



Appeal Decision

Hearing held on 9 December 2014

Site visit made on 9 December 2014

by **P Willows BA DipUED MRTPI**

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

Decision date: 15 January 2015

Appeal Ref: APP/R0660/A/14/2226494

Forge Mill, Forge Lane, Congleton, Cheshire CW12 4HF

- 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 EMC Properties Cheshire Ltd against the decision of Cheshire East Council.
 - The application Ref 14/0659C, dated 3 February 2014, was refused by notice dated 21 August 2014.
 - The development proposed is an outline planning application for the redevelopment of Forge Mill for residential development (C3) for 48 units included associated parking, landscaping, creation of a nature area, open space and off-site highway works to Forge Lane.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the redevelopment of Forge Mill for residential development (C3) for 48 units included associated parking, landscaping, creation of a nature area, open space and highway works to Forge Lane at Forge Mill, Forge Lane, Congleton, Cheshire CW12 4HF in accordance with the terms of the application, Ref 14/0659C, dated 3 February 2014, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal seeks outline planning permission, with approval sought for all matters other than appearance.
3. The appellant confirmed during the Hearing that the works to Forge Lane are not 'off-site', and I have amended the description of the development accordingly.
4. The Council has raised concerns regarding the ownership of the site. The appellant has confirmed that it does not, in fact, own the whole of the planning application site. Moreover, part of the site over which it does claim ownership is not registered.
5. To address the site ownership issue, an amended site location plan was submitted before the Hearing. This excludes a small part of the site which the appellant does not own. This does not affect the area of the proposed housing development and the Council raised no objection to this change. Accordingly, I have determined the appeal on the basis of this revised site.

6. Despite this change, the Council remains concerned that the appellant cannot conclusively demonstrate ownership of that part of the site that is not registered. Accordingly, it is claimed that the planning application and appeal are not valid, since the certificates of ownership indicate that, with the exception of highway land, the appellant owns the whole of the site.
7. Nevertheless, the appellant claims ownership of the whole of the (now amended) site, including the unregistered part, and there is no evidence before me to cast doubt upon that claim. While the possibility of another claim coming forward cannot be ruled out entirely, the chances of that appear to me to be very slight indeed. The appellant company occupied the site for about 35 years. Moreover, the site has been marketed for the last 3 years, and there have been a planning application and appeal on the land. Yet throughout this period there appear to have been no alternative claims of ownership.
8. Overall, the evidence before me does not show that the appellant erred in relation to the certificates submitted with the planning application, other than in respect of the small area now excluded from the appeal site. That area, it is agreed, has no significant implications for the proposal. In these circumstances, the concerns raised by the Council do not lead me to conclude that the appeal is invalid. Accordingly, I have determined the appeal on its planning merits.

Main Issue

9. The main issue is whether the proximity of the development to existing sources of industrial noise is such that living conditions at the proposed dwellings or future activity at the industrial sites would be unacceptably compromised.

Reasons

Planning policy

10. The development plan includes the Congleton Borough Local Plan First Review. Policy GR1 only permits developments which, amongst other things, are acceptable in terms of amenity and health.
11. The Council accepts that it is currently unable to demonstrate that it has a 5 year supply of deliverable housing sites. As a result, the Council's policies for the supply of housing cannot be considered up to date¹. Consequently, in accordance with Paragraph 14 of the Framework, I have approached this appeal on the basis that planning permission should be granted 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 or specific policies within the Framework indicate that development should be restricted.
12. The National Planning Policy Framework (the Framework) advises that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. It should also be recognised that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established².

¹ Framework Paragraph 49

² Framework Paragraph 123

13. The Government's Planning Practice Guidance (PPG) advises that, in determining noise impact, decision-takers should consider whether or not a significant adverse effect or an adverse effect is occurring or likely to occur and whether or not a good standard of amenity can be achieved³.
14. The PPG sets out a noise exposure hierarchy. Situations where there would be an observed adverse effect should be mitigated and reduced to a minimum. Situations where there would be a significant observed adverse effect should be avoided. The PPG recognises the subjective nature of noise and does not relate the noise exposure hierarchy to any measured noise levels.

Noise – living conditions

15. The proposed housing would be on a former industrial site. The appeal site also includes wooded areas. To the east of the site, beyond the River Dane, is Congleton Business Park, where the company Airbags International is located. To the other side of the site the land rises steeply. On this higher land is the Radnor Park Trading Estate. The companies here include Tandom Metallurgical and Copeland and Craddock.
16. To assess the impact of these existing businesses on the proposed houses, the Council carried out an assessment in accordance with BS4142: 1997 *Method for rating industrial noise affecting mixed residential and industrial areas*. Although this has now been replaced by BS4142:2014, the Council advised at the Hearing that it did not consider that its findings were invalidated as a result.
17. The method within the British Standard requires background noise levels to be established. It was apparently not possible to directly measure background noise at the appeal site (due to extraneous noise being present) so readings from a nearby site which the Council felt was comparable were used instead. BS4142 recognises that this may be appropriate where justified. The Council's assessment suggests that the difference between the background noise level and the rating level is between 10dB and 15 dB. BS4142 says that complaints are likely where the difference is more than 10dB.
18. BS4142:2014 advises at paragraph 8.1.2 that, 'In determining whether an alternative location is suitable for carrying out measurements of the background sound level it is important to take account of all contributing factors that might influence the measurement and assessment procedure. As far as is practicable, uncertainty in any measurement at an alternative location ought to be minimized and the extent of uncertainty reported'. However, the justification for the comparison site chosen in this instance is limited. The Council expresses the view that it is 'a reasonable background and residual level to be used' but also acknowledges that 'there is some uncertainty in this'. Moreover, the lower end of the range for background noise (35dB LA₉₀) used by the Council is based on a measurement taken over only 5 minutes. Overall, I approach the Council's figures with a degree of caution, particularly those reliant on this lower background noise figure.
19. The particular noises the Council is concerned with are apparently of a type likely to cause annoyance and disturbance. The Council has logged hours of subjective noise monitoring at the appeal site. Particular reference is made to

³ Reference ID: 30-003-20140306

the delivery of alloy wheels to Tandom Metallurgical, where the wheels are tipped from a lorry onto a concrete surface. I visited that site and witnessed for myself that moving wheels within the site was a very noisy process. Moreover, because of the location of the appeal site on lower land than the key sources of noise, the Council advises, and I accept, that little could be done to improve the external environment at the proposed dwellings with measures such as fencing.

20. The appellant's acoustic consultants (URS) have made a detailed assessment of the appeal site, in accordance with BS8233:2014 *Guidance on sound insulation and noise reduction for buildings*. Full details of the data gathered and calibration certificates for the equipment used have been provided, and I have no reason to doubt the data. The initial data was gathered over a period of about 15 hours, about half of which was at night time. A further 3.5 hours of data was gathered on a weekday more recently.
21. The highest noise level recorded by URS was 48dB LAeq for a 16 hour day time period. This compares to the 55 dB(A) upper limited prescribed by BS8233:2014 and by the World Health Organisation (WHO) for outdoor living areas⁴. URS's figures also suggest that an acceptable internal environment would be created throughout the day and night without the need for special measures. The figures assume that a closed double glazed window unit would secure a sound reduction of 33 dB, and that a partially-open window would secure a reduction of 18 dB. These appear to me to be reasonable assumptions, based upon WHO guidelines.
22. URS has not carried out a BS4142 assessment. This is, in part, said to be because industrial activities at the site were only just audible, although noise from industry was clearly noted in URS's more recent visit. While a BS4142 assessment would have added usefully to the appellant's evidence, the lack of one is not fatal to its case in my view.
23. When I visited the site there was little noticeable noise from the nearby industrial uses. However it was a windy day and both parties considered that this had a significant effect on the acoustic environment.
24. Drawing together the evidence before me I am, despite the Council's criticisms, persuaded by the appellant's noise assessment that the proposed dwellings would provide a satisfactory internal acoustic environment, even without specific measures to address noise. Moreover, the industrial noise that is the Council's primary concern is most significant during the daytime. Overall, therefore, it does not appear to me that the noise environment in the area would unduly disturb the sleep of residents at the site.
25. As to noise within the gardens, the Council's assessment suggests that specific industrial noise may exceed background noise to a degree that would give rise to complaints. However, as I have explained, I have some concerns with the method that has been adopted. Even taking the figures at face value, the lower end of the range produced by the Council suggests that the 10dB differential referred to in BS4142 would only be marginally exceeded. It also appears improbable that the upper limit of the WHO guideline figure for outdoor living areas would be exceeded, although the characteristics of the noise may mean that this is of limited relevance.

⁴ Guidelines for Community Noise, WHO

26. I do not doubt that loud and annoying noises from the industrial sites, particularly those involved in metal recycling, will sometimes be heard at the appeal site. However, throughout all the monitoring that has taken place, the loudest individual event recorded by either party that is clearly attributable to industrial activity is 70dB(A). While this is significant, higher figures recorded by the appellant during attended surveys are attributable to emergency vehicle sirens – a source of noise that is common in urban areas and which is, by its very nature, also clearly distinguishable from background noise. Of course, it may be that louder industrial noises (such as delivering wheels to Tandom Metallurgical) would have been recorded with additional monitoring. However, URS alone have carried out over 10 hours of weekday daytime monitoring, and I would have expected the most common types of noise events to have been picked up.
27. Overall, the evidence before me does not show that noise at the site would result in a significant observed adverse effect. It appears to me that, overall, a good standard of amenity could be achieved at the site. Accordingly, the development is compliant with Policy GR1.

Noise – the effect on the existing businesses

28. On the evidence before me, including the Council's BS4142 assessment, I cannot rule out the possibility of residents of the site complaining regarding local businesses. However, I have concluded that living conditions at the proposed dwellings would be satisfactory, and this is relevant to the question of whether complaints are likely. Moreover, the nearest of the proposed dwellings would be located a similar distance from the key sources of industrial noise as existing dwellings and, while the Council has shown some record of complaints from existing dwellings, those attributable to noise are not excessive in number. Accordingly, I am not persuaded that the dwellings proposed would add significantly to local pressure to curtail or restrict the activities of the existing businesses, and I find no conflict with the Framework as a result of this consideration.

Unilateral undertaking

29. The appellant submitted a unilateral undertaking during the Hearing. Regulation 122 of the Community Infrastructure Levy Regulations 2010 requires that planning obligations are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
30. The undertaking submitted in this case makes provision for affordable housing, open space and a locally equipped area of play (LEAP), with sums of money to be provided for habitat enhancement and creation, works to Forge Lane and traffic management. All of these are matters directly related to the development. Both sides consider that the undertaking is necessary to make the development acceptable in planning terms, and I have been provided with details of the relevant policies and guidance. I have also been provided with details of how the quantity of affordable housing (14 units), areas of the LEAP and the open space and the habitat enhancement sum have been calculated. I do not have detailed calculations for the Traffic Management Sum or the Highways Commuted Sum, but they appear proportionate to the works to be carried out.

31. The Council raised concerns that most of the appeal site has a mortgage upon it. This could prevent the undertaking from having legal effect, since the mortgager is not a signatory to the undertaking. However, the appellant has now addressed this with the submission of a deed of consent, which was submitted, with my agreement, after the close of the Hearing.
32. I conclude that the undertaking accords with the CIL Regulations and would be capable of taking effect, and I attach weight to it accordingly.

Other considerations

33. Plainly, the provision of new homes is a benefit of the scheme. The Framework seeks to boost significantly the supply of housing. The fact that the Council cannot currently demonstrate an adequate supply of housing land adds to the importance of the additional housing proposed here. These matters weigh in favour of the proposal.

Conclusion and conditions

34. Weighing up these matters I conclude that the adverse impacts of the development do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework. Specific policies within the Framework do not indicate that development should be restricted in this case and I have also found that the development complies with Local Plan Policy GR1. Accordingly, I will allow the appeal.
35. I have attached a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions relating to building materials are necessary to ensure that the appearance of the development is satisfactory and in order to ensure insulation against radio waves relating to the nearby Jodrell Bank observatory.
36. I have required details of the works to Forge Lane to be approved in the interests of road safety. Conditions relating to landscaping details and a condition restricting permitted development rights are imposed to ensure that the appearance of the development is satisfactory. In view of the site's industrial past I have imposed conditions requiring investigation into site contamination and requiring a programme of archaeological work to be carried out. Conditions relating to habitat and ecology are necessary in view of the significant wildlife and ecological interest present at the site.
37. A condition is necessary to ensure that proper provision is made for drainage and floodwater storage at the site. A condition to control the floor levels of the buildings and the level of the roads is needed for the same reason. I have required a construction method statement to be submitted to address a range of matters, principally designed to protect local living conditions during the construction process.
38. I have imposed a condition requiring a scheme to reduce energy use to be submitted and approved. While the Council sought a condition with a specific target, I am not satisfied that the target suggested was sufficiently clear, and have not imposed it.
39. I am not persuaded, for the reasons I have already given, that any condition relating to sound insulation for the proposed dwellings is necessary. Nor have I imposed any condition seeking to control noise in external areas, since the

evidence before me suggests that it is unlikely that significant gains could be made in that regard.

Peter Willows

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Natasha Rowland	Associate Director, Savills
Dan Atkinson MIOA	URS
Robert Colder MIOA	URS
Rob Moore MRTPI	Savills
Mark Knights	Solicitor, Ellison Thomas

FOR THE LOCAL PLANNING AUTHORITY:

Susan Orrell	Principal Planning Officer, Cheshire East Council
Stephanie Bierwas	Enforcement Officer (Environmental Protection), Cheshire East Council
Phil Mason	Senior Enforcement Officer (Environmental Protection), Cheshire East Council
Charlotte McKay	Planning Lawyer, Cheshire East Council
Stephanie Parkinson	Property Lawyer, Cheshire East Council
Janet Turner	Property Lawyer, Cheshire East Council

DOCUMENTS

1	Unilateral undertaking dated 8 December 2014
2	Draft planning conditions
3	Statement of Common Ground dated 9 December 2014
4	CIL Compliance Statement
5	Email from Natasha Rowland dated 8 December 2014
6	Email from Charlotte McKay dated 8 December 2014
7	Deed of Consent date 22 December 2014

CONDITIONS

Commencement and reserved matters

- 1) Details of the appearance of the development (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 be carried out in accordance with the following approved plans: PLO2 Rev O and 47065192-URS-LD-01 Rev C.

Materials

- 5) No development involving the use of any facing or roofing materials shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings 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.
- 6) Prior to the commencement of development, plans showing details of all external facing material and internal insulation to the building (in respect of insulation against radio waves) shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Highway works

- 7) Prior to the commencement of development a scheme of highway upgrades to Forge Lane, to include street-lighting, and following the principles set out in SBA Drawing No A081804-P001B shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before any of the dwellings are occupied.

Archaeology

- 8) No housing development shall take place until a programme of archaeological work relating to the area of the proposed housing has been implemented in accordance with a written scheme of investigation to be submitted to and approved in writing by the local planning authority.

Landscaping

- 9) No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the local planning authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely

damaged or seriously diseased within five years from the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.

- 10) Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby permitted (including any tree felling, tree pruning, hedgerow pruning, hedgerow removal, demolition works, soil moving, temporary access construction and / or widening, or any operations involving the use of motorised vehicles or construction machinery) a detailed Arboricultural Method Statement shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved Arboricultural Method Statement.
- 11) Prior to the commencement of development full details of both hard and soft landscape works, in general accordance with the principals established by the approved Landscape Masterplan, shall be submitted to and approved in writing by the local planning authority. Where appropriate, these details shall include proposed finished ground levels or contours; hard surfacing materials; and all boundary treatments, minor artefacts and structures.
- 12) The approved landscaping scheme shall be completed in accordance with the following:
 - i) All hard and soft landscaping works shall be completed in full accordance with the approved scheme within the first planting season following completion of the development hereby permitted, or in accordance with a programme agreed with the local planning authority;
 - ii) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) *Code of Practice for General Landscape Operations (excluding hard surfaces)*;
 - iii) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 *Trees in Relation to Construction: Recommendations*;
 - iv) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species.

Permitted development

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no fences, gates or walls other than those expressly authorised by this permission shall be erected within the curtilage of any dwellinghouse forward of the principal elevation of that dwellinghouse or any wall which fronts onto a road.

Contamination

- 14) No development shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing by the local planning authority:
- a) A preliminary risk assessment which has identified:
 - all previous uses and potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors;
 - potentially unacceptable risks arising from contamination at the site.
 - b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 - c) The results of the site investigation and detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy, giving full details of the remediation measures required, including how and when they are to be undertaken.
 - d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The remediation measures shall be implemented in full accordance with the approved details.

Habitat and ecology

- 15) No clearance of bird breeding habitat in preparation for (or during the course of) the construction of any part of the development hereby permitted shall take place during the bird nesting season from March to August, unless it is carried out in accordance with a scheme which has been submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until a scheme for the provision and management of the undeveloped buffer zone has been submitted to and approved in writing by the local planning authority. The submitted scheme shall include:
- plans showing the extent and layout of the buffer zone;
 - details of any proposed planting scheme;
 - details demonstrating how the buffer zone and river corridor will be protected during development;
 - a management plan showing how the zone will be managed over the long term.

The buffer zone shall be provided and managed in accordance with the approved scheme.

- 17) No development shall commence until details of bat and bird boxes to be provided at the site have been submitted to and approved in writing by the local planning authority. The approved bat and bird boxes shall be provided prior to the first occupation of the development hereby permitted.
- 18) Prior to the commencement of development a scheme of Reasonable Avoidance Measures designed to minimise the potential risk of reptiles being harmed during the site clearance and development shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.

Drainage and levels

- 19) Notwithstanding any indication on the approved plans, the development shall not commence until a scheme for the disposal of foul and surface water for the entire site has been submitted to and approved in writing by the local planning authority. The scheme shall make separate provision for foul and surface water and shall not permit surface water to discharge directly or indirectly into existing sewerage systems. The scheme shall be designed to manage the risk of surface water flooding, including the provision of compensatory flood storage as necessary. The approved scheme shall be implemented in full prior to any part of the development being brought into use.
- 20) The development hereby permitted shall not be commenced until details of the minimum level of the access roads and the minimum floor level of the proposed buildings have been submitted to and approved in writing by the local planning authority. The minimum level of the roads shall not be below 73.35m AOD and floor levels shall not be below 73.65m AOD. The development shall be implemented in accordance with the approved details.

Construction method statement

- 21) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - the hours of work
 - the parking of vehicles of site operatives and visitors
 - the loading and unloading of plant and materials
 - the storage of plant and materials used in constructing the development
 - the erection and maintenance of security hoardings
 - wheel washing facilities
 - a scheme for recycling/disposing of waste resulting from demolition and construction works
 - a scheme to minimise dust emissions arising from demolition and construction activities on the site. The scheme shall include details of

all dust suppression measures and the methods to monitor emissions of dust arising from the development.

Energy reduction

- 22) Prior to the commencement of development a scheme to reduce energy use within the development (utilising enhanced insulation or construction technologies as appropriate) shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.

Richborough Estates