
Appeal Decision

Hearing Held on 8 August 2017

Site visit made on 8 August 2017

by **S Harley BSc(Hons) MPhil MRTPI ARICS**

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

Decision date: 11th September 2017

Appeal Ref: APP/N1350/W/17/3172401

Land adjoining Faverdale West, Darlington DL3 0PS

- 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 Argon Properties against the decision of Darlington Borough Council.
 - The application Ref 15/01043/OUT, dated 26 October 2015, was refused by notice dated 16 February 2017.
 - The development proposed is outline application with all matters reserved for the development of up to 40 No. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline with all matters reserved for future consideration. I have seen two indicative layouts, the latest of which, plan Ref 01 Rev D, omits vehicular access to Faverdale West. A completed Agreement under s106 of the Town and Country Planning Act 1990 (the planning obligation) making provision for 20% affordable housing and a contribution per dwelling towards primary school facilities was submitted following the Hearing.

Background and Main Issue

3. The parties have submitted a Statement of Common Ground for the purposes of this appeal. The appeal site is a vacant area of unused green field land. It is bounded by residential properties to the west and Faverdale Industrial Estate to the east. It is allocated for employment use in the Darlington Local Plan 1997 (the LP)¹. Faverdale is identified as a key employment location in Policy CS5 of the CS. There are no extant planning permissions² for the site although there have been previous permissions for industrial units.
4. The parties agree that the Council can demonstrate an excess supply of employment land but that the site appears unviable for employment uses at the present time. The parties therefore agree that there would be no conflict with Policy CS5 of the CS in relation to employment land status. The Council cannot demonstrate a deliverable five year supply of housing land in

¹ The development plan includes the Borough of Darlington Local Plan 1997 (the LP), the Darlington Core Strategy 2011 (the CS) and the Emerging Local Plan (the Emerging LP) which carries appropriate weight according to the stage of progression. At the Hearing it was confirmed that Policy E49 of the LP is not a Saved Policy.

² Planning permissions 06/00812/FUL and 10/00487/FUL expired before implementation.

accordance with Paragraph 47 of the National Planning Policy Framework (the Framework), which is a material consideration. Accordingly, the parties agree that the presumption in favour of sustainable development in Paragraph 14 of the Framework applies, and without prejudice, that provided all other material planning considerations are satisfied residential development of the site would be acceptable in principle.

5. The site benefits from good access to shops, services including nearby schools, and public transport. No objections have been raised by the Council in respect of highways, flood risk, ecology and biodiversity, landscape, ground contamination, archaeology or heritage matters subject to appropriate conditions. The parties agree that 20% affordable housing and a contribution towards primary school provision are appropriate planning obligations.
6. Taking the above into account and from all that I have seen, read and heard, I consider the main issue for this appeal to be: whether or not the site is suitable for residential development having particular regard to the living conditions that would be provided for future occupants of the proposed dwellings in relation to the noise environment; the effects of any necessary noise mitigation measures; and whether future activity at the adjacent employment premises and land would be unacceptably compromised.

Reasons

7. It is common ground between the parties that the Council cannot demonstrate a five year supply of deliverable housing land to meet the objectively assessed housing need (OAN) for the Borough as envisaged by Section 6 of the Framework. The available evidence indicates that the Council does not have a tested figure for OAN³; that the Council's housing strategy has not delivered sufficient land for residential development to date⁴; and that the Council will consider suitable located sustainable sites to prevent a further backlog of under delivery pending the progress of the emerging LP⁵. On this basis I conclude that housing policies in the development plan are out of date. Paragraph 14 of the Framework contains a presumption in favour of sustainable development and states that, where the development plan policies are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
8. The appeal site is part of the Faverdale Industrial Estate and is allocated for B1, B2 and B8⁶ uses (employment uses) in Saved Policy EP2.7 of the LP. Policy CS5 seeks to safe guard employment sites with some exceptions. Paragraph 22 of the Framework indicates that employment land should not be protected in the long term if there is no reasonable prospect of it being used for that purpose. The IPPS broadly accords with the Framework in recognising that alternative uses with a similar character but not in the same use class can contribute to employment areas. The appellant's Employment Land Viability Report October 2015 concluded that, at that time, the appeal site was not viable for standalone industrial development based on the former planning permissions on the site. The Council accepts that this demonstrated that the exception of Policy CS5a in

³ Council's document DBC2

⁴ APP/N1350/A/14/2217552;

⁵ Interim Planning Position Statement (IPPS)

⁶ Town and Country Planning (Use Classes) Order 1987 as amended

relation to viability applies; that the site is not required to provide a balanced portfolio of land for employment purposes; and the exception at Policy CS5d also applies. I see no reason to reach different conclusions.

Living Conditions

9. The appeal site is some 200m by 100m in size and is rectangular in shape. It extends from Faverdale Road to the west and Norward House to the east. Norward House comprises a high warehouse building that, at the time the original NA was carried out, was occupied by LTL and was used as a distribution depot. Subsequently it was acquired for use by CEPAC⁷ in conjunction with the adjoining CEPAC premises. To the north are Faverdale West and Stead House, currently occupied by Capita. The western carpark belonging to Stead House adjoins the appeal site whilst the northern yard is sited behind and to the side of the main Stead House building. To the immediate south of the appeal site is a vacant piece of brownfield land that had a planning permission for a supermarket which has since expired⁸.
10. The site itself has not been previously developed and is overgrown with vegetation. There is a dense belt of mature woodland that runs alongside Faverdale Road and Tower Grange through which there are informal footpaths. There are a number of mature trees close to the western boundary. An area of unimproved neutral grassland which has affinity with MG5a grassland⁹ occurs within the site that could be translocated.
11. Planning applications and appeals should be determined in accordance with the development plan unless material considerations¹⁰ indicate otherwise. Policy CS16 of the CS, amongst other things, seeks to ensure new development has no detrimental impact on general amenity including from noise. These aims are in broad accordance with Paragraph 123 of the Framework which seeks to avoid noise giving rise to significant adverse impacts on health and quality of life and to mitigate the effects of noise.
12. There have been extensive discussions between the parties in respect of noise. The Noise Assessment Revision 4i dated 20 May 2016 (the NA) and the "Response to EHO Objection email 23 September 2016" formed the basis of the discussion at the Hearing.
13. It is unfortunate that the Council were unable to give advice on preferred methodology prior to the preparation of the initial Noise Assessment. I have been referred to a variety of standards set out in Guidance documents¹¹. There is no definitive method of assessing noise and the parties do not agree on the appropriate standards to use in judging the level of noise. Moreover the measurements/calculations provided by the parties differ as different methodologies have been used including different positions for recordings.

⁷ CEPAC produce card board packaging

⁸ 14/01043/OUT

⁹ MG5a *Cynosurus cristatus* – *Centaurea nigra* grassland *Lathyrus pratensis* sub-community - vegetation is typical of meadow grassland that would once have been common throughout Teesside on well-drained, fertile clayey soils

¹⁰ Section 38 of the Planning and Compulsory Purchase Act 2004

¹¹ The key ones for this appeal are the Noise Policy Statement for England (NPSE); British Standard 8233: 2014 "Sound insulation and noise reduction for buildings" (BS8233); BS4142:2014 "Method for Rating and Assessing Industrial and Commercial Sound" (BS4142); World Health Organization 1999 "Guidance for Community Noise" (the WHO criteria)

14. The Planning Practice Guidance (PPG) draws on the NPSE and suggests that noise should be assessed in terms of three critical levels. These are:
- No observed effect level (NOEL) below which no effect at all on health or quality of life can be detected;
 - Lowest observed adverse effect level (LOAEL) above which adverse effects on health or quality of life can be detected; and
 - Significant observed adverse effect level (SOAEL) above which significant adverse effects on health or quality of life can be detected.
15. In simple terms, the PPG advises that no mitigating measures need to be taken at LOAEL or below, whilst effects above SOAEL are likely to argue for development not taking place in the form proposed. Between LOAEL and SOAEL the expectation is that mitigation measures should reduce noise effects to a minimum so as to allow the development to go ahead. The PPG does not set out specific measures of noise in terms of decibels (dB) but presents a series of qualitative assessments that reflect observed effects. For effects between LOAEL and SOAEL, the assessment is that *'Noise can be heard and causes small changes in behaviour and /or attitude....Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life'*.
16. The WHO criteria say that to protect the majority of people from being moderately annoyed during the day time outdoor sound level from a steady continuous noise should be no more than 50 LAeq dB and that the indoor bedroom limit should be no more than 30 LAeq dB. It appears to me that the WHO criteria sets limits below which decision-makers can be reasonably confident that noise will not result in damage to health and the quality of life. However, in order to implement the approach suggested in the NPSE and PPG, the WHO LOAEL criteria have to be augmented by higher, SOAEL levels, beyond which noise disturbance may exceed the point where it can be sufficiently mitigated.
17. The initial NA was based predominantly around BS8233 and therefore sought to establish the design of the proposed development to meet noise standards rather than to assess the effect of changes in the external noise climate. Inside bedrooms BS8233 seeks 35 LAeq16hr dB from 07:00 to 23:00 and 30 LAeq8hr dB from 23:00 to 07:00. It is also suggested that it is desirable that noise in gardens does not exceed 50 LAeqT dB with an upper guideline of 55 LAeqT dB being acceptable in noisier environments such as town centres.
18. The Council considers that BS4142 is more appropriate for this case as it provides a method for rating and assessing sound of an industrial and/or commercial character. Such noise may be impulsive instead of/as well as continuous. Prescriptive rating levels are not given but the NA considers that a difference between background level and rating level of around +5 dB is an indication of an adverse effect and a difference of around +10 dB would be an indication of a significant adverse effect. Assessments of tonality and impulsivity of a sound source are taken into account by weighting the rating values according to the judgement of the assessor.
19. The NA identified traffic noise along the A68 as the predominant noise environment of the site with noise associated with the activities of the

Faverdale Estate audible to a lesser extent. Periodic noise from overhead aircraft was considered not to be a primary noise contributor but bird song was considered to be a major contributor especially during the dawn and evening chorus periods.

20. The NA identified noise associated with Capita plant as audible along the northern boundary during late evening and night time (the louvre noise). There is some doubt whether Capita have operational plant that would create such noise as the Council were told that equipment that was behind the louvre is no longer in use. The NA states there is no other direct plant or activity noise audible at the appeal site.
21. There is potential for noise arising from the use of the Western Carpark at Stead House for purposes other than a staff carpark. A Noise Abatement Notice was served in 2005 when Savers Health and Beauty Limited, the then occupier of Stead House, used the Western Carpark as a delivery yard. A planning obligation deed 31 March 2007 was entered into in mitigation. This restricts the use of the Northern Service Yard of Stead House to no more than 3 vehicular movements in any single 9 pm to 6 am period with a maximum of 12 in any week and no unloading or loading activities between the hours of 9 pm and 6 am. At that time there also appears to have been some consensus that, should the Western Carpark be used as a delivery yard, a 5m high acoustic fence would be required around it, but it appears there may be no planning controls that could secure this.
22. CEPAC has a cardboard compactor unit with reverse jet filtration which serves a factory extractor unit located in the CEPAC yard between the original CEPAC building and Norward House. This plant operates 24-hours daily. The noise produced by the plant is a constant drone from the fan unit with intermittent pulses of compressed air inside the unit to agitate bag filters. The waste is compressed automatically by a pneumatic press with an associated churning/rumbling sound caused by the movement of the waste. The cycle time for the operations is 30 seconds for the reverse jet and 3 minutes for the compactor.
23. This plant is the dominant noise source within the area when observed at close quarters and also on Faverdale West. Notwithstanding some doubts it seems probable that, in the absence of noise from plant in Stead House, the noise observed along the northern boundary of the site would most likely be reflected noise from the activity of the cardboard compactor unit.
24. The NA identified noise from forklift truck reversing horns during the day breaking out from the building façade of Norward House and Yard. At the Hearing CEPAC representatives explained the intentions of installing an additional board making machine in Norward House to expand manufacturing activities to meet demand. Noise associated with the potential supermarket to the south including fixed plant, delivery vehicles and car park activities is factored into the NA.
25. To the above is added noise from vehicle movements including delivery vehicles and forklift trucks in the yards and on the estate roads. These include engine noise; coupling/uncoupling; opening/closing of tailgates and doors; reversing; and drivers' voices.

26. Thus the character of the noise that affects, or could potentially affect, the appeal site can be characterised as continuous drone punctuated by explosive events and delivery vehicle noise. The NA measurements were taken on the four boundaries and the worst case scenario, for the four properties closest to the respective sound sources, was used in calculating the likely internal noise levels in the proposed dwellings.
27. Paragraph 5.24 of the NA recommends that to achieve acceptable internal noise levels all habitable rooms should have sealed double glazing units with suitable trickle ventilation. With these measures the predicted internal noise levels should be below the LOAEL level in terms of BS8233. Paragraph 5.34 recommends that, to reduce the external noise levels within the proposed gardens to below 50 LAeq dB, there should be an acoustic barrier bund of a minimum 3m high on the southern site boundary adjacent to the supermarket site formed from soil displaced during development. The northern site boundary should have a 3m high acoustic barrier to protect from potential noise associated with Capita activities, including the possible use of the Western Carpark as a delivery yard, should this occur in the future.
28. As requested by the Council an assessment against BS4142 was undertaken based on actual measurements supplemented by data from other sources¹². The calculations at Table 5.8 of the NA, which include the predicted effects of the proposed noise mitigation measures, indicate that the majority of the actual and potential noise sources would be below the level at which noise would be deemed an issue with respect to adverse impact. However, Paragraph 5.43 re-iterates that closed windows are required to provide for an undisturbed sleep.
29. The appellant considers that the likelihood of the Western Carpark being used as a delivery yard is low given the layout of the Stead House premises; works that might be required to bring its surface up to a suitable standard; and as the existing and future occupants are likely to be aware of the restrictions of the deed dated 31 March 2007. Whilst I acknowledge these points I consider there is a real possibility that in the future occupants may wish to use the Western Carpark for delivery vehicles to evade the restrictions imposed on the Northern Service Yard. There are no planning restrictions on the use of the Western Carpark although the appellant is of the view that the Council could exercise control by virtue of the reference in the Deed to use of the access. There seems to me to be a significant degree of doubt about the level of control that could be exercised and I am mindful that occupants would have the defence of best practicable means in respect of nuisance regulations.
30. I also note the doubt around the louvre noise related to Stead House. Additional calculations were undertaken as part of the NA in relation to the Stead House front elevation. It seems to me that different activities in that building might result in a greater degree of noise emanating from that property that might add to the noise environment of the site.
31. The potential supermarket scheme may not come to fruition. Equally a similar scheme may take place. It is therefore appropriate that allowance is made for future uses on that site.

¹² Approved report information taken from the supermarket application produced by Royal Haskoning DHV dated 13 October 2014 and the Capita site Western car park feasibility study compiled for Darlington Borough Council by Parsons Brinkerhoff Ltd dated December 2006.

32. CEPAK have indicated an intention to expand manufacturing activities. As part of the Hearing CEPAK were kind enough to provide a tour of their premises. Norward House has solid walls and a roof. Nevertheless the acoustic qualities of the building are not known and noise egress may well occur from uses in that building which is very close to the eastern boundary of the appeal site.
33. The Council has received complaints over the years from residents in the Faverdale Road/Tower Grange area. Whilst these are not numerous they do indicate that noise from the Industrial Estate affects some of these residents. The effects of noise reduce over distance and the proposed development would bring residents much closer to noise sources.
34. There was discussion at the Hearing about the likely extent of mitigation and the actual noise environment that might be experienced by future occupants of the proposed houses. I acknowledge that Norward House provides some mitigation from the cardboard compactor activities, but even so I do not consider I could safely conclude from the evidence before me that the 3m high acoustic barriers would be sufficient to satisfactorily mitigate the identified noise sources, particularly in the upper floors of the proposed houses. I acknowledge that this could be addressed, at least in part, by developing bungalows rather than houses but that is not the proposal before me.
35. I also have concerns about future maintenance of the proposed mitigation in the long term even if a management company was formed. The fence might last some 25 years and would require replacement at that time even if not damaged or deteriorating before then. The bund would require regular maintenance to avoid complaints from residents. Moreover, I do not consider it to be good design to rely on windows being closed with only trickle ventilation for new residential houses and where occupants are likely to have doors and windows open into their gardens.
36. I acknowledge that the acoustic measures proposed might improve living conditions for residents on Faverdale Road and Tower Grange. Alternatively it is possible that the acoustic fence might channel noise towards existing residents, and this, together with the new access through the wood onto Faverdale Road might result in adverse noise effects in those areas. I do not find the evidence to be clear on these points.
37. The application is accompanied by indicative layout plans showing ways in which houses could be accommodated. At the Hearing it was agreed that the indicative plan 01 Revision D, which showed 33 dwellings and only pedestrian/cycle access to Faverdale West and, would have a more satisfactory noise environment than earlier indicative version. Based on the Rev D layout some of the houses, particularly those towards the eastern boundary of the site, would be enclosed by the fence/the bund/rear wall of Norward House which would have an over bearing effect on the gardens of those houses. Even though many different forms of layout for houses could be put forward, given the shape of the site it seems probable that a layout similar to Rev D would be required for houses. Moreover on the balance of probabilities it seems likely that a future developer would require the number of houses to be approaching the higher end of the "up to 40 houses" applied for.
38. For the reasons set out above I conclude that the mitigation as proposed in the NA, or similar, would be necessary to achieve acceptable living conditions for future occupants in respect of noise but this would be likely to cause other

unacceptable effects on living conditions. I find some doubts around the methodology used to calculate the level and extent of noise sources that affect the appeal site both now and potentially in the future.

Effect on adjacent industrial premises

39. The Framework recognises that development will often create some noise and that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. The appeal proposal would protrude residential development into an established employment area. Activities on the Industrial Estate are already constrained to some degree both through planning conditions attached to more recent permissions and through the enforcement of Statutory Nuisance regulations. I conclude it is highly probable that the intrusion of residential uses towards industrial premises on the appeal site as proposed would be likely to result in pressure on the Council to impose restrictions in respect of industrial activities and delivery vehicles.

Overall Planning Balance and Conclusion

40. The combination of the lack of certainty about the noise environment of the site, the degree of noise mitigation which would actually be achieved; the failure to provide satisfactory living conditions for future occupants of the proposed houses, by virtue of noise and the effects of the proposed mitigation, and the likelihood of unreasonable restrictions being imposed on existing businesses together leave me with significant concerns. With the precautionary principle in mind, I cannot conclude with any degree of certainty that the site would, alone, be suitable for residential development. In these respects I conclude the proposal conflicts with Policies CS16 of the CS and Paragraph 123 of the Framework. I give these adverse effects significant weight.
41. The Framework and the Guidance refer to the NPSE. All expect that noise is not considered separately from the economic, social and environmental dimensions of the proposed development.
42. I acknowledge that there would be some benefits generated by the scheme, including economic benefits associated with the construction phase of the development and increased spend in the local area. The proposal would provide much needed housing for the Borough. The planning obligation provides for 20% affordable housing which, once completed, would be a benefit to which I give some weight in favour of the proposal. However, I conclude on balance that adverse impact of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Taking into account all other relevant matters raised I therefore conclude that the appeal should not succeed.
43. Given the outcome above there is no need for me to examine the planning obligation other than to confirm that I have taken the potential affordable housing provision to be a benefit of the proposal. The provision of education facilities would be to mitigate harm arising from the development scheme itself and are not benefits as such.

SHarley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Richard Wilks
Luke Herring
Paul Horsley

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Argon Properties
Johnson Mowat
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FOR THE LOCAL PLANNING AUTHORITY:

Lisa Hutchinson
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Planning Officer
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Environmental Health Officer
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INTERESTED PERSONS:

Steven Hollingsworth
Rod Ainslie

CEPAC Ltd
CEPAC Ltd

DOCUMENTS submitted at or after the Hearing:

1. Letter Johnson Mowat dated 3 August 2017
2. Joint Statement of areas of disagreement on noise for discussion at Hearing on 8 August 2017
3. Suggested Planning Conditions
4. Indicative Housing Layout Plan Ref 01 Rev D confirming the layout shows 33 dwellings and showing Land Ownership
5. Plan annotating surrounding development
6. Master Plan Layout and indicative cross sections
7. Coloured version of plan for S106 accompanying planning obligation deed 31 March 2007
8. Contour plan with annotated levels
9. Email dated 14 August 2017 with signed Section 106 Agreement; British Standards Assessment – A comparative table; Alternative wordings for the proposed Conditions
10. Email dated 10 August 2017 with copy of Education Section's comments in relation to capacity at West Park Academy
11. Comments from the Welsh Expert Panel of the Welsh Heads of Environmental Health in response to Consultation BS4142
12. Email dated 21 August concerning Supreme Court Judgment: Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council

