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## Appeal Decision

Inquiry held on 3 and 4 November 2015

Site visits made on 4 and 5 November 2015

**by M Middleton BA(Econ) DipTP DipMgmt MRTPI**

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

**Decision date: 16/12/2015**

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**Appeal Ref: APP/T3725/W/15/3007571**

**Land at Sydenham Industrial Estate, Sydenham Drive and St Mary's Road, Leamington Spa, Warwickshire, CV31 1PG**

- 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 Orbit Group and CHS Developments Ltd against the decision of Warwick District Council.
  - The application Ref W/14/1132, dated 25 July 2014, was refused by notice dated 19 November 2014.
  - The development proposed is the erection of 96 no. affordable and 51 no. low cost dwellings (Class C) served by vehicular access from St Mary's Road and Ramsey Road; associated car parking, landscaping, open space and other ancillary and enabling works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 96 no. affordable and 51 no. low cost dwellings (Class C) served by vehicular access from St Mary's Road and Ramsey Road; associated car parking, landscaping, open space and other ancillary and enabling works on land at Sydenham Industrial Estate, Sydenham Drive and St Mary's Road, Leamington Spa, Warwickshire, CV31 1PG in accordance with the terms of the application, Ref W/14/1132, dated 25 July 2014, and the plans submitted with it, subject to the conditions in the attached schedule.

### Procedural matters

2. Following their making of this appeal, the Appellants submitted an application for outline planning permission on the eastern part of the site, i.e. that part of the development that was not accessed from Ramsey Drive, which for the most part was previously occupied by car showrooms and a garage. Outline planning permission was granted on 11 August 2015 for 66 no. affordable dwellings and 36 no. low cost dwellings and subject to 28 conditions.
3. Subsequent to that, on 24 August 2015, the Council invited the Appellants to submit a revised outline application for 143 dwellings on the entire appeal site. The notional layout that accompanied that application was the appeal scheme, with the addition of a 3m high acoustic fence located immediately to the north of the building currently occupied by Bellagio Stone. Outline planning permission was granted on 28 September 2015 for 88 no. affordable dwellings and 55 no. low cost dwellings and subject to 33 conditions.

4. On 6 October 2015 the Council wrote to the Planning Inspectorate informing it that in view of its decision to grant planning permission for the outline scheme, it would not be seeking to defend its decision to refuse the appeal application. Other than with regard to conditions, it would not be presenting any evidence to the Inquiry.
5. Bellagio Stone who cuts and polishes stone in a building on Ramsey Road, adjacent to the appeal site, objected to the proposal and was granted Rule 6 status. Despite the existence of the outline planning permission and the Council's withdrawal from the proceedings on 6 October, Bellagio Stone did not inform the Planning Inspectorate that it had decided not to appear at the Inquiry until 2 November.
6. At the start of the Inquiry the Appellants indicated that they did not wish to withdraw the appeal, in part because they disagreed with some of the conditions that the Council had imposed on the outline planning permission but also because they considered the construction of the acoustic fence to be unnecessary. They also pointed out that the implementation of the development would be funded by the Homes and Communities Agency to the extent of over £3 million but that this funding was contingent upon the completion of the development by 31 March 2018. Speed was therefore now essential in the context of the implementation of this proposal and to assist this, the Appellants preference was for a full planning permission.
7. I informed the parties that in the circumstances, I would examine the evidence myself, holding Hearing sessions where appropriate. I invited both the Council and the Rule 6 party to attend and to participate where appropriate. In the event, whilst the Council was represented, the Rule 6 party did not attend. It was therefore left to me to interrogate the Appellants' evidence and to assess the validity of their disagreement with the Rule 6 Party's case.
8. The Council has granted outline planning permission for two schemes on the site. These represent fall back positions. Nevertheless, the conditions about which the Appellants have concerns, relate to noise and highway safety matters that were the subject of the refusal of the appeal application and in the case of noise, the objection from Bellagio Stone. My decision therefore examines these in some detail.
9. The Appellants made an application for costs, against the Council, at the start of the Inquiry. They withdrew it shortly before its close.

### **Main Issues**

10. In the context of the above and from all that I have read, heard and seen I consider the main issues to be whether the proposal would:-
  - a) have an unacceptably adverse impact on road safety
  - b) be harmful to the living conditions of future residents of the development as a result of noise and disturbance from nearby sources of employment and road trafficand
  - c) impact on the use of nearby commercial premises to an extent that affected the viability of their use for employment purposes.

## Reasons

11. The appeal site is a former employment area extending to 2.96 hectares. It is a part of a much larger such area that extends to the south of St Mary's Road and to the east of Ramsey Road. With the exception of the building occupied by Bellagio Stone, located immediately adjacent to the south-western corner of the appeal site and a building occupied by Magnet, on the east side of Ramsey road and which would be surrounded by the appeal development, the buildings to the north of St Mary's Road are now all vacant. Apart from the Bellagio Stone premise, which is a brick and metal clad structure, the remainder of the buildings are in a poor condition, some of them having significant quantities of asbestos sheeting.
12. The proposal would redevelop the entire area between Sydenham Road, St Mary's Road, and the Grand Union Canal for residential purposes with the exception of the two occupied buildings and the two vacant buildings fronting St Mary's Road, west of its junction with Ramsey Road. It was unclear what is to happen to these two buildings or the Bellagio Building whose occupier, I was told, was seeking planning permission to relocate to another industrial estate. For the purposes of my determination, I have assumed that these buildings will remain, that Bellagio Stone or a similar operation continues to occupy the remaining industrial building immediately adjacent to the site, that Magnet remain in occupation of their current premises and that the two remaining buildings fronting St Mary's Road are reoccupied by industrial users.

## Planning Policy

13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan (DP) unless material considerations indicate otherwise. The DP for the area now consists of the saved policies of the *Warwick District Local Plan 1996-2011* (LP), which was adopted in 2007. It seeks to meet the District's development needs up to 2011.
14. A replacement plan, *Warwick District Local Plan* (WDLP) was submitted for examination in January 2015. The Examination in Public began in May 2015 but was adjourned because the Inspector had concerns about the robustness of the evidence base underpinning its housing and related policies. In such circumstances, I cannot give significant weight to the policies contained in this document, although some of the background research information that is being used to underpin this plan, may still be relevant.
15. It is accepted that the LP housing supply policies are now time expired and out of date. It is also agreed that Warwick does not have a five year supply of housing land. Paragraph 49 of the National Planning Policy Framework (Framework) says that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
16. Paragraph 14 of the Framework says that development proposals that accord with the DP should be approved without delay. It also says that where the relevant DP Policies are out of date, planning permission should be granted for sustainable development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the

Framework indicate that development should be restricted. The DP Policies that regulate the supply of housing within Warwick District are time expired and/or out of date. Paragraph 14 of the Framework is consequently engaged in the context of this appeal.

### **Traffic**

17. The Council was concerned about the use of Ramsey Road by delivery vehicles and those of customers visiting Bellagio Stone and Magnet. It considered that there could be conflict with pedestrians. However, the results of a weeklong survey undertaken by the Appellants suggest that the daily average number of light vehicles visiting Bellagio Stone and Magnet is 172, which is equivalent to the daily traffic generation of about 33 dwellings. On average fewer than 10 HGV movements visited the commercial premises combined on each day, with a maximum of 14. This is not a large number. The road is straight and not much more than 100 metres long. Traffic speeds are therefore likely to be low. There are good pavements on Ramsey Road and no visibility issues.
18. The locations of facilities that would be walked to by future residents are such that most people would not use Ramsey Road as a pedestrian route for most walking journeys. Pedestrian flows are therefore unlikely to be high. Whilst there is amenity open space to be provided to its north, no play area is proposed and few people visiting this area are likely to use Ramsey Road to gain access to it.
19. Although I appreciate that if the vacant unit on the corner of St Mary's Road and Ramsey Road is reoccupied, then there would be additional traffic associated with the commercial units, I am not persuaded that the residual cumulative impacts would be severe, which is the Framework's test for refusing development on transport grounds. I also note that the independent Road Safety Audit did not raise highway safety on Ramsey Road as an issue, although it did draw attention to matters elsewhere within and around the development and suggested remedial action. The Highway Authority does not make reference to Ramsey Road in its observations, although it too has raised issues that it suggests should be resolved by conditions.
20. I consider that any harm to highway safety and attributable to the proposal would not be significant and that for the most part, it would provide safe, convenient and attractive routes for pedestrians, cyclists and public transport users. It therefore complies with saved LP Policy DP6 and would not have an unacceptably adverse impact on road safety. In these circumstances I can only give minor weight to the potential conflict between vehicles and pedestrians on Ramsey Road.

### **Living conditions**

21. The Council was concerned that the noise from the operations at Bellagio Stone, in combination with the comings and goings of vehicular traffic to its premises and to those of Magnet, would be such that the living conditions at the proposed dwellings in the vicinity of Ramsey Road would be unacceptable.
22. The Council offered no evidence in support of this contention but Bellagio Stone submitted a noise assessment prepared on its behalf by Resound Acoustics (RA). However, no one was present at the Inquiry to answer questions about this evidence or to be cross examined. The report concluded that the

- assessment, which was prepared in accordance with British Standard 4142: 2014, showed that noise from Bellagio Stone's current operations would lead to significant adverse impacts at proposed residential properties close to the Bellagio premises.
23. The report also pointed out that if Bellagio Stone expanded its operational hours and worked during the night, then these adverse impacts would be exacerbated. It referred to the *Framework*, the *Noise Policy Statement for England* and the noise section in the *National Planning Practice Guidance (NPPG)*, all of which recommend the avoidance of adverse impacts due to noise.
24. RA suggests that representative background noise levels are 41dB  $L_{A90}$  in the daytime and 37 dB  $L_{A90}$  at night, on weekdays and across the appeal site. Hoare Lea (HL)'s analysis, on behalf of the Appellants, suggests about 53dB  $L_{Aeq}$  in the daytime and about 33dB  $L_{Aeq}$  in the middle of the night at locations around the edge of the site. However, I am not persuaded that the RA daytime levels are representative of the background noise levels that could be experienced at the properties closest to the Bellagio Stone premises i.e. units nos.73 to 79, which are the critical dwellings. The HL position 2 measurements were taken at a point that is approximately in the middle of the front of the proposed location of this block. The RA measurements were taken further east and in the yard to the north of the warehouse building opposite Bellagio Stone. This is approximately outside of the front of the proposed position of dwelling no.80. I do not consider this to be representative, as at the present time, traffic noise from St Mary's Road is largely screened by the warehouse building and from Sydenham Drive by the large former car showrooms to the east of the measuring point. It is hardly surprising therefore that the recorded ambient noise levels are much lower here than those recorded by HL at a position close to and facing Ramsey Road and which is visible from St Mary's Road.
25. RA has used its recorded noise level to predict the levels at three other external locations within the proposed layout. Location 3 is the closest to and most representative of HL position 2. Because of the proposed positions of buildings, it would be open to the receipt of traffic noise from St Mary's Road much more than location 4 and the latter would be more than twice the distance from that road. It is therefore surprising that RA award the same background sound level to these two locations.
26. On my site visits, when I observed ambient noise over most of the site during afternoon and morning periods, the yard, which is the source of RL's noise readings, was undoubtedly one of the quietest parts of the site. Following redevelopment the configuration of buildings will be very different to what it is at present and noise will travel from the surrounding noise sources to the RA measuring point much easier than it currently does. I therefore consider the RA predicted ambient noise level results to be unrepresentative of the likely position outside of the dwellings most likely to be affected by noise from Bellagio Stone.
27. RA took sound measurements at noise sources on Bellagio Stone's premises and has used the information to make predictions about noise levels at its four assessment locations during evening and night time working scenarios. At location 3, which is at the rear of dwelling no. 72, they give a rating level of 52

dB both day and night and at location 4, which is outside dwelling no. 80, one of 58 dB. These noise levels are not appreciably above the ambient day time levels predicted by HL but they are much higher than the night time levels. However, the RA scenario is clearly a worse case and was it to occur, it is quite clear that night time noise levels would be unacceptable for the existing population living in the area and it is likely that there would be regular complaints.

28. Bellagio Stone were notified about my first site visit and I heard at first hand most of the different types of operational noise outlined by RA and from a number of locations in the western part of the appeal site. Periodic irregular noise, such as from tipping waste stone into a skip in the external area or the reversing horn of the fork lift truck, were clearly discernable but they were not frequent. Other than immediately to the north of the Bellagio Stone building, continuous tonal noise, from operations such as cutting and grinding, was not particularly noticeable on the appeal site above the background noise. Its identity to the north of Bellagio Stone was because a door in the western elevation of its building had been left open.
29. The appeal dwellings, in the vicinity of the Bellagio Stone site, have been orientated away from that location and designed such that habitable rooms do not face that building. Thermal grade double glazed windows are to be installed in the properties and trickle vents, to achieve background ventilation, are to be fitted. These should reduce noise levels inside of the appeal dwellings by over 30dB so that even in RA's worst case night time scenario, they would be clearly below the World Health Organisation's guidelines for community noise exposure<sup>1</sup> and the minimum requirement defined in BS 8233.
30. Design and technical solutions cannot reduce noise in external areas to the same extent. However the private gardens close to Bellagio Stone are all to be located on elevations that do not face that property and they are to be enclosed by 2m high acoustic fencing. This on its own should reduce noise levels by 10dB. The orientation of buildings should also enable a further reduction of more than 15dB in instances where private gardens are adjacent to the elevation that is opposite to the one that faces Bellagio Stone. In RA's worst case evening scenario the rear garden at plot no. 80 would have a noise rating less than 43dB and that at plot no. 77 48dB. Dwellings nos. 72 to 76 would experience noise levels below 42 dB if RA's rating level for location 3 is correct. These are not unacceptable outside noise levels and comfortably below the World Health Organisation's recommended maximum of 55dB.
31. The Council did not offer any evidence to justify its concerns about noise from traffic. Whilst much of the ambient noise is as a result of traffic on Sydenham Drive and St Mary's Drive, the levels suggested by the Appellants' measurements do not imply that an adverse noise environment would occur in this context. Whilst there would be distinctive noise experienced in the vicinity of Ramsey Road, from heavy vehicles visiting the Bellagio Stone and Magnet premises, these are not frequent occurrences. The Appellant's survey identified up to 14 weekday heavy goods vehicle movements on Ramsey Road. This is not high, even in the context of a residential area.
32. I note that there is no objection from the Council's Environmental Health officer and in the above circumstances I consider that the appeal proposal would

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<sup>1</sup> World Health Organisation, Guidelines for Community Noise 1999, Appendix B

provide acceptable standards of amenity for future occupiers of the development and would comply with saved LP Policy DP2. I conclude that the proposal would not be harmful to the living conditions of future residents of the development as a result of noise and disturbance from nearby sources of employment and road traffic. In these circumstances I can only give minor weight to the harm to living conditions resulting from these considerations.

### **Commercial premises**

33. I have found that because of the proposed mitigation, the noise resulting from the operation of the Bellagio Stone enterprise, even if it were to commence night time working, would not be so severe as to be harmful to the living conditions of future residents of the appeal scheme. It follows that whilst I do consider the predicted night time levels from the RA analysis could give rise to complaints from existing residential properties in the area, any action that resulted and curbed the operations at Bellagio Stone should not stem from the impact of its operations on the appeal dwellings. Consequently the appeal proposal should not impact on the use of nearby commercial premises to an extent that affected the viability of their use for employment purposes. In these circumstances I give no weight to the likely impact of the proposal on the viability of the use of neighbouring commercial premises.
34. Saved LP Policy SC2 seeks to protect employment land and buildings from redevelopment, unless one of four circumstances exists. Although the proposal is for affordable housing, it is not all being provided in accordance with the definition contained in saved LP Policy SC11 and none of the other three circumstances apply. The proposal is consequently contrary to saved LP Policy SC2. Nevertheless, over 60% of the dwellings would comply with the definition, which is a significant bonus beyond the 40% requirement established in saved LP Policy SC11. The remainder are to be low-cost market dwellings, for which there is also an urgent need.
35. Additionally, the *Warwick District Land Review Update (2013)*, which was undertaken to inform employment land provision in the WDLP, identifies the Sydenham Industrial Estate as being tired and with a high level of vacancies. It advocates the redevelopment of the northern half of estate for residential-led development. Draft WDLP Policy DS11 allocates the appeal site for the delivery of 100 dwellings. These considerations reduce the weight that I should give to saved LP Policy SC2. I conclude that the proposal need not impact on the use of nearby commercial premises to an extent that affected the viability of their use for employment purposes.

### **Sustainable development**

36. At paragraph 14 the Framework says that at its heart there is a presumption in favour of sustainable development. At paragraph 6 it points out that the policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development means for the planning system. It further points out at paragraph 7 that there are three dimensions to sustainable development: economic, social and environmental. The three roles are mutually dependent and should not be taken in isolation (paragraph 8). The considerations that can contribute to sustainable development, within the meaning of the Framework, go far beyond the narrow meanings of environmental and locational sustainability. As portrayed, sustainable development is thus a multi-faceted, broad based concept. The factors

involved are not always positive and it is often necessary to weigh relevant attributes against one another in order to arrive at a balanced position. The situation at the appeal site, in this respect, is no exception.

#### *Economic role*

37. Economic growth contributes to the building of a strong and competitive economy, which leads to prosperity. Development creates local jobs in the construction industry, as well as business for and jobs in the building supply industry. These support sustainable economic development to deliver the homes, business and infrastructure that the country needs. This is particularly important in times of economic austerity and is emphasised in paragraphs 17 and 18 of the Framework.
38. The appeal site is available. A well-established building company, with a track record of delivering new dwellings, in partnership with a Housing Association, has an interest in acquiring the site to undertake a development in the short term. The Appellants have indicated that in order to draw down grant funding from the Homes and Communities Agency, the affordable housing has to be completed by March 2018. Additionally, a condition could ensure that reserved matters are expedited without undue delay so that all of the development could commence at an early date and thereby make a positive contribution to boosting the supply of market, as well as affordable, housing now.
39. There is a parade of shops across Sydenham Drive from the appeal site. It caters for its customers' daily convenience needs and there is also a public house as well as other businesses in the area. Additional population, residing in the appeal development, would undoubtedly generate more expenditure to support these businesses, which in many locations are under threat. In contributing to economic vitality, the proposal is supported by section 1 of the Framework.
40. As discussed above, I have also found that the proposal would not adversely affect the viability of nearby commercial businesses. Nevertheless the proposal would result in a loss of employment land and buildings and their potential to provide jobs. Although set against this is the poor quality of many of the buildings and their vacant status.
41. There would be benefits to the local economy through increased expenditure in the form of wages and material purchases during the construction period. New jobs would be created for the duration of the development but not all of these would be based or recruited locally. Nevertheless, the economic considerations of the development, as discussed above, would overall weigh in favour of the proposal in the sustainability balance and I attach minor weight to this consideration.

#### *Social role*

42. The proposal would contribute to the supply of both market and affordable housing at a time when the Framework urges local authorities to boost the supply of housing. Warwick has a need for more affordable and low cost market housing. Policy SC11 requires sites with above 10 or more dwellings to provide a minimum of 40% of the dwellings as affordable. The appeal proposal, which would provide over 60%, is clearly supported by this policy and should be given significant weight in this context. As well as assisting in the



- provision of affordable homes, this development would also contribute to the provision of low cost market housing.
43. It could facilitate the provision of accommodation for young people wishing to establish themselves on the home ownership ladder as well as dwellings for those in need of rented accommodation. The Framework says that steps should be taken to boost significantly the supply of housing now and this is nowhere more relevant than in authorities that have failed and are still failing to deliver. Warwick does not have a five year supply of housing land. It is also some years since housing completions exceeded the annual requirement. Consequently, its delivery performance in the recent past leaves much to be desired. It is such that the Council agrees that a 20% buffer should be applied.
44. As well as the facilities referred to above, there is a superstore at the southern end of Sydenham Drive and a regular bus service to the centre of Leamington and elsewhere from that road. The local secondary school is located close to the superstore and there are a number of primary schools close by. The nearest is on the northern side of the adjacent canal. There is also an equipped children's play area at Rushmoor Street, which can be accessed from the canal tow path. The development would provide further amenity open space adjacent to the canal and there is a major area of public open space with sports and other recreational facilities at Newbold Comyn to the north of Radford Road, which is a short walk away. Leamington Town Centre is also a walkable journey for many people.
45. Given the distances I would expect most residents of the appeal site to walk to the schools and the other local facilities. Manual for Streets<sup>2</sup> describes a walkable neighbourhood as one that is typically characterised by having a range of facilities within ten minutes walking distance so that residents can comfortably access them on foot. The appeal site would clearly be a walkable neighbourhood. In promoting sustainable transport, the Framework at paragraph 38 says that key facilities such as primary schools and local shops should be located within walking distance of most properties. Although it does not define "walking distance", I consider the appeal site to be within easy walking distance of these facilities.
46. Overall I conclude that in the context of social sustainability the appeal proposal should attract significant weight.

### *Environmental role*

#### *Accessibility*

47. As well as being close to shops and community facilities, the appeal site is adjacent to a large industrial area where there are a variety of jobs and Leamington Town Centre, where there are more potential sources of employment, is only a short distance away. Many residents would have the opportunity of working in the locality and walking or cycling to work.
48. Paragraph 34 of the Framework says that decisions should ensure that developments that generate significant movement are located where the need to travel can be minimised and the use of sustainable transport modes can be maximised. In paragraphs 93 and 110 it encourages radical reductions in greenhouse gas emissions. This site is in an excellent location from an

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<sup>2</sup> Manual for Streets, Departments of Communities and Local Government and for Transport, 2007

accessibility standpoint and residential development here would undoubtedly contribute to the Framework's objectives in the above paragraphs.

49. The Appellants have agreed to provide and implement a travel plan, which should facilitate an increase in the use of sustainable travel options by the future residents of the development and a reduction in potential car journeys and greenhouse gas emissions. The Framework at paragraph 110 says that this is central to all dimensions of sustainable development. I find that the site has locational advantages in the sustainability balance and that this environmental consideration attracts moderate weight in favour of the appeal proposal in that context.

#### Other environmental considerations

50. There could be net gains to ecology, on a site that currently has little in the way of flora and fauna, by the creation of an amenity area adjacent to the canal. The redevelopment of unsightly and unused former commercial units would undoubtedly improve the visual experience of a walk along the tow path on the other side of the canal. This is a brownfield site with remediation necessary to remove pollutants from some locations. The development would fund this environmental improvement and is supported by paragraph 111 of the Framework in this respect.
51. It is agreed that through the discharge of appropriate conditions, the development could be of a design, layout, scale and mass compatible with the locality and that it could respect and enhance the local environment. If the discharge of the relevant conditions is pursued, in accordance with these objectives, the result would be a development that was of a high quality, safe, sustainable and inclusive, in accordance with the requirements of the relevant Development Plan policies.
52. There would clearly be more noise than would be desirable in an ideal residential environment but the levels are acceptable in what is a very urban environment close to a town centre. I can only therefore attach minor weight to this disadvantage.
53. The comparative locational advantages of the site clearly weigh in favour of the proposal in the environmental balance, as do the environmental improvements. Consequently there would be long term environmental benefits to outweigh the noise disbenefits. Overall the environmental considerations attract moderate weight in favour the proposal in the overall sustainability balance.

#### *Sustainability conclusion*

54. The Framework is clear, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. It is rare for any development to have no adverse impacts and on balance many often fail one or more of the roles because the individual disbenefits outweigh the benefits. Although there are some unfavourable aspects to this proposal, particularly the noise environment, they are limited and none is so substantial as to outweigh the respective benefits in each of the three strands of sustainability.
55. I find that the proposal would overall positively benefit each of the threads of economic, social and environmental sustainability. It is therefore my judgement that the appeal proposal would deliver sustainable development

within the meaning of paragraphs 18-219 of the Framework. Consequently the provisions of paragraph 14 clearly apply.

### **Planning balance and overall Conclusion**

56. The proposal accords with LP Policies DP2 and DP6 but it offends LP Policy SC2. Nevertheless, the Council's clear intent, to allocate much of this site for residential development in the emerging WDLP, must reduce the weight that should be given to this, particularly as without redevelopment this site is unlikely to be reused for any purpose.
57. Whilst there would be a loss of employment land and buildings, the proposal would bring local community and economic benefits. There would be minor harm from the noisy environment but this is offset by the site's locational advantages, as identified above. In the context of Warwick District this is undoubtedly a sustainable location for new development.
58. I have found that the adverse impacts of granting planning permission do not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole so that the proposal is sustainable development within the overall meaning of paragraphs 18 to 219 of the Framework. Consequently in a situation where some of the DP housing policies are not up to date, any harm to the DP is outweighed.
59. The other material considerations, to which I have been referred, do not indicate that planning permission should be refused. For the reasons discussed above I therefore find that the appeal should be allowed.

### **Conditions**

60. The Council's thirty suggested conditions were considered in the context of the Framework and the advice in the NPPG. They include reduced time limits for commencement and the specification of the approved plans.
61. To enable the developments to meet Development Plan policies that seek to achieve sustainable development, conditions concerning affordable housing, materials, privacy, landscaping, ecology protection and enhancement, sustainable construction, travel, ground water protection and flood risk, pollution, noise and contamination, and the implementation of bin storage facilities, parking and lighting, as well as fire hydrants have been suggested. All of these conditions are agreed by the parties. An additional condition concerning the provision of highway warning signs on Ramsey Road is not agreed.
62. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the NPPG. As one of the reasons for allowing this appeal concerns the site's alleged ability to significantly contribute to housing provision within the next five years, it is appropriate to reduce the time limits for the commencement of development from the norm. Department of Transport advice<sup>3</sup> on warning signs suggests that the only potentially appropriate signs are the ones that relate to pedestrians in the road ahead or children going to a playground. However, the circumstances of Ramsey Road do not meet the criteria for either of these signs in that there are footways on both sides of Ramsey Road and the

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<sup>3</sup> Traffic Signs Manual, Department of Transport 2013

Council has not asked for a playground to be provided within the proposed amenity open space. In such circumstances the provision of warning signs at the entry to Ramsey Road is not appropriate.

63. The remainder of the conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable and minimises the impact on the environment.

*M Middleton*

INSPECTOR

Richborough Estates

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than one year from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the details shown on the application form, site location plan (2894-24B) and the following approved plans, 2894-25V, 2894-29J, 2894-30B, 2894-31A, 2894-32A, 2894-33A, 2894-34A, 2894-35A, 2894-36A, 2894-37A, 2894-38C, 2894-39C, 2894-40B, 2894-43 & 2894-44.
- 3) No development 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.
- 4) No development shall take place until a scheme detailing the affordable housing provisions has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - i) the tenure split;
  - ii) the arrangements for the management of the affordable housing; and
  - iii) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 5) No development shall take place until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved in writing by the local planning authority:
  - i) The site investigation results and the detailed risk assessment (to be carried out in accordance with the recommendations set out in the Preliminary Remediation Strategy of the Phase II Site Investigation (Factual and Interpretative Report) submitted in December 2013) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and
  - ii) A verification plan providing details of the data that will be collected in order to demonstrate that the remediation works set out in (i) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components shall require the express consent of the local planning authority. The scheme shall be implemented in accordance with the approved details.

- 6) No development shall take place until a scheme for protecting the proposed dwellings from industrial and traffic noise has been submitted to and approved in writing by the local planning authority; all works which form part of the scheme shall be completed in each dwelling before that dwelling is occupied. The scheme shall be implemented in accordance with the approved details and shall be retained at all times thereafter.
- 7) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The hard landscaping details shall include means of enclosure and hard surfacing materials. These works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority.
- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. All hedging, tree(s) and shrub(s) shall be planted in accordance with British Standard BS4043 – Transplanting Root-balled Trees and BS4428 – Code of Practice for General Landscape Operations.
- 9) No development or other operations (including demolition, site clearance or other preparatory works) shall take place until adequate steps, which shall have been previously approved in writing by the local planning authority, have been taken to safeguard against damage or injury during construction works (in accordance with Clause 7 of British Standard BS5837 – 2012 Trees in Relation to Design, Demolition & Construction) to all tree(s) on the site, or those tree(s) whose root structure may extend within the site. Unless otherwise approved in writing by the local planning authority, no excavations, site works, trenches or channels shall be cut or pipes or services laid, no fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree(s); no equipment, machinery or structure shall be attached to or supported by any retained tree(s); no mixing of cement or use of other contaminating materials or substances shall take place within, or close enough to, a root protection area such that seepage or displacement could cause them to enter a root protection area, or any other works be carried out in such a way as to cause damage or injury to the tree(s) by interference with their root structure and no soil or waste shall be deposited on the land in such a position as to be likely to cause damage or injury to the tree(s).
- 10) In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the occupation of the last dwelling:
  - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with

- the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work);
- ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority; and
  - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with plans and particulars to be approved by the local planning authority before any equipment, machinery or materials are brought on to the site for the purposes of the development. The fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 11) No development shall take place until a scheme detailing the laying out and future management of the public open space within the site has been submitted to and approved in writing by the local planning authority. The public open space shall be laid out and maintained in accordance with the approved scheme. The scheme shall include:
- i) arrangements for the future management and maintenance of the public open space; and
  - ii) details of how public access will be provided to the public open space in perpetuity.
- 12) 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:
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - viii) the anticipated movements of vehicles and a HGV routing plan;
  - ix) measures to limit noise and disturbance; and
  - x) a construction phasing plan.

- 13) Demolition or construction works and site deliveries shall not take place outside 08:00 hours to 16:30 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 14) No dwelling shall be occupied until space has been laid out within the site, in accordance with the approved drawings, for cars to be parked, for the loading and unloading of vehicles and for vehicles to turn so that they may enter and leave the site in forward gear, in association with that dwelling.
- 15) The construction of buildings hereby permitted shall not be commenced until a detailed lighting scheme for publically accessible parts of the site has been submitted to and agreed in writing by the local planning authority. In discharging this condition the local planning authority expects lighting to be restricted around the boundary edges, particularly along hedgerows, where protected species are likely to be found, and to be kept to a minimum at night across the whole site in order to minimise impact on emerging and foraging bats and other nocturnal wildlife. This could be achieved in the following ways:
  - i) low energy LED lighting should be used in preference to high pressure sodium or mercury lamps;
  - ii) the brightness of lights should be as low as legally possible;
  - iii) lighting should be timed to provide some dark periods; and
  - iv) connections to areas important for foraging should contain unlit stretches.

No lighting shall be installed other than in strict accordance with the scheme approved under this condition. The lighting shall be maintained and operated in strict accordance with the approved scheme at all times thereafter.
- 16) The construction of buildings hereby permitted shall not be commenced until a scheme for the provision of adequate water supplies and fire hydrants, necessary for firefighting purposes at the site, has been submitted to and approved in writing by the District Planning Authority. The development shall not then be occupied until the scheme has been implemented to the satisfaction of the local planning authority.
- 17) The construction of buildings hereby permitted shall not be commenced until a Low Emission Strategy has been submitted to and approved in writing by the local planning authority. The Low Emission Strategy shall thereafter be implemented in strict accordance with the approved details.
- 18) All destructive works to the roof of the office building to the rear of Building 7 (as annotated in the Ecological Surveys report produced by Crestwood Environmental Ltd and dated 18 December 2013) shall be undertaken in the presence of a qualified bat worker appointed by the Applicants. All roofing material on this building shall be removed carefully by hand. Appropriate precautions must be taken in case bats are found, such as the erection of at least one bat box on a suitable tree or building. Should evidence of bats be found during this operation, then destructive works to the roof of this building must cease immediately while Natural England and Warwickshire County Council Ecological



Services are consulted for further advice. Any subsequent recommendations or remedial works shall be implemented within the timescales agreed between the bat worker and Warwickshire County Council Ecology / Natural England. Notwithstanding any requirement for remedial work or otherwise, a qualified bat worker's report (to summarise the findings) shall be submitted to the local planning authority within 1 month following completion of the supervised works.

- 19) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.
- 20) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.
- 21) The development shall be carried out in accordance with the Flood Risk Assessment ref. C6247-01 Rev A by Couch Consulting Engineers that was submitted on 25 July 2014.
- 22) None of the flats hereby permitted shall be occupied until the bin store for that flat has been constructed in accordance with the approved plans. The bin stores shall be retained and kept available for the storage of refuse and recycling at all times thereafter.
- 23) None of the flats hereby permitted shall be occupied until the cycle parking provision for that flat has been constructed in accordance with the approved plans. The cycle stores shall thereafter be kept free of obstruction and be available at all times for the parking of cycles associated with the development.
- 24) Prior to the occupation of the dwellings on plots 23, 34, 66, 69 and 97, the first floor windows in the side elevations shall be permanently glazed with obscured glass to a degree sufficient to conceal or hide the features of all physical objects from view. The obscured glazed windows shall be retained and maintained in that condition at all times.
- 25) None of the dwellings hereby permitted shall be occupied until a Green Travel Plan to promote sustainable travel to and from the site has been submitted to and approved in writing by the local planning authority. The approved Green Travel Plan shall thereafter be implemented in full and shall not be withdrawn or amended in any way without the prior written approval of the local planning authority.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

John Gregory Solicitor	Instructed by Warwick District Council
He called	
Tracy Drake Dip TP, MRTPI, DMS	Warwick District Council
Rob Young BSc, Dip TP, MRTPI	Warwick District Council
Alan Gillham	Warwick District Council

### FOR THE APPELLANT:

Mary Cook of Counsel	Instructed by Barton Willmore
She called	
Kathryn Ventham BSc, MsC, MRTPI	Barton Willmore
Nicholas Bradshaw	Connect Consultants
Barry Jobling BSC, MSc, MIOA	Hoare Lea Acoustics

## DOCUMENTS PRESENTED TO THE INQUIRY

- 1 Appellants opening submissions
- 2 Tree Preservation Order No. 494, Sydenham Industrial Estate, submitted by the Appellants
- 3 Letter of 1 June 2015 from Warwick District Local Plan Examining Inspector concerning the plan's soundness, submitted by the Appellants
- 4 Warwick District, Five Year Housing Land Supply Estimate, November 2015, supplied by the Appellants
- 5 Application for a full award of costs, presented on behalf of the Appellants
- 6 Appellants closing submissions
- 7 List of locations to be visited on the accompanied site visit, submitted by the Appellants
- 8 Draft conditions with disagreements highlighted, submitted by the Appellants
- 9 Note from the Appellants as to the appropriateness of draft condition no.31 concerning the provision of highway warning signs at the entrance to Ramsey Road
- 10 Revised conditions, submitted by the Appellants
- 11 Council's confirmation that it is content with the revised conditions

## PLANS

- A 1:500, Ref 2894-29 revision J, Proposed site plan
- B 1:10,000, Ref SL-P-0, Site visit locations