



Appeal Decision

Inquiry held on 12 and 13 February 2013

Site visit made on 13 February 2013

by Julia Gregory BSc (Hons) BTP MRTPI MCMI

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

Decision date: 4 April 2013

Appeal Ref: APP/W3710/A/12/2176750 Midland Road, Nuneaton, Warwickshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Shibl - Reliant Building Contractors Ltd against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 030803, dated 24 March 2011, was refused by notice dated 22 March 2012.
 - The development proposed is the erection of 84 houses.
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Preliminary Matters

1. The Inquiry was adjourned to enable the appellant sufficient time to submit a completed Unilateral Undertaking (UU). That document was signed on 18 February 2013 and was then formally submitted. The Inquiry was closed in writing on 4 March 2013.
2. The site map had been omitted in error from the UU. This was, exceptionally, accepted after the close of the Inquiry.
3. The UU provides for a financial contribution of £116,915 index linked towards the provision of public open space in the vicinity of the site. It also provides for a further viability assessment to be carried out at 50% completion of the development to determine whether the development would be viable enough to support the provision of a contribution towards affordable housing at that time. If so, a financial contribution would be provided to the Council in accordance with a stated formula.
4. I shall consider this UU further in my decision in the light of the requirements of the Community Infrastructure Regulations 2010 (CIL).
5. The application is in outline, but only landscaping would be reserved for future determination.
6. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Decision

7. The appeal is allowed and planning permission is granted for the erection of 84 houses at Midland Road, Nuneaton in accordance with the terms of the application, Ref 030803, dated 24 March 2011, subject to the conditions in Annex A.

Main Issues

8. The Council did not oppose the layout and elevation details of the scheme. Having considered all the matters raised, including the impact of the dwellings on neighbouring residential properties, I consider that those matters are acceptable.
9. The main issues on which I shall concentrate are whether the development makes adequate provision for affordable housing and for public open space.

Reasons

Affordable housing

10. Saved Nuneaton and Bedworth Local Plan (LP) policy H3 indicates that 25% of new housing should be affordable. It seeks to achieve this by allowing the Council to negotiate its provision on sites of 15 dwellings or more over 0.5 hectares. The site comprises some 2.44 hectares and the development would comprise some 84 dwellings. Therefore the policy is applicable.
11. There is also an Affordable Housing Supplementary Planning Document (SPD) that provides guidance on the implementation of LP policy H3. LP policy Env14 seeks a high standard of design that complies with SPD.
12. The National Planning Policy Framework (the Framework) supports the creation of sustainable, inclusive and mixed communities that provides for affordable housing where the need is identified.
13. It is not disputed that there is a housing need in the area. The Council's Housing Strategy 2010-2015 identifies that some 495 affordable homes are required each year to meet the Council's identified need. Furthermore, there are some 6444 households registered for housing, with 2067 households in significant housing need, and 30 families in Bed and Breakfast and temporary hostel accommodation.
14. Based on completions in the last 10 years, the 25% policy provision would not achieve the affordable housing requirement. There is a significant problem with under-delivery of affordable homes in the Borough. The Council intends to revisit this issue in its future local plan preparation but that is at an early stage and therefore has limited weight.
15. For 84 houses, some 21 affordable homes should be provided if the full 25% were to be provided. That is not a fixed percentage because it would be for negotiation. The appellant is proposing no

affordable homes. There would however be a mix of sizes of dwellings. 28 two bedroom homes would contribute to the provision of lower cost homes in the town. Nevertheless, these would be for sale rather than for rent and the latter comprises the majority of the affordable housing need.

16. The Affordable Housing SPD includes advice on the approach that should be taken when the 25% affordable housing provision would render the development unviable. It sets out the evidence that the applicant should provide on viability.
17. The Framework identifies that affordable housing policies should be sufficiently flexible to take account of changing market conditions over time. Furthermore, paragraph 173 of the Framework seeks to ensure that the scale of obligations and policy burdens should not be such that the ability to develop sites viably is threatened.
18. The Government is pursuing legislation to allow the re-negotiation of affordable housing schemes required by planning obligations where these have resulted in stalled developments. This is aimed at getting more homes built even if it leads to a reduction in the number of affordable homes.
19. The appellant has provided a robust assessment on the viability of the scheme and its lack of ability to provide any affordable housing at this time. This uses the Three Dragons Development Appraisal Toolkit.
20. Because the local housing market is weak, with low values for newly constructed dwellings and relatively high construction costs, the scheme produces negative residual value if development costs from the RICS Building Costs are applied and all the appellant's assumptions are accepted. I am satisfied that it is an acceptable approach to use RICS Building Costs since actual building costs can only be judged when the developer undertakes the work. There is no indication that contact with other social landlords would produce a different result in the price that would be paid for affordable dwellings. The details for the social landlords contacted were provided via the Council.
21. The Council's Land and Property Manager assessed that the scheme would have a negative land value of £350, 000, assuming a developer's profit of 15% using the appellants assumptions. The residual value for the whole of the site according to the Statement of Common Ground would be only some £37,000 if the Council's assumptions were to be followed.
22. This would not produce a strong incentive to develop the site and therefore the site would not come forward. This does not mean that the site might not come forward if variables were to change, such as the amount of profit that would be envisaged, lower construction costs or if higher sale prices could be achieved for the dwellings. Nevertheless, the supply of 21 affordable houses on the

site would significantly undermine the viability of the scheme at this time on the basis of these assessments.

23. The appellant has through the provisions of the UU agreed to submit a revised viability appraisal upon completion of 50% of the dwellings. In the event of viability being established, the appellants would pay to the Council a deferred contribution amounting to the aggregate sum remaining after deduction of both the developers profit at 15% and the agreed sum of £580,000 which constitutes the existing use value, not exceeding any amount properly due under the policy. This would be spent on new or additional provision of affordable housing or the maintenance or improvement of existing units.
24. This would be effective in ensuring that any changes in circumstances would be accounted for. The Council confirmed that they were content with the provisions of the UU and that there were schemes on which the funding could be spent. In addition, £1100 would be paid as a monitoring fee. Given that substantial work would be involved in assessing revised viability, that fee would be modest and reasonable.
25. I consider that the UU fulfils the statutory tests in regard to CIL Regulation 122. It is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to the scale and kind of development.
26. The Framework is seeking to boost significantly the supply of homes. There is not a five year supply of housing land locally and this would provide a substantial number of new homes in a sustainable location, providing a mix of dwellings on a brownfield site. In all the circumstances, I conclude that the development makes reasonable provision for affordable housing that complies with the Council's SPD and the Framework.

Public open space

27. A key part of the Government's aim of promoting healthy communities is to provide access to high quality open spaces and opportunities for sport and recreation, which can make an important contribution to the health and well-being of communities. Saved LP policy H6 seeks appropriate provision for increased demand on amongst other matters sport and play facilities and public open space. This is consistent with the Framework.
28. The application as originally submitted included no on-site provision for public open space. However, it was amended to include two areas of open space at the entrance to the site in order to separate dwellings from the adjacent waste transfer station. This would act as a green buffer to help protect living conditions.
29. These open areas would be at the entrance to the site, would be adjacent to estate roads, and would not be ideally situated for play

provision being adjacent to a waste transfer station. I consider that this land would provide predominantly a landscaping feature and that the development would require further provision of public open space.

30. The Council states in its Residential Design Guide that it does not expect on-site provision to be made for sites of less than 200 dwellings, preferring instead to require contributions to be pooled for public open space elsewhere locally. This is because that number of houses is considered by the Council to be insufficient to fund in itself an equipped children's play area. The Council quoted a figure of £2670.15 as being required per dwelling as a contribution. This is based on actual costs identified in Appendix B of a report to the Council's Cabinet on 1 September 2010.
31. Nevertheless, at the Inquiry the Council identified that some of the elements which make up the contribution per dwelling would not be appropriate to include because these elements already exist at Stanley Road recreation area. That would be the nearest play area, being some 300m from the site. This is where the money would be likely to be spent. Leaving out some elements that were not necessary would enable the per house cost to be significantly reduced to some £1392 per property, resulting in a total figure of £116,915, substantially less than had previously been suggested. The UU would make this contribution, index linked on completion of 50% of the dwellings.
32. The area is lacking in adequate facilities for childrens' play, and Stanley Road is poorly equipped. The area is deprived with high levels of obesity and it performs poorly against national mortality rates. The 84 dwellings, albeit that some would only have two bedrooms, would generate a significant demand from children for such facilities. Some of the properties have small gardens which would also increase pressure on the use of public open space. The contribution would address the additional demand on the inadequate local public open space.
33. Given the contribution that the provision of adequate open space makes to sustainable communities, I consider that the contribution would be justified. It would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related to the scale and kind of development.
34. That the Council does not have a five year housing land supply and that the scheme would provide much needed housing within the area is acknowledged. Housing applications should however be considered in the context of the presumption in favour of sustainable development. The social role of sustainable development seeks to support strong, vibrant and healthy communities.
35. Although the viability of the scheme at the present time is marginal, there has been a substantial reduction in the amount of

the contribution to make it comply with the CIL Regulation 122. In addition, the payment of the contribution at 50% completion also helps viability.

36. Whilst I understand the issues in connection with viability and its effect on delivery, the provision of adequate open space is an integral part of the development in terms of its sustainability and should be provided. Without it the development would not be sustainable or provide acceptable living conditions for future residents. It would also place additional demand on inadequate local facilities to the detriment of existing local residents.
37. The adverse impacts would in those circumstances significantly and demonstrably outweigh the benefits against the policies of the Framework as a whole, and specific policies in the Framework would indicate that development should be restricted.

Conditions

38. Various conditions were suggested by the Council that were discussed at the Inquiry. I have considered the conditions against the advice in DOE Circular 11/95: *The Use of Conditions in Planning Permissions* and altered them as necessary.
39. In accordance with the advice in DCLG: *Greater Flexibility for Planning Permissions*, a condition requires the development, other than that subject to reserved matters approvals, to be carried out in accordance with the approved plans.
40. Approval of details of materials, levels and boundary treatment are required in the interests of the character and appearance of the area. Maintenance conditions for shared areas and landscaping are required in the interests of the character and appearance of the area. I have altered the timing of landscaping, because it would be more appropriate to have an approved timetable rather than 12 months given the size of the site.
41. There have been concerns raised about drainage but I am satisfied that these can be resolved by conditions. The conditions suggested are unnecessarily detailed since details are to be submitted and approved and I have omitted one of them. Full details are to be approved and implemented.
42. Various conditions are required in the interests of highway safety to ensure satisfactory access. A condition is required to ensure satisfactory off road parking and bin storage.
43. Contamination should be properly investigated and any found should be remediated, in the interests of the health of future residents. Noise attenuation measures and air quality measures should be incorporated in the interests of future residents living conditions.
44. An archaeological scheme will ensure that any historical interests remaining on the site are properly assessed.

- 45. Bat and bird boxes should be incorporated, and mitigation provided for any protected species found are required, in the interest of the ecology of the area.
- 46. Several conditions are required to control construction activities in the interests of neighbours' living conditions.

Conclusions

- 47. For the reasons given above, and having considered all other matters, I conclude that the appeal should be allowed.

Julia Gregory

Inspector

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Wendy Davies White	Solicitor
She called	
Claire Lucas	Principal Planning Officer
Jane Grant	Strategic Housing and Communities Manager
Ian Wilson	Land and Property Manager
Paul Daly	Parks and Countryside Officer

FOR THE APPELLANT:

Jeremy Phillips	of Counsel
He called	
Andrew Golland	Three Dragons (AG) Ltd
Mark Jackson	Mark Jackson Planning

DOCUMENTS SUBMITTED TO THE INQUIRY

- 1 Opening on behalf of the Appellant
- 2 Planning for Housing - House of Commons Library report by Louise Smith 29 January 2013
- 3 2 x draft Unilateral Undertakings
- 4 Closing submission of the Local Planning Authority
- 5 Closing on behalf of the appellant
- 6 Costs application on behalf of the appellant
- 7 Unilateral Undertaking dated 18 February 2013

ANNEX A – CONDITIONS

- 1) Details of the landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the reserved matters.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule 1.
- 5) No development shall commence until full details and samples of materials proposed to be used in the external parts of any building have been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved details.
- 6) No development shall commence until full details of the boundary treatments, including new walls and fences, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the boundary treatment to that plot has been carried out in accordance with the approved details.
- 7) No development shall commence until full details of the site levels and finished floor levels have been submitted to and approved in writing by the local planning authority. No construction work shall be carried out other than in accordance with the approved details.
- 8) No development shall commence until full details of the drainage to the site, including all surface water and foul sewers and drainage to all hardstandings, have been submitted to and approved in writing by the local planning authority. No construction work creating surface water run off shall be carried out and no dwelling shall be occupied until the required drainage has been provided in accordance with the approved details.
- 9) No development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved scheme has been implemented in accordance with the approved details.
- 10) No development shall commence until full details of the provision of car parking, and manoeuvring areas, including surfacing, drainage, levels and lighting have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the areas have been laid out in

accordance with the approved details. Such areas shall be permanently retained for the purpose of parking and manoeuvring of vehicles, as the case may be.

- 11) The development hereby approved shall not commence until a contaminated land assessment and associated remedial strategy has been submitted to, and agreed in writing by the local planning authority. The approved remediation works shall be completed on site, in accordance with a quality assurance scheme, agreed as part of the contaminated land assessment. If during implementation of the development, contamination is encountered which has not previously been identified, the additional contamination shall be fully assessed and a specific contaminated land assessment and associated remedial strategy shall be submitted to and agreed in writing by the local planning authority before the additional remediation works are carried out. The agreed strategy shall be implemented in full prior to completion of the development hereby approved. On completion of the agreed remediation works, a closure report and certificate of compliance, endorsed by the interested parties shall be submitted to and agreed in writing by the local planning authority.
- 12) No development shall commence until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved details.
- 13) Notwithstanding the submitted plans, no development shall commence until full details of the bin storage and parking court 2 has been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved details.
- 14) The development shall only be constructed in accordance with the noise attenuation measures outlined within the *Environmental Noise and PPG24 Assessment* prepared by Three Spires Acoustics (received 09/11/2011, referenced CJI-I/ENA//2011/31, version V4.0 Revision).
- 15) No development shall commence until full details of the acoustic fencing/brickwork wall specification, glazing/facade/roof specification and ventilation systems required by the *Environmental Noise and PPG24 Assessment* have first been submitted to and approved in writing by the local planning authority. The approved acoustic fencing/brickwork wall specification, glazing/facade/roof specification and ventilation systems shall then be installed in accordance with the approved details prior to the first occupation of any of the residential units. The approved acoustic fencing/brickwork wall specification, glazing/facade/roof and ventilation systems shall then only be maintained and/or replaced in accordance with the approved

details and shall not be removed without the prior written approval by the local planning authority.

- 16) No development shall commence until full details of bat and bird bricks and where they will be installed have been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved details.
- 17) No development shall commence until details of measures (including type, method of operation and control of use) to ensure that mud and debris will not be deposited on the highway as a result of construction traffic leaving the site have been submitted to and approved in writing by the local planning authority. The development shall then only be carried out in accordance with the approved details.
- 18) No dwelling hereby permitted shall be occupied until the estate roads, including footways, have been laid out and constructed in accordance with the details approved in writing by the local planning authority.
- 19) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas and shared parking areas, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development. The landscape management plan shall be carried out as approved.
- 20) The details required by condition 1 shall be carried out within a timetable submitted to and agreed in writing by the local planning authority and shall be subsequently maintained in the following manner: Any tree or plant (including any replacement) which, within a period of five years from the implementation of the scheme, dies, is removed or becomes seriously damaged or diseased, shall be replaced in the next planting season with another of a similar size and species unless the local planning authority consents in writing to any variation.
- 21) If protected species are identified on any part of the site, no development shall commence on that part of the site unless and until a working design, method and timetable to mitigate any undue adverse affects on the species involved has been submitted to and approved in writing by the local planning authority. No development shall be carried out other than in accordance with the approved details.
- 22) The development shall only be constructed in accordance with the mitigation measures outlined within the *Air Quality Assessment* prepared by Accon UK (received 25/03/2011, referenced A0630 Version 1). No development shall commence until full details of the ventilation system and maintenance of this as required by the *Air Quality Assessment* has first been submitted to and approved in writing by the local planning authority. The approved ventilation system shall then be installed in accordance with the approved details prior to the first

occupation of any of the residential units. The ventilation system shall then only be maintained in accordance with the approved details and should not be removed without the prior written approval of the local planning authority.

Richborough Estates

SCHEDULE 1 – APPROVED PLANS

5290/NU/001A

5290/NU/011U

5290/NU/012G

5290/NU/014B

5290/NU/020A

5290/NU/021A

5290/NU/022A

5290/NU/023A

5290/NU/024B

5290/NU/027

5290/NU/028

5290/NU/030A

5290/NU/031

5290/NU/032

5290/NU/033

5290/NU/034

5290/NU/036A

5290/NU/039

5290/NU/040

5290/NU/041

5290/NU/042

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