
Appeal Decision

Site visit made on 30 October 2015

by **M Seaton DipTP MRTPI**

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

Decision date: 30 March 2016

Appeal Ref: APP/N1350/W/15/3031333

Beacon Hill Works, Sadberge, Darlington, DL1 3BQ

- 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 P Foster against the decision of Darlington Borough Council.
 - The application Ref 14/00449/OUT, dated 7 May 2014, was refused by notice dated 24 February 2015.
 - The development proposed is the erection of six dwellings, and works to improve the existing access and footway connection.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr P Foster against Darlington Borough Council. This application will be the subject of a separate Decision.

Procedural Matter

3. The proposal is for outline planning permission, with approval sought at this stage for access only. Appearance, landscaping, scale and layout are therefore reserved matters.

Background and Main Issues

4. The appeal site comprises former commercial/industrial land and buildings, which is predominantly covered with hardstanding. The site is currently surrounded by 2 metre high metal palisade security fencing, with access taken from the north of the site directly from the west-bound A66 dual carriageway, part of the strategic road network.
5. The Council has indicated that the principle of a residential land use of the site would be acceptable in the context of the Council's current stated position regarding the absence of a five-year supply of deliverable housing land, subject to other considerations. As a consequence, to the extent that the policies of the Development Plan are concerned with the supply of housing, they fall within the scope of paragraph 49 of the National Planning Policy Framework (the Framework) and should be treated as being out of date.
6. Whilst I have had regard to the stated concerns of interested parties regarding highway safety from the proposed access to the site, I note that this is an issue which is held to be *common ground* between the appellant and the Council,

with the Highways Agency having offered no objection to the proposed access onto the strategic road network, subject to conditions. In the absence of any technical evidence to the contrary, this is a conclusion with which I would agree.

7. Therefore, the main issues for this appeal are:
- whether the proximity of the proposed development to the A66 would safeguard the living conditions of future occupiers, having regard to noise and disturbance; and,
 - whether or not provision is required in relation to affordable housing, education facilities, green infrastructure and transport.

Reasons

Living conditions

8. The appeal site is located adjacent to the A66, which as it passes the site is a dual carriageway with a derestricted speed limit. Whilst the proposals have been submitted in outline form only at this stage, the Council had raised concerns over the impact of the generation of noise and disturbance from passing traffic on the living conditions of future residential occupiers of the development.
9. In this respect, I note that the appellant in their submissions on the planning application, had concluded that various approaches to mitigation could be implemented, but that in the absence of a detailed design of scheme, that a meaningful noise assessment would be difficult, and that such measures and/or an appropriate assessment could be secured through the use of a planning condition. Nevertheless, the appellant submitted a noise impact assessment during the course of the consideration of the planning application, which concluded that subject to appropriate noise mitigation, internal ambient noise levels could be reduced to acceptable levels, whilst with mitigation external noise levels would only marginally exceed World Health Organisation (WHO) recommended noise levels for external areas.
10. I have carefully considered the conclusions of the noise impact assessment, as well as the Council's conclusions regarding the interpretation of *British Standard 8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings*. In this respect, I note that the Council has not focussed their case on internal noise levels, which with mitigation including double glazing and trickle vents could achieve levels below the recommended level of 35 dB $L_{Aeq(0700-2300)}$, and would therefore accord with BS 8233:2014.
11. In respect of external areas, whilst the incorporation of mitigation and attenuation in the form of a 2 metre high acoustic barrier would be effective in reducing the ambient external noise levels, the resultant noise levels would still exceed the desirable level of 50 dB $L_{Aeq,T}$ set out in BS8233:2014, with some still equalling or exceeding the WHO standard of 55 dB L_{Aeq} for outdoor living areas. In this respect, I have noted the references to BS 8233:2014 which state that external noise levels of 55 dB $L_{Aeq,T}$ may be acceptable in some noisier environments, but this would seem to be on the premise that the site would be desirable to be brought forward for the proposed development. Whilst I have had regard to the submissions that accept that an appropriate re-use of the appeal site has proved to be difficult, I do not have any evidence

before me that this site would be more desirable to bring forward for residential development than any other, even in the context of the Council's inability to demonstrate a five-year supply of deliverable housing land. As a consequence, and irrespective of any potential issues around the maintenance of any acoustic screening, I am not persuaded that the proposed development of the site would result in acceptable living conditions for future occupiers having regard to levels of noise and disturbance that would be experienced in external areas.

12. I have noted the appellant's reference to the presence of existing dwellings on the opposite side of the A66 with gardens backing onto the road, which I observed at the time of my visit. However, accepting the point that their continued occupation may indicate that they remain desirable within the local housing market, I do not consider that the position and location of these existing older dwellings sets any kind of precedent for the proposals given the poor standard of living conditions which would be provided, even allowing for the 'buyer beware' principle.
13. I have also had regard to the appellant's suggestion that the submitted indicative layout could be re-designed to provide appropriate living conditions for future occupiers. In this respect, I consider that it was incumbent on the appellant to demonstrate at the application stage that the principle of the development as proposed could be accommodated on the site through any re-designed layout, rather than rely upon the future possibility of an alternative layout. This has not been demonstrated.
14. On the basis of the submitted evidence, and my observations of the appeal site and its environs, the proposed development would fail to safeguard the living conditions of future occupiers, having regard to levels of noise and disturbance which would be experienced in external areas. The proposal would therefore be contrary to Policy CS16 of the Darlington Local Development Framework Core Strategy 2011 (the Core Strategy), which requires new development to protect general amenity and the health of the community. The proposed development would also be contrary to paragraph 17 of the Framework as it would fail to secure a good standard of amenity for future occupants of land and buildings.

Planning obligations

15. The Council has highlighted that, in accordance with the Darlington Planning Obligations Supplementary Planning Document 2013 (the Planning Obligations SPD), the proposed development would be required to make provision required in relation to affordable housing, education facilities, green infrastructure and transport. The appellant has not submitted a planning obligation with the planning application, but has appended a viability assessment in accordance with the Homes and Communities Agency's (HCA) Development Appraisal Tool, to establish the residual value of the site and to determine whether there would be capacity to deliver either on-site or off-site affordable housing. In this respect, the viability assessment concludes that as a consequence of the costs associated with the works to provide pedestrian and vehicular access, that the appellant's offer of planning obligations is limited and there would be no opportunity to provide the required level of contributions towards affordable housing. In the absence of any independent verification of the viability assessment, the Council has not indicated that it does not accept this conclusion.

16. However, I must first consider whether or not the obligations as required by the Council would meet the policy tests set out in the Framework at paragraph 204, and which state; obligations must be 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. The same tests are enshrined in the statutory tests set out in the regulation 122 of the CIL regulations.
17. The Planning Obligations SPD sets out the basis for when planning obligations will be sought and how they will be calculated. The document sets out a requirement for 20% affordable housing, as well as the formula basis for calculating contributions towards transport and green infrastructure, as well as a standard charge for education contributions. The document also highlights clear linkages to policies within the Core Strategy, and I am satisfied in this respect that the in-principle requirement of contributions is justified in the context of the policies of the Development Plan, and the Framework. I have also had regard to the reference within the Planning Obligations SPD to an Infrastructure Projects List where developers are able to see which projects and infrastructure are to be delivered with the contributions.
18. Despite my conclusions on the legitimacy of the Planning Obligations SPD, on the basis of the submitted evidence no details have been provided regarding how any specific contributions for off-site works would be utilised, and I have not been provided with any evidence pertaining to the Infrastructure Projects List as indicated within the Planning Obligations SPD. As a consequence I am unable to conclude that the required obligations would be necessary to make the development acceptable in planning terms, or would be utilised in a manner directly related to the development. Furthermore I note that the Council does not contend that there would remain extant capacity in the maximum pooled limit of 5 generic contributions allowed by virtue of the Community Infrastructure Levy Regulations 2010, and I cannot therefore conclude that the requested contributions are fairly and reasonably related in scale and kind.
19. Turning specifically to the requirement for affordable housing provision, the national position in respect of the requirement for affordable housing on development of under 10 units has altered since the determination of the planning application. As set out and revised in Planning Practice Guidance, national policy had at the time of the submission of the planning appeal removed the requirement for contributions towards affordable housing on development of under 10 units. However, this position has since July 2015 reverted to allow local planning authorities to seek such a contribution. As a consequence, whilst the appellant had submitted the appeal on the basis of there not being such a requirement, their later submissions have taken into account the updated national policy position, which has been addressed in their Final Comments.
20. In considering the need for affordable housing, I have had regard to *Appendix 2: Compliance with National Planning Policy Framework Tests*, within the Planning Obligations SPD. This sets out that Darlington as an urban area operates as a single housing market, and that off-site provision will go towards the provision of affordable housing in that area. The appendix indicates that the provision would support the delivery of a balanced housing offer taking account of documents including the *Darlington Strategic Housing Market*

Assessment (SHMA), the Darlington Economic Viability of Housing Land and Addendum, and the Darlington Housing Strategy.

21. However, on the basis of the submitted evidence, I note that the documents as referred to in the Planning Obligations SPD as the evidence base for affordable housing provision are relatively old and I have received no indication that these have been updated. Furthermore, I have not been provided by the Council with any definitive evidence regarding up-to-date affordable housing completions, commitments or unmet provision within the area, which I would consider to be necessary in the context of references to other recent large-scale development within the borough. I therefore find that the absence of this information combined with the relative age of the existing affordable housing evidence base would not alone provide a reasonable demonstration of an up-to-date identified and continuing affordable housing need specific to the site.
22. Turning to the issue of viability, whilst I have noted the contentions of the appellant and the Council in respect of this matter, as a consequence of my conclusions above in respect of the planning obligations as requested there is no need for any conclusion to be drawn on the basis of the submitted evidence.
23. On the basis of the evidence provided, the Council has failed to demonstrate that the requested planning obligations would meet the tests as set out at paragraph 204 of the Framework, and as enshrined in regulation 122 of the CIL regulations, and specifically that they would be necessary to make the development acceptable in planning terms or directly related to the development. As a consequence, the proposal would not conflict with Policy CS4 of the Core Strategy, the Planning Obligations SPD, or the Framework.

Planning Balance and Conclusion

24. The proposal would make provision for additional residential units within the local housing market on previously developed land, which in the context of the Council's stated position in respect of the absence of a five-year supply of deliverable housing land, would provide a limited boost to housing supply resulting in some limited weight in support of the proposed development. I would also attach some limited weight to the potential visual benefits which may accrue from a redevelopment of the site as well as various sustainability measures which are indicated as proposed to be embedded within the design of the dwellings. However, whilst I have concluded that it has not been demonstrated that there would be a need for the planning obligations as required by the Council, I find on the basis of the submitted evidence that the harm to future occupiers of the proposed development from noise and disturbance, would outweigh the highlighted benefits.
25. As a consequence, and for the reasons given above, I dismiss the appeal.

M Seaton

INSPECTOR

