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## Appeal Decision

Hearing held on 3 September 2014

Site visits made on 2 and 3 September 2014

**By John Wilde C.Eng M.I.C.E.**

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

Decision date: 29 September 2014

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**Appeal Ref: APP/K3415/A/14/2216143**

**Land at Eastern Avenue, Lichfield, Staffordshire, WS13 6RL**

- 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 Revelan Group Plc against the decision of Lichfield District Council.
  - The application Ref 13/01309/OUTM, dated 26 November 2013, was refused by notice dated 20 February 2014.
  - The development proposed is residential development for 77 dwellings, associated open space and infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for 77 dwellings, associated open space and infrastructure at Eastern Avenue, Lichfield, Staffordshire, WS13 6RL in accordance with the terms of the application, Ref 13/01309/OUTM, dated 26 November 2013, and the plans submitted with it, subject to the conditions contained within the attached schedule.

### Procedural matter

2. The application has been made in outline, with details of access to be considered at this stage. Layout, scale, appearance and landscaping have been reserved for later determination.

### Main Issues

3. The main issues are:
  - (a) Whether or not the proposed development would lead to an unacceptable loss of employment land.
  - (b) Whether or not the proposed development should provide a contribution towards secondary education provision, and if so, whether arrangements for the contribution have been made.

### Reasons

*Whether or not the proposed development would lead to an unacceptable loss of employment land*

4. The appeal site is a brownfield site situated within the settlement boundary of Lichfield, to the north of Eastern Avenue and the east of Watery Lane. Access

- to the proposed development would be gained for Watery Lane. The site is within an allocated industrial area in the Lichfield District Local Plan (June 1998) (LP). Policy Emp. 2 of the LP makes clear that *the Council will restrict development within such areas to business (B1), general industry (B2) and storage and distribution (B8) unless it is demonstrated that any proposed use falling outside these use classes will not detrimentally affect residential areas or the industrial area.*
5. My attention has also been directed to Core Policy 7 of the emerging Lichfield District Local Plan. This policy identifies a series of measures that the Council will put in place in order to support economic growth. One of the measures is that *79.1 hectares of land will be allocated for employment uses, informed by the employment portfolio shown in the Employment Land Review. Around 10 additional hectares of land will be defined by the Local Plan Allocations document to ensure flexibility of provision to serve Lichfield City.*
  6. Whether or not the proposed development would lead to an unacceptable loss of employment land seems to me to be dependent on a number of factors. Firstly there is the question of the amount of employment land available, or likely to become available, compared to that required.
  7. The Employment Land Review<sup>1</sup> (ELR) prepared for the Council by GVA concludes in bullet point one of paragraph 8.3 that *demand for employment land is projected to be around 79 hectares to 2028. This takes account of employment growth in the economy, churn from existing businesses, leakage to non-employment areas and reallocations from existing employment sites which amount to 16 hectares.* The second bullet point continues *having regard to the supply of committed sites only, there is a potential shortfall of employment land for offices of circa 3 hectares and industrial circa 6 hectares and an oversupply of distribution of over 24 hectares.*
  8. The third bullet point goes on to say that *the total supply of future employment land (commitments and all potential future sites) amounts to around 230 hectares, which compared with the demand forecasts, indicates a potential over supply of around 150 hectares. This excludes sites that have been removed from the future employment land portfolio which amounts to a further 46.12 hectares.*
  9. The Council's own ELR therefore concludes that there is a potential oversupply of around 150 hectares. At the Hearing the Council pointed out that not all of the sites identified within the ELR would necessarily be eventually deemed suitable for employment use and that therefore it did not take the potential sites into account when evaluating the appeal planning application. However, the appeal site is only 2.6 hectares and it seems extremely unlikely that the ELR would identify potential sites for the vast majority of them to be then considered unsuitable at a later stage. I also note that in table 4.5 of the ELR 43% of the potential sites are rated as good or excellent.
  10. Furthermore, the Lichfield Annual Monitoring Report 2013 advises in paragraph 7.9 that *Lichfield District has 142.37 hectares of employment land available for employment development. This is available across a range of sites which can provide for all types of employment development.* I note that the figure of 142.37 hectares includes 28.53 hectares of Ministry of Defence land, but even

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<sup>1</sup> Final Report dated February 2012

removing this latter figure leaves over 112 hectares available for employment development.

11. Taking into account the above factors I can only conclude that allowing residential development to take place on the appeal site would not, in quantitative terms, result in an unacceptable loss of employment land.
12. The appeal site is within the settlement boundary of Lichfield and this was another factor in the Council's considerations, in that such sites are relatively rare and should therefore be protected. However, I was directed by the appellant to a list of 38 currently available employment units in the area. These were sourced from local agents and the list demonstrates that of the 38 units currently available, 21 are within Lichfield City. I was given no reason to doubt the accuracy of this information, and it follows that allowing the appeal would not result in an unacceptable loss of employment land within the City itself.
13. The Council also had concerns relating to the marketing of the appeal site. However, I have been supplied with information that shows that the site has been marketed since 2008. The marketing has included boards on the site (which were in evidence during my site visit), a brochure, mailshots and advertising in four local papers. This has resulted in 20 expressions of interest, although only one of these has resulted in an actual take up of land. This was for an ambulance station on land next to the appeal site. I note however that the use as an ambulance station is not strictly an industrial one.
14. I acknowledge that the period of marketing is seen as being within a recession. However, I have been supplied with information that shows that over the past 2-3 years there have been 23 deals involving industrial premises in the area. None of these deals has resulted in a rent required to sustain viable build-to-suit developments. I also note that the appeal site scores only average in the ELR with a considerable number of sites scoring higher and that phase one of this development has only achieved a rate of occupation at the present time of 76%. Furthermore the site is in a sustainable location in transport terms.
15. Overall, from the information available to me I conclude that the marketing carried out for the site has been sufficient to show that the appeal site is not attractive for industrial development.

#### Conclusion on the first main issue

16. I have found that the proposed development would not result in the unacceptable loss of employment land in either quantitative or qualitative terms. It would not therefore detrimentally affect the industrial area and no conflict would exist with policy Emp. 2 of the LP. Nor would the proposed development conflict with any of the measures outlined in policy CP7.
17. In arriving at this conclusion I have also borne in mind that the National Planning Policy Framework (the Framework) makes clear in paragraph 22 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 paragraph goes on to say that *where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having*

*regard to market signals and the relative need for different land uses to support sustainable local communities.*

18. In respect of the relative need for different land uses it is common ground between the parties that the Council do not have a five year housing land supply, and I have been given no evidence that would lead me to a different conclusion. One of the central tenets of the Framework is to *boost significantly the supply of housing* and the proposed development would provide 77 houses of which 25% would be affordable.

*Whether or not the proposed development should provide a contribution towards secondary education provision, and if so, whether arrangements for the contribution has been made*

19. I have been supplied with Section 106 Agreement that would provide for contributions towards secondary education, a Participation in Sport and Physical Activity Scheme (PSPA), and towards mitigation measures in relation to the Cannock Chase Special Area of Conservation. The appellants however contest the education contribution and the Section 106 is written in such a way that should I decide that this contribution is not justified, then it would not be paid.
20. Community Infrastructure Levy (CIL) Regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the obligation does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
21. In terms of the education contribution the appellants and education authority agree on the number of pupils likely to be generated by the proposed development and also the cost per head but disagree as to whether there is a need for extra secondary school places.
22. Staffordshire County Council Education Planning Obligations Policy (EPOP) is the document that the education authority uses to assess the education requirements emanating from a proposed development. The process involves projecting the school roll at the relevant schools three years ahead of when the planning application for a given development is received. As the application for the appeal scheme was received in December 2013 the relevant academic year becomes 2016/17.
23. In this year the numbers in the three relevant secondary schools in the various year groups are shown as totalling 3741. This is above the figure calculated from the Published Admission Numbers (PANs) meaning that the schools would have a shortfall of 187 places. However, the appellants point to four other developments that have either received planning permission or have been approved at committee. Between them these developments would generate 595 additional pupils, and each has made contributions for educational places.
24. One of these developments, Fradley Park, made a contribution for 81 school places. The appellants point to the fact this development was expected to come forward in 2015/16 and therefore January 2015 should be the date to assess the pupil numbers. If this was the case then there would be 12 surplus

places. In the appellants' view the Fradley Park development has therefore unnecessarily funded 81 school places and these can take up the 20 pupil places that would be generated by the proposed development.

25. The appellants also point to the fact that the theoretical capacity of the three relevant schools has not been increased to take account of the contributions from the four developments listed above and also other developments cited across the area.
26. At the Hearing the education authority made clear that predicting future pupil numbers is not a scientific procedure. Comment was also made that without an up to date adopted local plan and the corresponding housing numbers it is very difficult to assess future pupil numbers.
27. I acknowledge that assessing future need is a complicated matter that has many variables including inward and outward migration and birth rates. However, to find that the required contribution was in line with the requirements of CIL Regulation 122 I would have to be persuaded that the relevant schools were at capacity and were therefore unable to accept pupils from the proposed development without further places being made available. From the information that has been provided I do not consider that that situation has been demonstrated. It has not therefore been demonstrated that the contribution is necessary to make the development acceptable. I cannot therefore take the education contribution into account in this decision.

*Other matters*

28. As stated previously the Council also require contributions towards PSPA and towards mitigating the effect of the proposed development on the SAC. Whilst the appellant has not objected to these contributions it is nonetheless incumbent on me to assess them in relation to the tests set out in Regulation 122.
29. In respect of the contribution towards mitigating the effects of the development on the SAC, I have been provided with a document entitled *Cannock Chase Area of Special Conservation Interim Guidance to mitigate the Impact of New Residential Development*. This document refers to evidence that shows that visitors from residential development within 15km of the SAC have an adverse effect on its integrity. The proposed development would be within this distance. The document also gives the policy derivation and costings of works required within the SAC and how this relates to the provision of housing within the area. From the information that has been provided I consider that the tests outlined in Regulation 122 have been complied with and therefore this contribution can be taken into account in this decision.
30. In relation to the Contribution towards PSPA I have been supplied with a document entitled *Swimming Pool and Sports Hall Feasibility Study*<sup>2</sup>. This document indicates that the current swimming pools within the district are running at full capacity. The document also gives costed options for improving the situation and outlines how these could be funded in relation to an increasing population. Page 53 of the document sets out clearly how contributions would comply with CIL Reg 122. In light of this information I

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<sup>2</sup> Dated October 2013 and prepared by Neil Allen Associates.

consider that the tests outlined in Regulation 122 have been complied with and therefore this contribution can be taken into account in this decision.

31. I acknowledge that the appeal site is adjacent to existing commercial uses and the West Coast Railway Line. However, there are other residential estates in close proximity and I have been supplied with no significant evidence to show that the site is unsuitable for residential development.
32. Several interested persons have indicated that the proposed development would result in highway safety problems. However, the highway authority has not objected to the development and once again I have been supplied with no significant evidence that would lead me to dismiss the appeal on the basis of highway safety.

#### *Conditions*

33. The conditions set out in the accompanying schedule are based on those included within the statement of common ground. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance.
34. As the application was in outline I have imposed a condition requiring submission of reserved matters as well as others that would provide greater details of the approved access, landscaping, drainage, levels, and boundary treatment. The reserved matters application includes timescales agreed by the two main parties. In the interest of safety I have imposed conditions requiring two construction method statements, one of which relates specifically to the proximity of the West Coast Main Line.
35. As the site has had previous industrial use I have imposed a condition requiring a scheme of investigation and remediation of any contamination found on the site. To protect future residents from noise intrusion I have imposed a condition requiring a scheme of noise attenuation measures. In the interest of biodiversity a condition has also been imposed that requires the development to be carried out in accordance with a previously submitted Ecological Appraisal. I have also imposed conditions relating to the closing of existing accesses and resurfacing of the footway along Watery Lane. These latter conditions are to ensure highway safety.
36. Finally, otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. I have therefore imposed a condition to this effect.

#### **Overall conclusion**

37. I have found that the proposed development would not result in the unacceptable loss of employment land and would not be in conflict with the adopted local plan. It would provide much needed affordable and market housing in a brownfield and sustainable location. Having regard to all other matters raised, I conclude that the appeal should be allowed.

*John Wilde*

Inspector

### **Schedule of conditions**

- 1) The development hereby approved shall be begun either before the expiration of two years from the date of this permission, or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later. Application(s) for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of one year from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan, SK103, SK104, 4WA1310-P-0001.
- 3) No development shall take place until details of the layout of the site including the disposition of roads and buildings; full road construction including longitudinal sections; existing and proposed ground levels and finished floor levels; the design of all buildings and structures; the external appearance of all buildings and structures including materials to be used on all external surfaces; the means of pedestrian access and parking layout; and the landscape and planting of the site have been submitted to and approved in writing by the Local Planning Authority by way of reserved matters application(s). Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of the proposed access as shown on drawing 4WA1310-P-02 have been submitted to and approved in writing by the Local Planning Authority. The access shall thereafter be constructed in accordance with the approved details prior to any part of the development being brought into use.
- 5) No development shall take place until the existing site accesses, which shall include the crossings between the site and the carriageway edge made redundant as a consequence of the development hereby approved have been permanently closed and the access crossings reinstated as footway.
- 6) No development shall take place until a Traffic Management Plan/Construction Method Statement comprising construction traffic access and routing; delivery time restrictions; provision for parking of vehicles for site operatives and visitors; loading and unloading of plant and materials; and storage of plant and materials used in constructing the development has been submitted to and approved in writing by the Local Planning Authority. The approved Method of Construction Statement shall be implemented prior to the commencement of any works on the site and shall be maintained throughout the entire construction period, unless otherwise agreed in writing by the Local Planning Authority.
- 7) No development shall take place until the site has been subjected to a detailed scheme for the investigation and recording of any contamination and a report has been submitted to and approved in writing by the Local Planning Authority. The report shall identify any contamination on the site, the subsequent remediation works considered necessary to render the contamination harmless and the methodology used. The approved

remediation scheme shall thereafter be completed in accordance with the approved plan and a validation report submitted to and approved in writing by the Local Planning Authority within 1 month of the approved remediation being completed, to ensure that all contaminated land issues on the site have been adequately addressed prior to the first occupation of any part of the development, unless otherwise agreed in writing by the Local Planning Authority.

- 8) Pursuant to condition 3 no development shall take place until a Landscape Management Plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned domestic gardens, has been submitted to and approved in writing by the Local Planning Authority, unless otherwise agreed in writing by the Local Planning Authority. The Landscape Management Plan shall thereafter be implemented in accordance with the approved details and timescales.
- 9) No development shall take place until a Construction Method Statement and risk assessment in respect of the West Coast Main Line has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 10) No development shall take place until full details of the proposed surface and foul water drainage system for the development have been submitted to and approved in writing by the Local Planning Authority. This shall include full details of the method by which surface water and foul sewage will be directed away from the railway line. The development shall thereafter be undertaken in accordance with the approved details.
- 11) No development shall take place until details of ground levels (existing and proposed in relation to surrounding development and highway) in relation to the whole site, and also details of any earthworks and excavations to be carried out in the proximity of the railway, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
- 12) No dwelling shall be occupied until details of all proposed boundary treatments, which shall include details of a trespass proof fence to be erected adjacent to the railway boundary, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to the occupation of the dwellings the respective boundary treatment is to serve.
- 13) The development shall be carried out in full accordance with the mitigation and compensation measures outlined within the Ecological Appraisal prepared by EDP dated November 2013.
- 14) No dwelling shall be occupied until a scheme of noise attenuation measures designed to protect future occupants from noise nuisance arising from all existing and planned noise sources, including noise nuisance from external plant and equipment at the planned ambulance station and nearby industrial premises, has been submitted to and approved in writing by the Local Planning Authority. The development



shall thereafter be implemented in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

- 15) No dwelling shall be occupied until the footway surfacing along the Watery Lane site frontage has been carried out in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.
- 16) Before the submission of any Reserved Matters, pursuant to condition 3, the following details shall be submitted to and approved in writing by the Local Planning Authority:
  1. A detailed surface water drainage design to route and store surface water for up to and including the critical 1 in 100 year plus climate change storm event. Surface water outflows are to be limited to no greater than existing surface water runoff rates for the site;
  2. A 2-D linked Hydraulic Model study including suitable cross sections of the existing watercourse and area within the vicinity of the site demonstrating that the proposed site will be safe in terms of flood risk without increasing the flood risk to any third party. Pipe length, invert level, cover level, material and condition CCTV surveys of a suitable length of culverted watercourse should be provided;
  3. An appropriate easement to the watercourse within the site is to be provided for access for future repair and or maintenance. If any section of culverted watercourse is found to be in significantly defective then that section should be repaired and replaced notwithstanding the following. If any new section of watercourse (including any diversion of the existing watercourse) is planned, appropriate easements should be provided for future repair and or/maintenance; and
  4. Clearly marked plans showing safe access and egress routes for all areas of the development.

The development shall thereafter be undertaken in accordance with the approved details.

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Peter Leaver	Jones Lang Lasalle
Mr Andrew Dodson	Revelan UK Ltd
Mr Simon Hawley	Harrislamb Property Consultancy

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Harris  
Mr Oliver Dove

### INTERESTED PERSONS:

Mr Matthew Barrett	Staffordshire County Council
Mr Andrew Marsden	Staffordshire County Council
Councillor Richard Cox	
Councillor Keith Willis-Croft	
Mr Steve Brown	Local resident
Mr David Clark	Local resident

## **DOCUMENTS**

1. Letters dated 19 August 2014 and circulation list giving notice of the Hearing.
2. Email from Paul Harris dated 6 August giving information relevant to a Judicial Review.
3. List of 'shovel ready' development land supplied by the appellant.
4. Letter dated 26 August from Harrislamb to PINS.
5. Position statement from Harrislamb in relation to education contributions.
6. Draft Section 106 agreement.