for similar developments. However, whilst no comparable sites where this might apply have been suggested, I envisage that the Council would be successfully able to resist any development which could be shown to be likely to cause demonstrable harm, and this has not therefore been a factor in my decision-making.

Benefits of the scheme

27. The proposed development would result in the contribution of 65 dwellings towards the existing shortfall of a five-year supply of deliverable housing sites within the Council's area. This would accord with the underlying objective of

Chapter 6 of the Framework, which is to seek and significantly boost the supply of housing, and ensure choice and competition in the market for land for housing. Whilst I accept that the appeal site has not been allocated as a housing site, the site occupies previously developed land in an accessible location with regards to its access to services, facilities and public transport. The proposed development would also incorporate 13 affordable dwellings, which would be secured by a Section 106 Agreement, and for which I am satisfied the evidence of need has been satisfactorily demonstrated, in accordance with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the Framework. The proposal would therefore make a positive social contribution of additional housing within the area, which would weigh in support of the proposed development.

28. Further to the additions to the local housing market, the proposed development would be likely to provide some limited economic benefit as a result of the opportunities for the creation of employment from the construction of the dwellings, as well as providing some support to existing local services.
29. The reuse of previously developed land would attract moderate weight in support of the proposed development, with the proposed provision of enhanced grassland habitat to enhance biodiversity also clearly weighing in support of the proposed development.
30. I have also had regard to the appellant's stated intent to incorporate within the design and construction of the proposed dwellings measures to make efficient use of resources by meeting the Council's 10% renewable target through a combination of solar water heating and/or photovoltaic panels. This would accord with the objectives of Chapter 10 of the Framework addressing the challenge of climate change.

Planning Balance and Conclusion

31. In reaching my conclusion, I have been mindful of the Council's inability to demonstrate a five year supply of deliverable housing sites, and therefore, having regard to paragraph 49 of the Framework, that policies related to housing supply should be considered to be out-of-date and that the proposed development should therefore be considered in the context of the presumption in favour of sustainable development. In this respect, I recognise that paragraph 14 of the Framework advises that where a development plan is absent, silent or relevant policies are out-of-date, that permission should be granted for development proposals unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
32. Given the current position with regard to the development plan, and the absence of a five year supply of deliverable housing sites, considerable weight in support must be afforded to the provision of 65 new dwellings to meet housing needs within the area and the country. The redevelopment of a previously developed 'brownfield' site would also weigh in support of the proposals. I also consider that the proposals would provide some limited economic benefit as a result of the creation of employment from the construction of the dwellings, and support to existing local services.
33. I am satisfied that the appeal site is situated within an accessible and sustainable location for new development, with access to public transport.

Furthermore, I am satisfied that the proposal would provide an enhancement to the biodiversity interests in the area. However, I must attach substantial weight to the harm which would be caused to the living conditions of future occupiers having regard to noise and disturbance, and as a consequence the unreasonable restrictions that would be likely to be placed on the operation of the existing business at Keenan's, contrary to the Development Plan and the economic and environmental roles of sustainable development as set out within the Framework.

34. Overall, and having regard to all other matters raised and the economic, social and environmental dimensions of sustainable development set out in paragraph 7 of the Framework, I conclude that the scheme does not represent sustainable development. Overall, I therefore conclude that the harm likely to be caused by the proposal would outweigh the benefits of the proposed development, and that for the reasons given above, the appeal should be dismissed.

M Seaton

INSPECTOR

Richborough Estates