



Appeal Decision

Hearing held on 26 June 2013

Site visits made on 28 January and 26 June 2013

by M Middleton BA(Econ) Dip TP Dip Mgmt MRTPI

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

Decision date: 12 August 2013

Appeal Ref: APP/T3725/A/12/2186381

Land at Cape Road, Lower Cape, Warwick, CV34 5GZ

- 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 Mayfair Properties Midlands Ltd against the decision of Warwick District Council.
 - The application Ref W/10/0160, dated 12 February 2010, was refused by notice dated 25 May 2012.
 - The development proposed is mixed use development for sixteen residential properties and six nursery employment type units with associated access and parking.
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Decision

1. The appeal is allowed and outline planning permission is granted for mixed use development for sixteen residential properties and six nursery employment type units with associated access and parking on Land at Cape Road, Lower Cape, Warwick, CV34 5GZ in accordance with the terms of the application, Ref W/10/0160, dated 12 February 2010, and the plan submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Mayfair Properties Midlands Ltd against Warwick District Council. This application is the subject of a separate Decision.

Procedural matters

3. The application is in outline with all matters apart from the access reserved for subsequent approval. In accordance with the amendments to the Town and Country Planning (Applications) Regulations made in 2006 and brought about by the implementation of the Planning and Compulsory Purchase Act 2004, the proposal is accompanied by a Design and Access Statement, together with a site layout plan and a drawing showing typical plans and elevations. These provide information on the possible scale of the buildings, which are intended to be two storeys, including their height. However, they are no more than an illustration of one way in which the buildings, whose location is a reserved matter, could be designed and sited.
4. Whilst the appeal was being considered and in an attempt to demonstrate that the Council's concerns about the impact of noise on the proposed dwellings could be mitigated through design, the Appellant submitted two additional drawings (1/500 Options One and Two) that showed alternative layouts. In determining the Appeal I have used the information contained in the Design and Access Statement and the

accompanying and later drawings but in the context of them being no more than illustrative possible layouts and design solutions.

5. The Appellant submitted a signed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 to the Hearing. In the Undertaking it agrees to provide 40% of the total number of dwellings, to be constructed on the site, for the purposes of Affordable Housing. If planning permission is granted it would enter into a contract with a registered Provider of Social Housing for their construction and sale, at a price that enables them to be made available within Homes and Communities Agency rent targets without the need for grant funding.
6. Assuming that the appeal is allowed and the approved development is implemented, the Undertaking also provides for a financial contribution to be paid to the Council and used to fund the provision of open space facilities. Additionally, the Appellant has agreed to commence the housing and employment development simultaneously and not to allow either element of the development to be occupied before the other is substantially complete and in a serviced condition.
7. I am satisfied that the measures, as set out in the Agreement, comply with the provisions of Circular 05/2005: *Planning Obligations*, are necessary to make the development acceptable in planning terms and meet the *Community Infrastructure Levy Regulations* (2010).
8. At the Hearing the Appellant submitted a signed Statement of Common Ground on flood risk. This document has also been signed on behalf of the Environment Agency. As a consequence and subject to the imposition of two conditions that require the preparation and implementation of a surface water drainage and flood compensation scheme for the site and mitigation measures detailed within a Flood Risk assessment, to be implemented, the Environment Agency withdrew its objection to the proposal. The Council subsequently accepted that reason for refusal No. 3 could be overcome by the conditions.
9. The Council also accepted that reason for refusal No. 4 could be dealt with by the standard contamination conditions.

Main Issues

10. Policy SC2 of the Warwick District Local Plan (LP) seeks to protect existing employment land. However, criterion b) allows redevelopment for other uses when the applicant can demonstrate that its continued use for employment purposes is not economically viable. The Council considers the site's redevelopment for employment purposes to be unviable and accepts the principle of residential development on the site as a part of a mixed use scheme. Additionally, the proposal would provide affordable housing in accordance with LP Policy SC11, which criterion c) of LP Policy SC2 supports.
11. Paragraph 49 of the National planning Policy Framework (Framework) says that housing applications should be considered in the context of the presumption in favour of sustainable development. The appeal site is located within the development limits of Warwick, close to schools and other facilities. This is a very sustainable location for residential development. The Council accepts that it does not have a five-year supply of deliverable housing sites. In such circumstances proposals should be considered in the context of sustainable development and without reference to the housing supply policies contained in the Development Plan. At paragraph 14 the Framework also says that there is a presumption in favour of approving proposals for sustainable development 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.

12. In this context and from all that I have read, seen and heard I consider the main issues to be whether any harm as a result of
- a) The suitability of the site for residential use in the context of unacceptable levels of noise and odour
- and
- b) The effect of the proposal on the retention of employment in the area;
- is sufficient to outweigh the Framework's presumption in favour of allowing sustainable development and any other material considerations that favour the proposal.

Reasons

13. The site is located on former employment land on the edge of a large industrial area that contains heavy industry and a number of other manufacturing and repair processes. To its west is a row of terraced houses beyond which is a residential area comprised largely of three storey new dwellings, built on redeveloped industrial land. The proposal would develop the western part of the site with residential properties. This would be largely separated from the remaining industrial area by an access road. The eastern part of the site would be developed with nursery type employment units. These would be sandwiched between industrial properties and a builder's merchant.
14. *Noise*
15. As well as general noise from the adjacent industrial users and other premises to the north across the canal, which together create a high ambient noise level, there are also periodic distinct loud noises from various operations in the area. The Appellant commissioned an external noise assessment, for which noise surveys were undertaken on three weekdays during August 2012. These suggest that noise levels are affected by a variety of sources within the area, including birdsong and from aircraft and distant trains, as well as from the industrial processes and plant operating in the adjacent industrial areas.
16. The survey suggests that ambient daytime noise levels are in the range 46-55 dB L_{AeqT} with an average noise level of about 49 L_{AeqT} . Background levels were about 45 $L_{A90,T}$. British Standard 8233: 1999¹ advises that external noise levels should ideally not exceed 50 dB L_{AeqT} with 55 dB L_{AeqT} an upper limit. It is also generally accepted that the difference between the two noise ratings should be less than 10 dB. External noise levels would appear to be close to the recommended limits. To mitigate against this, the Appellant has offered to design the layout in a way that orientates the aspects of the gardens and the principle rooms of the dwellings to minimise noise impact. Additionally, it has agreed to construct boundary walls around the private gardens and to locate some of the starter units in a way that would assist in the reduction of noise at the dwellings. These measures should assist the reduction in external noise to levels below the recommended limits.
17. The report suggests the use of thermal double glazed windows to reduce inside noise levels to the good design range of BS8233. However, this would not secure acceptable levels if windows facing the noise sources are kept open. Rapid purge ventilation is suggested as an alternative to opening windows that face the primary noise sources. Such a solution is not ideal.

¹ Sound insulation and noise reduction for buildings – Code of Practice.

18. The Council, whilst not disagreeing with the survey and its results, criticises the limited period during which the survey was carried out. It claims that noise levels in the area are variable and that they could be higher than the survey suggests. However, it has not produced any empirical evidence itself to counter the study results. It does however, point to a recent increase in noise complaints from residential properties in the area.
19. Nevertheless, the results from the three different days surveyed are reasonably consistent and there have been no recent noise complaints recorded by the Council from the new and traditional dwellings adjacent to the appeal site. The internal and external layouts in these areas have not been designed to minimise the impact of noise. The building occupied by TS Shutters, the closest source of significant noise to the appeal site at the present time, helps to screen the impact of the noise from its fans at the appeal site but not at the new development at Chandlers Wharf. These considerations suggest that complaints from the appeal site are no more likely than from the adjacent residential development.
20. Whilst there is potential for the proposed employment units to generate undesirable noise, this could be controlled by a condition limiting acceptable noise levels or by a use restriction. The Appellant has suggested restricting the use of the employment units to B1 uses. The Council prefers a noise limitation condition allied to an hours of working condition.

Odour

21. Existing industry in the area periodically creates pungent smells that give rise to complaints. Whilst the heavy industry and operations that involve a significant amount of paint spraying are covered by the Environmental Permitting regime, less frequent generators of pungent smells are only covered by nuisance law. There is nevertheless an eventual remedy if unacceptable smells are generated by processes carried out in the area.
22. The distribution of complaints against odour is to the south and east of an aluminium foundry on Millers Road and this operation is by far the dominant source of complaints. Although there was a distinctive smell of cellulose along Lower Cape at the time of my first site visit and including at the appeal site, there have been no recorded complaints from the area concerning the spraying of paint. There has also only been one complaint from the Lower Cape area (about the aluminium foundry), despite the recent arrival of a significant number of new residents. This suggests that the smell that I observed was probably an infrequent occurrence and that although there is a risk of future odour problems at the appeal site, the evidence from the adjacent residential area suggests that it is not high. The Council has suggested a condition to control odour nuisance from furnaces, associated chimneys and exhaust ventilation systems at the proposed employment development.

Retention of employment

23. Given the existing distribution of dwellings in the area and the sources of recent complaints, if there is an issue of noise and odour sufficient to warrant action that restricts the operations of local employers or to place uneconomic cost burdens upon them, then it already exists. The addition of sixteen further dwellings that are no closer to the main sources of noise and odour than existing residential property will not add to the problem of use incompatibility or increase the potential loss of employment from the area.
24. I note the Council's point that many occupiers of the existing new dwellings will be working away for much of the time when local industry is active but in a residential

area, as large as what now exists at Lower Cape, there are likely to be some retired persons and some parents who look after small children and do not work, residing there and present during daytime hours. New residents have a higher propensity to complain about adverse features of their environment than long established ones. The evidence suggests that the complaints against adverse noise and odour in the area are almost unanimously from the established residential properties and not from the new ones close to the appeal site. If the adverse impact of industry upon residential properties was the same or greater at Lower Cape than in the long established residential areas then there ought to be complaints from Lower Cape to substantiate the hypothesis. I conclude that the proposal would be unlikely to further prejudice the retention of employment in the area.

Other material considerations

25. The area is located within flood zone 3 and without attenuation development is at risk of flooding. An unfortunate error in the drafting of a condition on an outline planning permission, allowing mixed use development on the appeal site and land to the west in 2004, has resulted in the construction of the housing area to the west without the agreed attenuation measures being implemented. The agreed flood attenuation scheme associated with the appeal proposal would resolve flooding issues for the area as a whole. There is therefore a clear major public advantage arising from this development in the context of flood alleviation.
26. The proposal would also contribute to the supply of affordable housing in the area for which there is a need. It would also remediate contaminated land and bring it back to a beneficial use, providing additional employment as well as housing. Warwick District only has a 2.5 year supply of housing land. The Framework requires local planning authorities to boost significantly the supply of housing. In the context of the under supply of housing land in Warwick district I should give significant weight to the contribution the proposal could make to the supply of housing land

Conditions

27. The Council's twelve suggested conditions, together with the two suggested by the Environment Agency were considered in the context of Circular 11/95: *The Use of Conditions in Planning Permissions*, and rationalised, amended and expanded in discussion at the Inquiry and subsequently. All of the conditions are agreed by the principal parties. They include the standard time limits for the submission of reserved matters and commencement. To enable the development to meet development plan policies that seek to achieve sustainable development and protect the living conditions of existing residents in the area and those of the development, other conditions concerning, renewable energy, removal of contamination, hours of working and noise and odour levels at the employment units and noise mitigation at the appeal scheme's dwellings have been suggested.
28. I have considered the need for these conditions in the light of the guidance contained in Circular 11/95 and used the model conditions suggested in the Circular where appropriate. The application adequately describes the nature of the proposal so a condition that serves the same purpose is not necessary. The disposal of surface water off the site is now covered by the condition requiring the submission and implementation of a surface water drainage and flood compensation scheme. To avoid the outcome of a similar condition on the earlier planning permission, the condition should require the scheme's implementation before any of the dwellings are occupied. Although design and landscaping are reserved matters, the requirement for further approval does not ensure the

submission of the materials to be used or the means of securing the establishment and maintenance of the landscaping. Additional conditions are necessary to cover these points. In view of the importance of walls to the attenuation of noise in gardens, a boundary condition is also appropriate.

29. I consider the remaining draft and additional conditions to be necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable and minimises the impact on the environment. I am also satisfied that they enable the Council to ensure that the siting, scale, design, external materials and screening enhance and do not detract from the visual quality and essential characteristics of the area, as required by LP Policies DP1 and DP2.

Conclusion

30. Problems of noise and odour from local industry will impact on the living conditions at the appeal proposal. Consequently the appeal site is not an ideal location for residential development. Nevertheless, external noise in gardens could be mitigated by boundary walls and the orientation of the buildings, including the employment units. Internal noise could be maintained at acceptable levels through mechanical ventilation systems. Anyone choosing to live here would be aware of the potential environmental harm and the constraints that this would place upon their living environment. In these circumstances I consider the proposal could provide acceptable standards of amenity for future occupiers of the development as required by LP Policy DP2.
31. I do not consider the disadvantages of the scheme carry sufficient weight to outweigh the presumption in favour of sustainable development provided by the Framework when considered alongside the benefits provided for the supply of affordable and market housing, flood control and the other material considerations discussed above. I therefore find for the reasons discussed above and having taken account of all of the other matters raised that the appeal should be allowed subject to conditions.

M Middleton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Laurence Wilbraham	Wilbraham Associates, 18 Regent Place, Rugby, CV21 2PN
Robert Atkinson	Hayley Green Consulting, 15 Stanford Grove, Halesowen, B63 1JG
Rachel Canham	Walker Beak Mason, Steepleton Lodge Barn, Long Lane, East Haddon, Northampton, NN6 8DU
Andrew Pass	Mayfair Properties (Midlands) Ltd, Fortress House, Stratford Road, Warwick, CV34 6RA

FOR THE LOCAL PLANNING AUTHORITY:

Liam D'onofrio	Development Services, Warwick District Council, Riverside House, Milverton Hill, Leamington Spa, CV2 5QF
Peter Lawson	Environmental Health, Warwick District Council, Riverside House, Milverton Hill, Leamington Spa, CV2 5QF

INTERESTED PERSONS:

Tom Lester	Environment Agency, Sentinel House, 9 Wellington Crescent, Fradley, Lichfield, WS13 8RR
Martin Ross	Environment Agency, Sentinel House, 9 Wellington Crescent, Fradley, Lichfield, WS13 8RR
Terence Mander	Bizzi Bodies, Mander House, Millers Road, Warwick, CV34 5AE
Alan Brown	Aluminium Service Company (Warwick) Ltd, Millers Road, Warwick, CV34 5AE

DOCUMENTS SUBMITTED TO THE HEARING

- 1 Signed Statement of Common Ground (Flood Risk), submitted by the Appellant
- 2 Warwick District Council, Five Year Housing Land Assessment 2012-2017, submitted by the Appellant
- 3 Suggested conditions submitted by the Council
- 4 Revised conditions discussed at the Hearing and subsequently
- 5 Subsequent correspondence about conditions 5 to 8 concerning contamination

APPLICATION PLAN

- A 1/1250 Site Plan

OTHER PLANS

- B Dwg No. 1180/010, 1/200 Proposed Site plan (notional layout)
C 1/500 Option One (Revised notional layout-minimal alteration)
D 1/500 Option Two (Revised notional layout allowing greater distance separation)
E Dwg No. 1180/011, 1/100 Proposed typical plans and elevations
F Figure 2 Constraints
G 1/500 Laing Homes, Proposed development Layout at Cape Road

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (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 last of the reserved matters to be approved.
- 4) The development hereby permitted shall not be commenced unless and until a scheme, showing how 10% of the predicted energy requirement of this development will be produced on site, or in the locality, from renewable energy resources, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until all the works within this scheme have been completed and thereafter the works shall be retained at all times and shall be maintained strictly in accordance with manufacturer's specifications.
- 5) Prior to the development commencing:
 - a) A Phase II contamination investigation shall be carried out and the results submitted to, and approved in writing by, the Local Planning Authority.
 - b) If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the Local Planning Authority. The remediation scheme in the approved Remediation Statement shall then be carried out.
 - c) If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to, and approved in writing by the Local Planning Authority prior to the first occupation of any part of the development hereby approved.
- 6) The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment Lower Cape, Warwick Final Report dated February 2010 and the following mitigation measures detailed within the Flood Risk Assessment:
 - a) Limiting the surface water run-off to no greater than 24 litres per second during the 100 year 360 min storm and no more than 130 litres per second during the 100 year 30 min storm.
 - b) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
 - c) Confirmation of the opening up of any culverts across the site.
 - d) The setting of finished floor levels no lower than 58.3 m above Ordnance Datum.
 - e) No development shall be located within 4m of the edge of the culvert.
 - f) Car parking areas shall be of permeable design in order to allow some infiltration and aid water quality.
- 7) There shall be no infiltration of surface water drainage into the ground other than with the express written consent of the Local Planning Authority, following the submission of full details. This may be given for those parts of

the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

- 8) No development shall take place until a surface water drainage and flood compensation 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. The drainage strategy should demonstrate that, additional to the volumes needed to attenuate water from this development, an extra 3040 cm³ of storage representing the 1 in 100 year plus climate change event, will need to be provided to prevent flooding to the site. The scheme shall subsequently be implemented in accordance with the approved details before any dwelling or employment unit is occupied.
- 9) No development shall take place until a scheme of hard and soft landscaping for the area affected by the surface water drainage and flood compensation scheme and details of how the scheme shall be maintained and managed after completion have been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before any dwelling is occupied.
- 10) Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme.
- 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the approved details in the first planting and seeding seasons following the occupation of the first dwelling or the completion of the development, whichever is the sooner. Any trees or plants, which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 12) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatments to be planted or erected. The boundary treatments shall be completed before the dwelling(s) associated with them is/are occupied. Development shall be carried out in accordance with the approved details and the boundary treatments shall remain in place whilst ever the dwellings remain.
- 13) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 14) Prior to the commencement of the development, the applicant shall submit in writing to the local planning authority full details of arrangements to protect residents of the development from excessive noise entering habitable rooms and for the provision of quiet garden areas shielded from noise. The details shall be carried out as approved before the dwellings are occupied.
- 15) Outdoor working associated with the employment uses hereby permitted (including loading/unloading) shall be restricted to between the hours of

07:00 and 19:00 Monday to Friday, 07:00 to 13:00 Saturday and not at any time on Sundays or Bank Holidays.

- 16) Noise arising from any plant or equipment *at the employment premises* , when measured one metre from the façade of any noise sensitive premises, including those within the development , shall not exceed the background noise level by more than 3dB(A) measured as LAeq (5 minutes). If the noise in question involves sounds containing a distinguishable, discrete, continuous tone, (whine, screech, hiss, hum etc.) or if there are discrete impulses (bangs, clicks, clatters, thumps etc.) or if the noise is irregular enough to attract attention, 5dB (A) shall be added to the measured level.
- 17) Full details of any proposed furnace and associated chimney or exhaust ventilation systems serving the proposed employment premises shall be submitted to and approved in writing by the local planning authority before the equipment or system is installed. The works shall be carried out as approved.

Richborough Estates