



Appeal Decision

Hearing held on 10 November 2016

Site visit made on 10 November 2016

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 12 December 2016

Appeal Ref: APP/R3325/W/16/3152706

Land off Crewkerne Road, Chard, Somerset

- 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 C G Fry and Son Limited against the decision of South Somerset District Council.
 - The application Ref 14/04399/FUL, dated 25 September 2014, was refused by notice dated 25 April 2016.
 - The development proposed is the erection of 72 dwellings with vehicular access and supporting infrastructure.
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Decision

1. The appeal is dismissed.

Procedural matter

2. A properly completed section 106 agreement has been submitted, the contents of which were discussed at the hearing. It secures financial contributions towards the provision of on-site affordable housing, local infrastructure and services. Its terms are addressed in more detail within the decision.

Main Issue

3. The main issue in this appeal is whether the appeal scheme comprises sustainable development as defined in the National Planning Policy Framework ('the Framework'), having regard to;
 - whether the location of the proposed development would comply with the development plan;
 - whether the proposed development would provide acceptable living conditions for future occupiers with regard to noise and disturbance;
 - whether the proximity of the proposed houses to Numatic International Limited would result in unreasonable restrictions placed upon the business;
 - whether play facilities for the young children of future residents would be reasonably accessible; and,
 - housing land supply, the accessibility of services and facilities from the site and the social, economic and environmental effects of the proposal.

Reasons

Location of development

4. The development plan for the district consists of the South Somerset Local Plan which was adopted in 2015. Its settlement strategy is to focus development on Yeovil and expand market towns such as Chard. The Inset Map for Chard contained within the Local Plan identifies that the appeal site falls within one of several larger areas of land that have been allocated for strategic growth as part of the Chard Eastern Development Area. Policy PMT1 of the Local Plan identifies that in these areas employment, housing, schools, neighbourhood centres, sports and open space uses will be supported. In providing housing the proposed development would therefore be one of several uses that would comply with the development plan.
5. Reference has been made to the Chard Regeneration Plan and the Chard Regeneration Framework Implementation Plan which were prepared in 2010. These documents show housing on the appeal site. However, they form part of the evidence base used in the preparation of the Local Plan, rather than detailed proposals that the development plan requires future growth to be carried out in accordance with. As a result, this and the proof of evidence referred to in relation to an earlier appeal¹ does not alter my finding that housing is one of several uses of the appeal site which would comply with the development plan.

Noise

6. The appeal site is a field of pasture that abuts part of the northern boundary to Numatic International Limited. The company manufactures commercial cleaning equipment and operates throughout the day and night, seven days a week. The National Planning Policy Framework ('the Framework') is an important material consideration. At paragraph 123 it states, amongst other matters, that in relation to new development noise should be avoided that gives rise to significant adverse impacts on health and quality of life².
7. Policy EQ2 and EQ7 of the Local Plan have been cited by the Council in relation to this issue. Policy EQ2 seeks high quality design that takes account of site specific considerations. Such considerations, to my mind, include the noise environment and its effect on future residents. As a result, it is consistent with the approach of the Framework. Policy EQ7 seeks to control development that would generate noise, rather than control development that would be introduced close to an existing noisy land use - as is the case with the appeal proposal. Whilst policy EQ7, as far as it goes, is consistent with the Framework it is therefore not relevant to the appeal proposal.
8. As the appeal site adjoins the boundary of Numatic International Limited the potential for noise that could give rise to significant adverse impacts on health and quality of life exists. The operation of the business generates a variety of different noises. Sources include machinery within buildings, external plant and the movement of vehicles, such as lorries and a large number of fork lift trucks that are used on the site.
9. Along the northern boundary of Numatic next to the appeal site is a storage area serviced by fork lift trucks and two workshops where powered handtools, including angle grinders, are used. Next to this area are a series of large rectangular buildings whose long sides face the boundary with the appeal site.

¹ Mr Gunn, Appeal reference APP/R3325/A/13/2209680 & 2203867

² Planning Practice Guidance, advises that noise at or above the significant observed adverse effect level (SOAEL) will have a significant adverse effect on health and quality of life (Paragraph 004 Reference ID: 30-004-20140306).

- Building 8, the nearest building, has been used as a warehouse but in plans that are currently underway it will be used for manufacturing.
10. Further to the west of the appeal site along its northern boundary, away from the manufacturing and warehousing areas, are the rear gardens of houses along Nursery Gardens. They face the company's offices and its car park. Here, despite preventing fork lift truck operations within this part of the site in the evenings and at weekends to minimise noise, the company has received complaints about noise and disturbance in recent years that are far in excess of those formally made to the Council.
 11. It was common ground between the parties at the hearing that in relation to living conditions within the proposed dwellings the most appropriate standards are those contained within BS8233:2015 'Guidance on Sound Insulation and Noise Reduction for Buildings', together with 45dB LAmax to protect against intrusive noise events of short duration. Exceedance of these standards it was stated would exceed the significant observed adverse effect level (SOAEL). I have no reason to disagree with that position.
 12. Externally, in the gardens of the proposed houses BS8233 uses an equivalent continuous sound level of 55 dB LAeq, measured over the 16 hour period of 07:00 hours to 23:00 hours, as the daytime limit. However, in my judgement use of this limit is appropriate to more anonymous noise sources, such as road traffic, and does not properly allow for the prominence of short duration and distinct noises associated with a factory such as Numatic. Such noises include, for example, reversing beepers attached to vehicles and horns sounded by fork lift trucks as they enter buildings. As a result, I agree with Numatic's noise consultants that in order to take account of such factors the SOAEL measured over this time period for gardens should be 50 dB LAeq and that the lowest observed adverse effect level should be 45 dB LAeq.
 13. In order to reduce noise levels within the majority of the appeal site, a row of terraced houses parallel to the southern boundary is proposed. Predicted noise levels on the basis of the existing operations and currently anticipated near future operations at the Numatic site have been agreed³. These show that the presence of the terrace would be insufficient to prevent sound levels within the rear gardens of the terrace and other proposed houses to the north exceeding the SOAEL of 50d(B)LAeq. Along the western side of the appeal site even higher levels in excess of 65 d(B)LAeq would occur within some garden areas. A significant amount of the predicted noise would occur as a result of noise breakout from the roofs of the manufacturing buildings. Consequently, acoustic fencing along the western side of the appeal site would not reduce noise levels along the most of the rear of the terrace. Within the garden areas of those houses along the western side of the site such fencing would only reduce levels by approximately 5d(B).
 14. During the warmer months of the year gardens may be in use from early in the day to late in the evening for outside eating, relaxation, socialising and play. As such they are of high amenity value. Therefore, whilst within the proposed dwellings, subject to appropriate construction and facing windows being kept closed, acceptable noise levels could be achieved, outside unacceptable living conditions would occur within the garden areas of many of the proposed properties. On the basis of the predicted noise levels and the mitigation

³ Document 3 submitted at the hearing.

measures that were discussed, I am not persuaded that such harm could be prevented by condition.

15. The proposed development would therefore result in unacceptable living conditions for future occupiers of the proposed development contrary to policy EQ2 of the Local Plan and the first bullet of paragraph 123 of the Framework.

Effect of the proposed residential development on Numatic International Limited

16. The third bullet point of paragraph 123 of the Framework states that decisions should 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 use since they were established. It was agreed at the hearing that where such circumstances exist that this bullet point is a policy of the Framework that restricts development.
17. Numatic moved to its current location in Chard in 1990. Since then its production has increased eight fold and £100 million has been invested in the business. With nearly 1,000 staff the company is Chard's largest employer and provides skilled jobs that pay above the local average wage. It is therefore of significant importance to the local economy.
18. The company has plans to increase turnover by 30% in five years. This will involve locating warehousing at the western end of the site and concentrating manufacturing at the eastern end of the site to the south of the appeal site.
19. Based upon the modelled noise levels across the appeal site of existing and currently anticipated near future operations, if the proposed development went ahead it is likely that future residents would complain about noise and that such complaints would be justified. This would result in the business being required to take measures to reduce noise levels such as relocating manufacturing machinery and plant and preventing the movements of lorries and fork lift trucks close to the appeal site. Such measures would restrict the operation of the business and could well inhibit its development. Given the very competitive nature of the market this would place avoidable restrictions on the business that could adversely affect its prosperity and limit its future development and growth.
20. I therefore find that the proposal is likely to result in unreasonable restrictions being placed upon Numatic International Limited, contrary to the third bullet point of paragraph 123 of the Framework.

Play facilities

21. The proposed development consists of 72 dwellings, the vast majority of which would be houses with two or more bedrooms. Such units would be suitable for families. As a result, in accordance with policy HW1 of the Local Plan, adequate outdoor play space and equipped play provision should be provided in a location that adequately services the new development.
22. At appeal stage, as part of the submitted section 106 agreement, it is proposed that an area of soft landscaping within the site shown on the application plans should be provided as public open space. This amendment would not alter the amount of housing, its layout or the scale of development and the nature of concerns of those who would normally have been consulted are clear from consultation on the proposal. As a consequence, I do not consider that the interests of those who would normally have been consulted would be

prejudiced if I took this amendment into account. My consideration of the case and decision is therefore based upon it.

23. The area of public open space would be provided in the south eastern corner of the site and would not be overlooked by nearby housing. Nevertheless, in my assessment, at approximately 100m in length and up to 15m in width it would provide reasonable on site play space provision. Furthermore, the section 106 agreement provides funding for equipped play space which could be used to provide such facilities within this space.
24. Taking all these matters into account, I therefore find that the proposed development would be adequately serviced by an outdoor play area. As such it would comply with policies HW1 and EQ2 of the Local Plan which seek good design and access to adequate outdoor play space and equipped play provision.

Housing land supply

25. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered to be up to date in situations where a local authority cannot demonstrate a five year housing land supply, and that housing applications should be considered in the context of the presumption in favour of sustainable development. In circumstances where relevant policies are out of date, paragraph 14 of the Framework advises that planning permission should be granted, unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
26. It was agreed at the hearing that the Council has a housing land supply of four years two months. Consequently, an undersupply of housing exists in the District. However, the site is located on land that the Local Plan has identified as being suitable for a variety of uses, including housing and employment. As a result, residential development of the site is acceptable in principle and the proposal is not contrary to policies relevant to the supply of housing. In terms of other policies relevant to determination of the appeal, those relied on by the Council in its reasons for refusal, consistent with a core planning principle of the Framework, seek to ensure a well-designed development and a good standard of residential amenity. As a result, these are qualitative policies and it was agreed by the appellant at the hearing that they were not relevant to the supply of housing land. As such, the absence of a five year supply of housing land does not mean that they are out of date. Given that the development plan is also not absent or silent, the tilted balance in paragraph 14 therefore does not apply to the proposed development.

Sustainable development

27. The Framework sets out a presumption in favour of sustainable development. The policies of the Framework as a whole constitute the Government's view of what sustainable development means in practice. There are three dimensions to sustainable development: environmental, economic and social.
28. In terms of the environment, with regard to noise from Numatic International Limited the proposal would result in unacceptable living conditions for future residents of the proposed development. The appeal site is within a reasonable distance of Chard town centre and the range of services and facilities that it has to offer. It is therefore in an accessible location. Redevelopment of the site offers the potential to enhance biodiversity on the site. However, on the basis of the submitted ecological report the scope for enhancement is limited.

29. The proposed development would be located within the setting of a small building that forms part of the Grade II listed Second World War Anti-invasion structures of the Taunton Stop Line. The significance of this structure is historical. In the exercise of planning functions, the statutory test in relation to a listed building is that special regard shall be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. The building is located within the grounds of Numatic International Limited next to a workshop and the boundary with the appeal site. The proposed development, with the front elevation of one end of the terraced row of houses facing the listed building, would be set back sufficiently not to adversely affect its setting. The setting and significance of this building would therefore not be harmed.
30. Socially, 72 new dwellings would be provided of which 20% would be affordable. I recognise that there may well be a shortage of affordable housing in the District. The provision of 14 affordable dwellings as part of the appeal scheme would leave the community better off in this regard and is therefore a benefit of the scheme.
31. Economically, the proposal is likely to result in restrictions being placed upon the operation of Numatic International Limited which could inhibit its future operation and growth. As the largest employer in the town operating in a highly competitive market I attach significant weight to this consideration. The proposal would increase employment during construction and fitting out, although by its nature this would be short lived. The development would also attract a New Homes Bonus and increase council tax receipts which is a benefit to which I attach some weight. The scheme by increasing the local population would also boost local spending power. However, in the context, according to the Local Plan, of an existing Chard population of 12,703 this boost would be small.
32. The site is in an accessible location where housing and other forms of development are in principle supported by the Local Plan. The proposed development would result in some social, economic and environmental benefits which I have described above. However, the positive aspects of the proposal are insufficient to outweigh the environmental harm in relation to noise pollution, and the resulting potential economic harm from the placing of unreasonable restrictions on the operation of Numatic International Limited, together with the conflict with the Local Plan and national policy contained within the Framework in relation to these matters.
33. I therefore conclude, based upon the overall balance of considerations, that the proposal would not accord with the development plan as a whole and would not be a sustainable development.

Conclusion

34. For these reasons that I have given, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
35. As I noted as a procedural matter, at the request of the Council the appellant has submitted a properly completed section 106 agreement. The tests in paragraph 204 of the Framework and regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended) apply to planning obligations. In this case however, as the appeal is to be dismissed on its substantive merits, it is not necessary to assess the agreement against these requirements.

Ian Radcliffe

Inspector

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Mr Coles	WYG (Planning)
Mr Stephens	Battens Solicitors
Mr Mann	WYG (Air, noise and light)

FOR THE LOCAL PLANNING AUTHORITY:

Mr Norris	South Somerset District Council
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INTERESTED PERSONS:

Mr Glover	Squire Patten Boggs (UK) LLP, representing Numatic International Limited
Mr Smith	Numatic International Limited
Mr Dursley	Acoustical Control Consultants, engaged by Numatic International Limited
Mr Collman	Acoustical Control Consultants, engaged by Numatic International Limited

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appendix 1 to the Statement of Common Ground – Schedule of appeal plans and documents
- 2 Addendum Statement of Common Ground
- 3 Agreed predicted noise levels and resulting noise contour plans
- 4 Chard Regeneration Plan (2010)
- 5 Chard Regeneration Framework Implementation Plan (2010)
- 6 Community, Health & Leisure planning obligation contribution calculations & Community Infrastructure Levy Regulations compliance statement
- 7 Section 106 agreement
- 8 Numatic International Limited suggested noise condition