



Appeal Decision

Hearing Held on 24 April 2018

Site visit made on 24 April 2018

by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th May 2018

Appeal Ref: APP/W3710/W/17/3182644

Land off Triton Road, Nuneaton

- 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 Westleigh Developments Ltd against the decision of Nuneaton & Bedworth Borough Council.
 - The application Ref 034424, dated 6 October 2016, was refused by notice dated 4 July 2017.
 - The development proposed is residential development of 29 affordable dwellings with associated access and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the residential development of 29 affordable dwellings with associated access and car parking at land off Triton Road, Nuneaton in accordance with the terms of application Ref 034424, dated 6 October 2016 and in accordance with the 17 conditions in the attached Schedule.

Procedural Matter

2. At the Hearing 2 Unilateral Undertakings (UU) were submitted dated 24 April 2018. These are considered later in my Decision.

Main Issues

3. The main issues in this case are the effect of the proposal on:
 - the character and appearance of the area having regard to the location of the appeal site and its relationship to nearby land uses;
 - whether or not a good standard of amenity would be provided to the intended future occupiers of the scheme, having regard to nearby land uses; and
 - employment opportunities within the locality.

Reasons

4. The appeal site comprises an undeveloped piece of land with an area of 0.60 hectare, located at the end of a cul-de-sac in Triton Road. The proposal is for 29, two storey semi-detached and terraced dwellings.

Character and Appearance

5. Triton Road is a cul-de-sac serving the appeal site, the Triton Showers premises and a number of garages and allotments. Industrial/commercial buildings adjoin the road to the east of the appeal site at Flavel House and further industrial units form part of the northern boundary of the site. The road is industrial/commercial in appearance.
6. I acknowledge that a residential scheme on the site would not reflect the commercial appearance of Triton Road. However, having regard to the requirements of Policy Env14. of the Nuneaton and Bedworth Local Plan 2006 (LP), which requires development, among other matters, to be in keeping with the scale and character of the locality, it is necessary to assess the character of the locality as opposed to Triton Road in isolation.
7. In this regard, I observed that the wider locality is characterised by a mix of residential and business uses in close proximity to one another, including the 2 storey development at Shepperton Court immediately to the north of the appeal site, and its close relationship to industrial premises at Centrovell Industrial Estate.
8. Although some of the new dwellings would front onto the industrial premises at Triton Showers opposite, as opposed to backing or siding onto them, as is largely the case with nearby development, I observed that the relationship of the respective buildings to each other would be similar to nearby development. As such I find that the proposal would be in keeping with the appearance of the locality. A residential scheme in this location would be unlikely to have a discernible effect upon the character of the area.
9. In light of the foregoing, I conclude that the proposed dwellings would be in keeping with the scale and character of the locality. As such there would be no conflict with the aims of saved Policy Env14. of the LP. There would also be no conflict with the core planning principle of the National Planning Policy Framework (the Framework) which requires that account is taken of the different roles and character of different areas. I note that the Inspector in considering an earlier scheme on the site¹ found similarly in this regard, stating that 'the visual impact of the proposal would be acceptable².'

Amenity

10. The new dwellings would be located close to a number of employment uses within the vicinity of the appeal site. The appellant proposes a number of mitigation measures³, including glazing, insulation and acoustic barriers to reduce the impact of external noise on the proposed scheme. The Council is satisfied that the measures proposed would ensure that satisfactory internal living conditions would be provided to the intended future occupiers of the new dwellings. It is however concerned that vehicles using Triton Road would cause noise and disturbance to the intended future occupiers of the new dwellings.
11. A number of the new dwellings would face directly onto Triton Road. When delivery vehicles were using the service yard at Triton Showers noise from them as they passed the dwellings would be likely to be audible from both

¹ Ref APP/W3710/W/15/3026368

² Paragraph 23 of appeal decision

³ As set out in the Blue Tree Acoustics Noise Report

inside and outside the dwellings. However, such noise would only be audible for a short time. It would also be likely to be at a time when the intended future occupiers were carrying out their day to day activities and thereby less likely to be disturbed by such activity given the delivery hour restrictions⁴ on the Triton premises.

12. I acknowledge that at certain times of the month there are more deliveries to the Triton premises than at other times. Reference was made at the Hearing to 56 vehicles using the service yard on Good Friday this year. Whilst noting this matter, this number of vehicle movements is not significant. Given my findings above, even if this number of deliveries was a regular occurrence, it would be unlikely to result in disturbance to a degree that would make the enjoyment of nearby properties unacceptable. The intended future occupiers would move into the dwellings aware of the operations that could occur nearby, including deliveries to and from the service yard, which is visible from the housing site.
13. I note that there may be occasions when a delivery vehicle would wait or park within the road whilst waiting for the service yard to open. This may be at the head of the cul-de-sac close to the service yard's gates. Noise from the vehicle's engine would be likely to be audible from those dwellings sited closest to the service yard entrance. It is however reasonable to assume that if a vehicle was waiting at the gates for some time that the driver would turn off the engine. Similarly, if a vehicle was parked overnight within the road, its engine would be turned off. It is also likely that the driver of the vehicle would park further down Triton Road away from the dwellings to give themselves privacy and to avoid being disturbed by the comings and goings of the new dwellings. Disturbance to nearby occupiers at a level that would be harmful to living conditions would therefore be unlikely to occur as a result.
14. It is likely that there would be occasions when vehicles entering or exiting the new housing scheme would have to wait for a delivery vehicle to pass. However, the length of time waiting would likely to be short and given the lightly trafficked nature of the road would be likely to be infrequent. It would be unlikely to be a source of inconvenience or annoyance.
15. I acknowledge that staff and visitor vehicles associated with the Triton Showers premises park within Triton Road, close to the appeal site, as observed on my site visit and as shown in photographs submitted in evidence. Such parking may well increase in the future if the Triton premises increases its hours of operation. Disturbance to nearby occupiers could be caused by engine noise, doors closing and people talking, particularly late at night when people were sleeping. However, once constructed, it would be unlikely that staff and visitor vehicles would park within the vicinity of the new dwellings because of the likely conflict with other vehicles using this part of the road. There is sufficient space elsewhere on Triton Road for staff and visitors to park, which would be no less convenient for them. The existing and future demands for on-street parking within the vicinity of the appeal site would therefore be unlikely to cause nuisance or harm the living conditions of the intended future occupiers of the scheme.

⁴ Condition No 16 of planning permission Ref TP/0609/93 limits deliveries to between the hours of 7.00am and 7.00pm Mondays to Saturdays.

16. I note the submissions made that the operations at the Triton Showers premises falls within Use Class B2 (General Industrial). However, the evidence before me indicates that it has permission to operate as a B1 (Light Industrial)/B8 (Storage and Distribution) use. This is not disputed by the Council. A B1 use, even if it operates 24 hours a day (which the Triton premises could do) is a use which is appropriate in a residential area. Furthermore, the delivery hours to these premises are restricted. I have no convincing evidence before me to demonstrate that the operations on this site could not satisfactorily co-exist with the new housing scheme as proposed.
17. My attention has also been drawn to a planning permission⁵ at Flavel House. These premises do not gain access from Triton Road and I note from the evidence submitted that the B2 use proposed would be separated from the appeal site by an existing tall building. This would be likely to buffer the noise that could be caused from industrial uses on this site. Furthermore, the relationship of the appeal proposal to this use is not dissimilar to that between residential properties on the corner of Caldwell Road with Triton Road. The Council would have been likely to consider the impact of such a use on the living conditions of nearby occupiers. In granting permission it is reasonable to assume that it found such impact to be acceptable. The B2 use would be likely to have a similar effect on the occupiers of the new dwellings as it would on existing occupiers, given the relationship of the respective developments.
18. The Council has also expressed concern about other nearby employment uses, including at Centraville House causing nuisance to the intended future occupiers of the new dwellings. I was advised at the Hearing that there are no planning conditions that would prevent delivery vehicles to these premises waiting within the shared car park. I acknowledge that such activity could be a source of nuisance. However, I was told at the Hearing that the Council had no record of complaints from existing nearby occupiers to the activities at these premises. I have no substantive evidence before me to demonstrate why such activity would be more likely to be a source of nuisance to the intended future occupiers of the scheme, particularly given that the new dwellings would have a similar separation from this site as existing residential properties nearby.
19. In light of the foregoing, I conclude that having regard to the proposed measures to mitigate against external sources of noise as proposed, that the relationship of the appeal proposal to nearby employment uses and vehicle activity associated with them would be acceptable. A good standard of amenity would be provided to the intended future occupiers of the new dwellings. There would no conflict with the aims of LP Policy Env14. or with the core planning principle of the Framework in this regard.

Employment Opportunities

20. There is dispute between the main parties as to whether the appeal site is allocated for employment use. The current LP Policy Emp1. identified 0.6 hectares of land at Shepperton Business Park for employment purposes as 'having planning permission, under construction or completed'. It is reasonable to assume that given the site area set out above is the same as the appeal site that this allocation relates to it. It is also clear that the site has not been developed for employment purposes, despite having had a planning permission

⁵ Ref 035390

for employment use and marketed for this purpose. It has not provided employment opportunities upon the site as a result.

21. Within the emerging Borough Plan⁶ (BP) the appeal site is identified as an employment allocation under Policy DS6. Emerging BP Policy EMP5 relates to the appeal site and states that this strategic employment site will be developed for employment uses comprising Use Classes B1, B2 and B8. It is clear that the appeal proposal for housing upon the site would conflict with the aims of BP Policies DS6 and EMP5.
22. However, whilst the policies of the BP carry more than limited weight in my consideration of this appeal, given the stage the Plan has reached, I am mindful that despite the long term protection given to the appeal site in the LP for employment uses, that it has not been developed for that purpose. This is despite Invest in Warwickshire and the Coventry and Warwickshire Local Enterprise Partnership stating that there is a demand for smaller employment sites in the area.
23. Paragraph 22 of the Framework states that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. The appellant has stated that the site will not be marketed further for employment use and that no further applications will be made for such uses upon the site. Having regard to these matters, the past unsuccessful marketing of it, even when there was a planning permission for employment use and that there is no planning permission upon the site, there is a high probability that it will not be developed for employment uses in the future.
24. In light of the foregoing, I conclude that although the proposal would prevent the site from being developed for employment uses, the site has not as yet contributed to employment opportunities in the area, and given my findings would be unlikely to do so in the future. Its development with housing would however result in the creation of a number of jobs and the intended future occupiers would be likely to support local businesses in the area. These matters outweigh the conflict with the emerging BP policies set out above in this case. The loss of this small site to non-employment use would be unlikely to have a significant effect upon wider employment opportunities in the locality, or undermine the employment strategy of the emerging BP.

Other Matters

Highway Safety

25. Concern has been raised that the proposal would result in additional vehicles and pedestrians, including children playing, at a point in Triton Road where heavy goods vehicles and other delivery vehicles would be arriving and departing from the Triton Shower's delivery yard. It is submitted that the narrowing of the road as suggested by the Highway Authority would take large vehicles closer to pedestrians and would compound the highway safety concerns in this respect.
26. I acknowledge that vehicle and pedestrian numbers using Triton Road would increase as a result of the proposal. However Triton Road, is lightly trafficked, as evidenced by the appellant's Transport Statement. Furthermore, speeds

⁶ Borough Plan 2011-2031 Publication (2017)

within the road are low. The Highway Authority raised no highway safety concerns in respect of the proposal. In the absence of substantive evidence to demonstrate otherwise, I have no reason to find differently in this regard.

Unilateral Undertakings

27. One of the UUs would make provision for a financial contribution to be made towards library provision within the borough. Given the demand the intended future occupiers would be likely to place upon library facilities, such a contribution is reasonable and necessary to make the development acceptable.
28. The other UU would make provision for the housing scheme to be affordable with 75% of the units to be provided as affordable rented and the remainder to be shared ownership. Whilst such provision exceeds that required by LP Policy H3, I have not been directed to a policy that would prevent a scheme of this nature. To ensure that the scheme remains affordable in perpetuity, the obligations contained within the UU are reasonable and necessary.

Effect on Existing Businesses

29. I note the concern raised that the scheme may have an impact on the existing operations at Triton Showers and this company's plans for future expansion. However no convincing evidence was provided to demonstrate this. I was told at the Hearing that nearby occupiers to these premises had not had cause to complain about the operations undertaken on these premises (or indeed other employment premises in the locality). Whilst the new dwellings would be closer to the Triton premises than existing residential development, the use of this site, in accordance with the planning permission granted for it, is appropriate in a residential area. It is therefore unlikely that the respective uses could not co-exist harmoniously. The proposal would be unlikely therefore to have a discernible effect upon the existing and future operation of this business, or indeed other businesses in the locality.

The Balancing Exercise

30. It is agreed that the Council cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework confirms in these circumstances that relevant policies for the supply of housing should not be considered up to date. The parties agree that the 'tilted balance' set out in the 4th bullet point of paragraph 14 is engaged in this case. This paragraph requires that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. I have found that the proposal would result in an identified employment site within the emerging BP not being developed for employment purposes. Despite the site being identified for employment development over the years, no such development has taken place upon it and no employment opportunities have occurred as a result. Given the evidence before me, it is unlikely that the site would be development for employment uses in the future. Against this the proposal would provide employment opportunities during the construction phase and the intended future occupiers would be likely to support businesses in the area. In this case, I find the harm that would be caused would be limited.

32. The proposal would result in the delivery of 29 new homes, all of which would be affordable. They would be located in a sustainable location, close to services and facilities, including shops, medical facilities, schools and bus stops. I attach significant weight to these matters. The Council confirm that the design of the houses complies with its Design Guide. I have found that the proposal could satisfactorily co-exist with nearby commercial uses, and that a good standard of amenity would be provided to existing and future occupants of the proposal. These matters carry moderate weight.
33. Added to these benefits are the likely improvements that would result to the landscaping along the canal which would be likely to enhance biodiversity upon the site and the character and appearance of the area.
34. In light of the foregoing, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the scheme. The proposal would comprise sustainable development. The conflict with the emerging development plan is outweighed by the other material considerations and planning permission should be granted.

Conditions

35. A list of conditions agreed between the main parties was submitted at the Hearing in the event that the appeal is allowed. Following the appeal both parties agreed that a further condition relating to levels was necessary. I have considered the conditions in the context of the advice in the Planning Practice Guidance.
36. To ensure that the development is undertaken as approved, a condition referring to the approved drawings is necessary. In the interests of the character and appearance of the area, conditions controlling external materials, levels, landscaping, tree protection and lighting are necessary.
37. A condition requiring further details to be submitted including mitigation is necessary to prevent contamination of the locality. To ensure that the site is suitably drained, a condition requiring drainage details to be submitted and implemented is necessary.
38. In the interest of living conditions, it is necessary for conditions to be attached controlling the design of the new dwellings and boundary treatments. A condition relating to a construction method statement is necessary in the interests of amenity and highway safety. In the interest of highway safety, conditions are also necessary in respect of visibility splay provision and works to the highway. In the interests of public safety a condition is necessary regarding fire safety.
39. To protect and enhance biodiversity in the locality conditions are necessary controlling construction upon the site and measures to be taken in respect of biodiversity improvements. In the interest of sustainability, a condition requiring that a Sustainable Welcome Pack is provided to future occupiers is necessary.

Conclusion

40. For the above reasons and having regard to all other matters raised, the appeal is allowed.

R C Kirby

INSPECTOR

Richborough Estates

SCHEDULE

Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 40046 005C; 006B ; 007B; 008B; 009B; 010C; 012C; 013C; 014; 017E; 018B; 019B; 021A; 022F and P1224 101B.
- 3) Notwithstanding the brick details shown on the approved plan 40046 08B no development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) wheel washing facilities;
 - ii) measures to control the emission of dust and dirt during construction;
 - iii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) No development shall commence until a noise attenuation scheme as specified in the Blue Tree Acoustics Noise Report Chapter 5, Noise Mitigation Measures to meet the standard for internal (including 45dB LAFmax in bedrooms at night from 23:00 - 07:00 hours) and external noise levels as defined in table 4 and section 7.7.3.2 of British Standard BS 8233:2014, including glazing and ventilation details, has first been submitted to and approved in writing by the local planning authority. The approved details shall be completed before the first occupation of the dwellings and retained thereafter.
- 7) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification

report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved 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 and on completion of the agreed remediation works, a closure report and certificate of compliance, endorsed by the interested party/parties shall be submitted to and agreed in writing by the local planning authority.

- 8) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. Any such planting which within a period of 5 years of implementation of the landscaping dies, is removed, or becomes seriously damaged or diseased shall be replaced in the next planting season with others of a similar size or species.
- 9) Before the development is first occupied or brought into use a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
- 10) No dwelling shall be occupied until full details of the boundary treatments including new walls and acoustic fences have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the agreed boundary treatment has been carried out in accordance with the approved details. The acoustic fences are to be maintained in perpetuity.
- 11) No development shall commence until detailed surface and foul water drainage schemes for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted and approved in writing by the local planning authority. The approved details shall be completed before the first occupation of the dwellings.
- 12) No development shall commence until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until provision has been made in accordance with the approved details.
- 13) No development including any site clearance shall take place until a Ecological Management Plan (EMP) has been submitted to and approved in writing by the local planning authority. The EMP shall include details of any pre-construction checks required; the species safeguards to be employed; site clearance methods; appropriate working practices and timings of construction works; the extent of buffer zones and stand-offs for sensitive ecological features; details of the works to enhance biodiversity including bird bricks and bat bricks and a timetable for

implementation; details of the person, body or organisation responsible for the implementation and ongoing management and monitoring of such measures; and measures that will be taken to demonstrate implementation of the EMP. The approved EMP shall be implemented in accordance with the approved details.

- 14) Prior to the first occupation of the dwellings, details of external lighting upon the site and lighting columns including a timetable for their implementation shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details.
- 15) No development shall commence until details of the construction of the road serving the development, delineation between the proposed public highway and private area, footway crossing points, footways, private drives and means of accessing individual plots, drainage (including the outfalls), levels of the car parking and manoeuvring areas, details of future maintenance and a timetable for implementation have been submitted to and approved in writing by the local planning authority.
- 16) The dwellings shall not be occupied until visibility splays have been provided to the private driveway accesses to the site for vehicles with 'x' distances of 2.4 metres and 'y' distances of 2.0 metres, as measured from the rear edge of the highway footway. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the highway footway.
- 17) The dwellings shall not be occupied until the occupiers have been provided with a Sustainable Welcome Pack (including public transport information), the details of which shall have first been submitted to and approved in writing by the local planning authority.

Richborough Estates

APPEARANCES

FOR THE APPELLANT

Mr D Pritchard	Marrons Planning
Mr C May	Howes Percival LLP
Mr M Brownstone	Resound Acoustics Limited

FOR THE LOCAL PLANNING AUTHORITY

Mrs J Padbury	Principal Planning Officer
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INTERESTED PARTIES

Mr D Tutton	Triton Showers
Councillor K Kondakor	Leader of Green Group Nuneaton and Bedworth Borough Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Unilateral Undertaking with Warwickshire County Council dated 24 April 2018
2. Unilateral Undertaking with Nuneaton and Bedworth Borough Council dated 24 April 2018
3. List of conditions
4. Additional condition by email dated 24 April 2018
5. Photographs of vehicles parked in Triton Road from Mr Tutton
6. Plan showing Nuneaton cycle networks
7. Copy of emerging Policies HS6, NE1 and NE2
8. Copy of planning permission Ref. TP/0609/93
9. Copy of drawing for Unit 4 Flaval House
10. Copy of planning permission TP059798
11. Copy of planning permission TP054892
12. Copy of planning permission TP/0283/93
13. Copy of planning permission TP/0630/94