



Appeal Decision

Hearing held on 6 January 2015

Site visit made on 6 January 2015

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 20th January 2015

Appeal Ref: APP/P3420/A/14/2227311

Land off Watermills Road, Chesterton ST5 7ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr M Carden (Carden Development Ltd) against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 13/00974/OUT, dated 19 December 2013, was refused by notice dated 15 April 2014.
 - The development proposed is residential development of up to 65 dwellings including means of access.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 65 dwellings including means of access at Land off Watermills Road, Chesterton ST5 7ET in accordance with the terms of the application, Ref 13/00974/OUT, dated 19 December 2013, subject to the conditions set out in Annex A.

Procedural Matter

2. The application was submitted in outline with access only to be determined at this stage. I have dealt with the appeal on this basis treating the plans showing the zoning layout and the landscaping, open space and wildlife mitigation as indicative apart from in respect of the access to the site.

Main Issue

3. The main issue in the appeal is the effect of the proposed development on the supply of employment land in the borough and the future economic development and growth of Newcastle-under-Lyme.

Reasons

4. The appeal site is currently vacant open land that the appellant indicates was formerly part of a landfill tip. The site, together with other land in the vicinity, was acquired and reclaimed by the Council over twenty years ago. Whilst the site itself is relatively flat, vegetated mounds lie between the site and Audley Road and also to the south west of the site. Beyond the latter the land drops down the hillside to Apedale Sawmills and the Rowhurst Industrial Estate.
5. The surrounding area is mixed in character. On the other side of Watermills Road lies an extensive brickworks, but to the west of the site is agricultural

- land. To the north, on the other side of Audley Road, it is predominantly residential.
6. Although the site is covered by Policy E9 of the *Newcastle-under-Lyme Local Plan 2011 (adopted October 2003)* (NLP) it was agreed by both parties that this policy does not allocate land for employment purposes as policies E2-E8 of the NLP do. Instead this policy indicates that renewal of the then existing planning permissions for employment uses on the sites listed would be likely to be considered favourably. However, in my view this does not preclude the use of the site for other purposes.
 7. Notwithstanding this, the Council have indicated that the Development Brief¹ prepared for the site in the early 1990's, and the subsequent planning permissions for employment uses on the site, show that it has always been their intention that the site should be used for economic purposes. As such they consider it forms part of the employment land supply within the borough, and is covered by Policy E11 of the NLP which seeks to resist the loss of good quality employment land and buildings where this would limit the range and quality of sites and premises available.
 8. The proposal would allow the development of up to 65 dwellings on the site. The Council have acknowledged that the site is in a sustainable location and that, in principle, the site could be developed for residential purposes without having an unacceptable impact on the character and appearance of the area, highway safety, the living conditions of existing and future occupiers, mineral extraction and protected species.
 9. The *National Planning Policy Framework* (the Framework) sets out in paragraph 47 that to boost significantly the supply of housing, local planning authorities should be able to demonstrate a 5 year supply of deliverable housing sites. There is agreement from both parties that the Council cannot demonstrate this. I am mindful in this respect that the Framework (paragraph 14) has a presumption in favour of sustainable development unless the adverse impacts would significantly and demonstrably outweigh the benefits.
 10. The deficit is clearly a matter of significant weight. However, the Council are concerned that the loss of site for employment purposes would be detrimental to the supply of employment land in the borough, and would undermine the aims and objectives of the *Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006 – 2026 (adopted October 2009)* (CSS) to promote economic growth. The Framework also gives strong support to securing economic growth.
 11. Policy SP2 of the CSS sets out a requirement of 112ha of employment land in the borough over the plan period. This consists of a rolling five year supply requirement of 28ha and a long term supply of 84ha. The more recently produced *Newcastle-under-Lyme and Stoke-on-Trent Employment Land Review (July 2011)* (ELR) utilised two methodologies to forecast future requirements for employment land. However, following concerns raised in a previous appeal regarding the methodology and findings of these forecasts, it was accepted that the figures in the CSS were the appropriate ones to use.

¹ Planning Brief for the development of land at Audley Road, Chesterton

12. At the hearing there was a lack of clarity over how much employment land had been developed to date. Whilst the ELR indicated that between 2006/7 and 2009/10 68ha of employment land had been developed, Table 1 of the Council's statement indicated that over the longer period 2006 to 2014 only just over 58ha had been developed. Using the later more conservative figure which the Council considered to be more accurate leaves a requirement of 54ha over the rest of the plan period.
13. The current supply of employment land in the borough was disputed. Nevertheless, at the hearing a list of 9 sites totalling approximately 19ha was agreed as being currently available. In addition, the availability of a further 5 sites totalling 82ha was disputed. This included 28ha at Keele Science Park where the types of uses permitted was restricted, and 42ha at Chatterley Valley Phase 2 where the ability to develop the site due to up-front costs was not agreed.
14. From the evidence put before me I have no firm basis for reaching a conclusion on the current supply of employment land in the borough. However, I am mindful of the fact that in April 2014, following an inquiry on land at Trentham Lakes² in neighbouring Stoke-on-Trent, the Inspector concluded that there was more than sufficient employment land available within Stoke-on-Trent, and the wider market area, to satisfy future demand in the short to medium term. No evidence has been presented to me that makes me come to a different conclusion on this matter.
15. Even if it is accepted that there is a shortage of employment land in the borough, it is clear that this site has been available for employment development for in the region of 20 years. During this time, despite extensive marketing and the fact that the site has had the benefit of planning permission for the development of a number of business units (B1, B2 and B8 uses) the site has remained undeveloped.
16. The Council raised concerns as to whether the price being asked for the site has been realistic. In particular they note that they sold the land for £495,000 in 2007 whereas the new owners put it on the market for £787,000. The appellant highlighted that although the sale took place in 2007, the price for the site was agreed in 2005. During this time the value of land increased and the price initially asked was in fact lower than it was independently valued at, and reflected the value land was selling for in the area at that time. Moreover, I note that the price has changed over recent years to reflect market conditions.
17. It was also argued that the fact that the site no longer has planning permission would be detrimental to the ability to develop the site. However, given that Policy E9 of the NLP makes it clear that planning permission for employment purposes on the site is likely to be considered favourably, and that any developer is likely to submit a new application for the site, I agree with the appellant that this is unlikely to be detrimental in the marketing of the site.
18. Reference was made to an offer that was made for the site in October 2014 which shows that there is interest in the site for employment purposes. However, the appellant indicated that this verbal offer was never converted into a formal written offer as requested. It was indicated that verbal offers

² Appeal Reference AP/M3455/A/13/2199404

such as these are often made to strengthen the negotiating position of potential purchasers. Furthermore, it was stated that it was known that verbal offers were made on a number of sites and that negotiations on the purchase of another site are now well underway.

19. Whilst the presence of the brickworks and the industrial units on Rowhurst Close indicate that the area is considered acceptable by some employment uses, the plan of the area on page 3 of the Development Brief indicates that many of these buildings/uses appear to have been operating for some considerable time from the area. Of the land identified in the brief only one site appears to have been partially developed and the appellant indicated that Phase 2 of this site has been stalled due to difficulties in letting the first phase. However, it was indicated that permission was granted in May 2014 for two industrial blocks each containing 6 units.
20. The appellant considered that access was the biggest constraint to the site coming forward for economic development. This corresponds to the view put forward in the ELR, and in a report by Jones Lang LaSalle produced for the Trentham Lakes appeal, which classed the accessibility of the site as poor. Within the area accessibility to the A34/A500/A50 and junctions 15 and 16 of the M6 are seen as key.
21. Whilst the site is physically not far from the A34 or junction 15 of the M6, it is perceived to be a "tertiary" location that is "off-patch". Thus it was highlighted that although the Silverdale Enterprise Park was more than twice the distance to the main road corridors it had been developed as the perception of the accessibility was better. Furthermore, I observed that there were a number of employment parks along the route from the site to the M6, many of which had land and/or buildings available. These will be competing directly with this site and their accessibility is likely to be perceived as superior to that of this site.
22. Paragraph 22 of the Framework indicates that planning policies should avoid the long term protection of sites allocated for employment uses where there is no reasonable prospect of a site being used for that purpose. Although it is agreed that this site is not formally allocated for employment purposes, the Council have sought to protect it for such purposes and as such this paragraph is of relevance.
23. The site has been available for employment purposes for a considerable period of time, including both periods of significant economic growth as well as periods of recession. During this time extensive marketing of the site has taken place. Notwithstanding this the site has remained undeveloped. Given this I am satisfied that there is no reasonable prospect of it being used for employment purposes.
24. In the light of this the Framework indicates that applications for alternative uses should be treated on their merits, having regard to market signals and the relative need for different land uses. As highlighted above the Council cannot demonstrate a five year supply of housing land. Consequently there is a clear need for housing land within the borough and the development of this site for up to 65 houses would make a significant contribution to the housing supply.
25. Whilst the development of the site would result in the loss of just over 1ha from the employment land supply, overall, I consider the borough and the wider market area within which it operates, would still have an adequate

supply of employment land. As such, the proposal would not have a detrimental impact on the supply of employment land in the borough and the future economic development and growth of Newcastle-under-Lyme. Accordingly, there would be no conflict with Policies SP1, SP2 of the CSS and Policy E11 of the NLP.

Unilateral Undertaking

26. The appellant submitted a revised Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 at the hearing. I have considered this in the light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010.
27. Policy CSP10 of the CSS indicates that developers are required to have regard to the consequences that may arise from development. Proposals should therefore include provision for necessary on-site and off-site infrastructure, community facilities and/or mitigation measures where this is necessary to ensure comprehensive planning and to avoid placing an additional burden on the existing community and area. It states that these may include: transport measures, facilities and improvements; affordable housing; education and community facilities; and open spaces, sport and recreation facilities. Saved Policy IM1 of the NLP states that where a development requires improvements to infrastructure, or essential facilities, to make it acceptable then the developer will be expected to carry out or contribute to the funding of appropriate works. The obligations within the Unilateral Undertaking relate to the following matters.
28. *Transport.* The Highways and Transport section of the *Supplementary Planning Document for Developer Contributions (adopted September 2007) (SPD)* indicates that if an Area Transport Strategy for the borough is adopted, the Highway Authority may seek contributions for the delivery of the strategy. The Newcastle (urban) Transport and Development Strategy (NTADS) (adopted December 2009) aims to reduce congestion, accessibility and safety problems in the area, reduce pressures that new developments place on local transport infrastructure, increase the opportunities to travel by sustainable modes of transport, and support the regeneration of the area. The Highways Authority assessed that the development should make a contribution of £40,079 towards the NTADS and this is provided within the Unilateral Undertaking. Given that a development of this size would create additional pressures on the existing local transport infrastructure, I consider that the contribution sought by the Council is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such it would accord with the statutory tests.
29. *Education.* The SPD indicates that developments of more than 7 dwellings or 0.2ha may be required to provide a financial contribution towards education provision. In addition the County Council's Education Planning Obligations Policy sets out the broad approach to planning obligations for education infrastructure, and the formula for calculating an education contribution where it has been established that the development creates a need for additional school places to be provided. It is calculated that the development will create a need for 14 primary school, and 10 secondary school places. As the schools in the area are projected to be full or have very limited space for the foreseeable future, an education contribution of £154,434 is sought and is

provided for within the Unilateral Undertaking. Given this I consider that this obligation would meet the statutory tests.

30. *Affordable Housing*. Policy CSP6 of the CSS requires that new residential development within the urban area, on sites or parts of sites proposed to, or capable of, accommodating 15 or more dwellings contributes towards affordable housing at a rate equivalent to a target of 25% of the total dwellings to be provided. The Supplementary Planning Guidance on Affordable Housing (SPG) sets out more detail on the Council's approach to affordable housing and the need for such housing within the borough.
31. The Unilateral Undertaking makes provision that not less than 25% of the dwellings will be affordable housing dwellings of which 63% will be either Affordable Rent Dwellings or Discounted Rent Dwellings or Social Rented Dwellings and 37% will be Shared Ownership. At the Hearing the Council expressed concern regarding the type of affordable housing proposed, which they stated, to accord with the SPG, should be predominantly Social Rented, and also that there is inadequate regulation to ensure that the housing would be given to people with affordable housing needs. However as the Undertaking states that they are managed by the Registered Provider, in accordance with their normal lettings policy, I am satisfied that the dwellings would be given to the people with affordable housing needs. Whilst the type of affordable housing may not be exactly what the Council would prefer, overall the Undertaking would ensure that the development contributes to the affordable housing needs within the borough, and I consider that the obligation passes the statutory tests.
32. *Open Space*. Policy CS5 of the CSS states that open space, sport and leisure assets will be enhanced, maintained and protected by a number of measures including the use of developer contributions to meet the needs of new residents, and help deliver a variety of green space strategies in the area. Policy C4 of the NLP sets out the amount and type of publically accessible open space that must be provided by new housing development and also requires that its maintenance will be secured. *The North Staffordshire Green Space Strategy (2007) (GSS)* sets out methodology for calculating developer contributions for open space.
33. Although the proposal will provide a variety of publically accessible open space within the site it is expected that it would also increase demand for other green space facilities in the area. Consequently, in accordance with the GSS, a contribution of £2,943 per dwelling is sought towards improvements at a nearby playground and recreation ground. This is provided for within the Undertaking. I consider that the contribution sought by the Council in this respect is directly related to the development and is fairly related in scale and kind. As such it would accord with the statutory tests.

Conclusion and Conditions

34. For the reasons set out above, I conclude the appeal should be allowed.
35. In addition to the standard implementation and reserved matters conditions, it is necessary for the avoidance of doubt, to define the plans with which the scheme should accord. As the application was made for up to 65 houses I consider it reasonable to condition the maximum number of houses that can be built on the site. For reasons of highway safety a condition is required to

ensure the provision of an adequate access to the site before the development commences.

36. Given the findings of the Preliminary Risk Assessment and the sensitive nature of the end use, I consider it would be appropriate to have a condition to further assess the potential for contamination and to outline measures of how any contamination would be dealt with. It is also necessary to control any soil brought onto to the site to ensure it is not contaminated.
37. A condition requiring a construction method statement is necessary to protect residential amenity. To ensure the satisfactory drainage of the site it is necessary to control details of the disposal of surface water and foul sewerage from the site. In the interests of the character and appearance of the area a condition is required to control the slab levels of the dwellings. As recommended in the Officer's report, a condition to ensure the mitigation measures set out in Ecological Assessment are carried out as part of the development is necessary for nature conservation purposes.
38. As the other conditions suggested by the Council relate to matters that are reserved for future consideration I consider that it is neither necessary, nor appropriate, to apply them at this stage.

Alison Partington

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Niall Blackie	FBC Manby Bowdler LLP
Penny Bicknell	Les Stephan Planning Ltd
Richard Mounsey	Mounsey Chartered Surveyors
David Mayer	Jacksons Group
Matthew Carden	Carden Developments

FOR THE LOCAL PLANNING AUTHORITY:

Rachel Killeen	Planning Officer
Simon Smith	Economic Development Officer
Stewart Donohue	Planning Officer
A Razaq	Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Revised Unilateral undertaking submitted by the appellant
2. Available Employment Land in Newcastle-under-Lyme January 2015 submitted jointly by the Local Planning Authority and the appellant

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Annex A

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 be carried out in accordance with the following approved plans: Location Plan Dwg No 01; Existing Site Plan Dwg No 02; Proposed Zoning Layout Dwg No 03 Rev A; and Landscape, Open Space and Wildlife Mitigation Dwg No 04 Rev A but only in respect of those matters not reserved for later approval.
- 5) The development hereby permitted shall be for residential development of no more than 65 dwellings.
- 6) No other development shall take place until the access to the site, which shall include a 2m wide footway on either side of a 5m wide access road, has been completed.
- 7) No development hereby permitted shall take place until a further site investigation and risk assessment has been completed in accordance with a scheme to be agreed by the Local Planning Authority to assess the nature and extent of any contamination on the site. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to, and agreed in writing with, the Local Planning Authority prior to the commencement of the development. The report of the findings shall include:-
 - I. A survey of the extent, scale and nature of any contamination;
 - II. An assessment of the potential risks to:
 - Human health;
 - Property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes;
 - Adjoining land;
 - Ground and surface waters;
 - Ecological systems; and,
 - Archaeological sites and ancient monuments.
 - III. An appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11'*.

- 8) If necessary, no development hereby permitted shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historical environment has been prepared, and is subject to the approval, in writing, of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 9) The approved remediation scheme must be carried out in accordance with its terms prior to the occupation of the first dwelling, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and subject to the approval in writing of the Local Planning Authority

- 10) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 7, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 8, which is subject to the approval in writing of the Local Planning Authority

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority

- 11) No top soil is to be imported to the site until it has been tested for contamination and assessed for its suitability for the proposed development. A suitable methodology for testing this material should be submitted to, and agreed in writing by, the Local Planning Authority prior to the soils being imported on to site. The methodology should include the sampling frequency, testing schedules, criteria against which the analytical results will be assessed (as determined by the risk assessment) and source material information. The analysis shall then be carried out, and validatory evidence submitted to, and approved in writing, by the Local Planning Authority.
- 12) No development shall take place until a Construction Method Statement has been submitted in writing to, and approved in writing by, the Local Planning Authority. This shall include details relating to:
- The control of noise and vibration emissions from construction activities, including groundworks and the formation of infrastructure, including arrangements to monitor noise emissions from the development site during the construction phase;

- The control of dust including arrangements to monitor dust emissions from the development site during the construction phase; and
- Measures to reduce mud deposition off-site from vehicles leaving the site.

Development shall be carried out in compliance with the approved Construction Method Statement, unless otherwise approved in writing by the Local Planning Authority.

- 13) No development shall take place until drainage plans for the disposal of surface water and foul sewage have been submitted to, and approved in writing by, the Local Planning Authority. The surface water drainage scheme shall be based on sustainable drainage principles, and an assessment of the hydrological and hydrogeological context of the development and shall also include details of how surface water runoff up to and including the 1 in 100 year event plus climate change will be retained on site and details of how any surface water drainage scheme will be maintained. The scheme shall be implemented in accordance with the approved details before the occupation of the first dwelling and maintained as such at all times thereafter.
- 14) No development hereby permitted shall take place until details of the slab levels of all dwellings have been submitted to, and approved in writing by, the Local Planning Authority. The development hereby approved shall be carried out in accordance with the approved details.
- 15) The development hereby permitted shall be carried out in full accordance with the mitigation methods contained within the Ecological Assessment by Star Ecology, Ref LSP/940/13.1, dated 4 November 2013.

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