
Appeal Decision

Hearing held on 7 February 2017

Site visit made on 7 February 2017

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 03 May 2017

Appeal Ref: APP/C3105/W/16/3149497

Former Lear Corporation, Bessemer Close, Bicester, Oxfordshire OX26 6QE

- 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 Nathan Craker (Vanderbilt Homes and International Wood Agency Ltd) against the decision of Cherwell District Council.
 - The application Ref 15/02074/OUT, dated 12 November 2016, was refused by notice dated 29 February 2016.
 - The development proposed is the demolition of existing industrial buildings and the erection of 21 affordable dwellings and 49 open market dwellings, with associated new access, open space and landscaping.
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Decision

1. The decision is allowed and planning permission is granted for the demolition of existing industrial buildings and the erection of 21 affordable dwellings and 49 open market dwellings, with associated new access, open space and landscaping at Former Lear Corporation, Bessemer Close, Bicester, Oxfordshire OX26 6QE, in accordance with the terms of the application Ref 15/02074/OUT, dated 12 November 2016, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was made in outline with only landscaping reserved for future consideration. Amended plans were provided after the appeal was submitted. As these have only minor changes such as clarification of root protection zones and the main parties are content to take the latest revised plans into account I am satisfied that no-one would be disadvantaged if I were to do the same in determining the appeal.
3. The appellant has submitted a unilateral undertaking to provide 21 affordable housing units on site and make financial contributions towards infrastructure. Consequently the Council no longer seek to defend the fourth reason for refusal. I shall discuss the provisions of the unilateral undertaking in more detail below.

Background and Main Issues

4. The appeal site contains a large warehouse type building that has previously been in general industrial use including the manufacture and spraying of car parts but has been vacant for approximately 10 years and is in poor or semi-
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derelict condition. Planning permission was granted in 2008 for retail use but was not implemented.

5. The appellant has demonstrated that the loss of employment land would be justified, based on the long term vacancy of the site and marketing evidence showing a lack of interest in the site for employment use. The Council has accepted the loss of employment use on the appeal site and thus the proposal would accord with Policy SLE1 of the Cherwell Local Plan 2011-2031 Part 1(2015).
6. The main issues in the appeal are therefore :
 - The effect of the proposal on the living conditions of future occupiers with regard to noise and the relationship with adjoining land uses; and
 - The effect of the proposal on the character and appearance of the area, in relation to scale, form, layout and design.

Reasons

Living Conditions of future occupiers

7. The site is bordered to the east by a railway line raised on an embankment, and there are a number of warehouse buildings to the north and west on Bessemer Close, with residential dwellings beyond on Moor Pond Close and Fallowfields. Launton Road has a mixed character, with an Aldi supermarket opposite the site and residential properties to the west. Joblings Garage is situated on the corner of Bessemer Close and Launton Road and is used for car sales, a filling station and MOT testing. Beyond the railway bridge Launton Road is predominantly industrial in character.
8. The Planning Policy Framework (the Framework) at paragraph 123 states that planning policies and decisions should aim to avoid noise and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development. This includes mitigation and reduction of noise impacts through design and use of conditions.
9. The proposed development would be adjacent to industrial uses, and the railway line, and would be subject to traffic noise from Launton Road. The appellant has submitted a Noise and Vibration Impact Assessment.¹ Monitoring stations were positioned at each corner of the appeal site² and monitoring was undertaken continuously for 1 week. The measured average background noise levels were 52 dBA during the daytime and 46 dBA during the night time, and the main source of background noise experienced within the site was from road traffic on Launton Road. Mitigation measures would therefore be necessary, including double glazing and acoustic fencing to ensure noise levels would be within World Health Organisation limits for internal and external noise for residential developments. These measures would also be adequate to address a potential doubling of the current levels of rail traffic along the adjacent corridor. The details could be secured by appropriate conditions.
10. The warehouse buildings to the north-west of the appeal site are in B8 storage use and are subject to conditions restricting hours of use and types of machinery that may be used. There are residential properties at the rear of

¹ Noise and Vibration Impact Assessment Report 13329.NVA.01.REVB, KP Acoustics Ltd (January 2016)

² See figure 13329.SP1 in above report

these units, and whilst this is an existing relationship and not necessarily an indicator that further residential uses should be permitted in the area, the Council's successful enforcement action at Unit 3A (Granite House) indicates that activities within these commercial buildings are being effectively controlled.

11. Further to the above, planning permission was recently granted at Joblings Garage for change of use of an existing work area to an MOT testing station³. Additional information was provided at the appeal stage of noise levels for the MOT garage⁴. Although these were based on a 'library' noise profile of typical types of individual equipment, the use of such data is permitted by BS4142:2014⁵. The assessment indicates that the noise sources within the garage do not exceed the background daytime noise levels measured at the appeal site. The planning permission was subject to a condition restricting the hours of operation to 08:30 to 17:30 Monday to Friday and 08:30 – 12:00 Saturdays and not on Sundays or Public Holidays.
12. The Council is concerned that there is insufficient information on all individual noise sources in the vicinity of the site to confirm that the scheme would provide satisfactory living conditions for future occupiers, but it was unable to point to any specific source of noise other than from Joblings Garage that might be harmful. Furthermore, as noted above, the Class B8 units referred to above are subject to conditions that prevent the operation of machinery on the premises.
13. There is no dispute that the appellant's Noise and Vibration Assessment is not technically compliant with the methodology set out in BS 4142:2014. However, the appellant's assessment indicates that with mitigation, future residents would not be significantly adversely affected by the ambient background noise level in the locality. Whilst the assessment provides an average noise level for the area there is nothing before me to suggest that there are any other individual noise sources that would be likely to cause a significant nuisance.
14. For the above reasons I conclude that the proposal would not harm the living conditions of future occupiers with regard to noise and disturbance, and there would be no conflict with saved policy C30 of the Cherwell adopted Local Plan (LP) (1996), insofar as it seeks to ensure that new housing development provides standards of amenity acceptable to the local planning authority, or with policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 (2015). This states that new development proposals should consider the amenity of both existing and future development.

Character and appearance

15. The development would be formed of two apartment blocks fronting Bessemer Close and the corner of Launton Road and semi-detached and terraced dwellings and an apartment block positioned around an open space, incorporating a local play area. The open space would be bordered on one side by Launton Road. This means there would not be a continuous built frontage along this street. However, the existing warehouse building on the site is set

³ ref. 14/01158/F

⁴ Addendum to BS4142:2014 Assessment – KP Acoustics dated 24 November 2016

⁵ British Standard 4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound

back from both the Bessemer Close and Launton Road frontages, and there is no enclosure to the opposite side of Launton Road, where surface car parking for the supermarket dominates the street scene. The introduction of some dwellings fronting the street within the appeal site would make a positive contribution to the character of the area.

16. The apartment blocks on Bessemer Close would be positioned close to the back edge of the pavement and thus would provide a strong definition to the street. Building heights of 3 and 2.5 storeys would not be markedly out of scale with the adjacent warehouse buildings or the existing residential properties in the locality. Although the gap between the two apartment blocks is relatively narrow, the visual impact of the two buildings would be mitigated by the angled nature of Bessemer Close and the corner location, which means that the entire length of the two blocks would not be seen in a single view, and articulation of the buildings through the use of different materials and variation in building height and roof form.
17. The apartment block shown on the submitted drawings as Flats 34-47 would face the open space but is also connected to Flats 48-53 which have a frontage to Bessemer Close, and the two buildings would be connected over the courtyard parking access. The architectural relationship between the hipped and half hipped roof forms and different eaves heights of these two elements is somewhat awkward but is not particularly prominent in public views. It would not be so harmful as to make the development unacceptable on this basis alone.
18. The courtyard parking area to the rear of the apartment blocks would accommodate approximately 35 car parking spaces. Whilst the Council stated that this would be greater in size than it would normally expect for courtyard parking, there is no maximum size specified in the Council's policy or guidance for this type of parking arrangement. The parking area would be overlooked by residents and is screened from public view, and so would not dominate the street scene. Furthermore, the overall amount of car parking in the development would be in accordance with the Council's standards, and courtyard parking has been accepted by the Council in other similar urban housing schemes, including some permitted after the publication of the Framework. Consequently I consider that the development strikes an appropriate balance between achieving technical parking standards and good design.
19. Taking all of the above into account, I conclude that the development would not cause material harm to the character and appearance of the surrounding area. It would accord with saved LP policy C30, which requires housing development to be compatible with appearance, character, layout, scale and density of existing dwellings in the vicinity, and saved LP policy C28, which requires that the layout, design and external materials proposed should be sympathetic to the character of the urban or rural context of that development. It would also comply with policy ESD15 of the Cherwell Local Plan 2011-2031, which requires, amongst other things, that new development proposals improve the quality and appearance of an area and the way it functions, and complement and enhance the character of its context through sensitive siting, layout and high quality design.

Other Matters

20. The unilateral undertaking provides for 30% of the residential units to be affordable housing, and for the provision and maintenance of open space and play area within the development; enhancements to Bicester East community centre, and expansion of nursery and primary capacity at Longfields Primary School, in accordance with policy INF1 of the Cherwell Local Plan 2011-2031.
21. Future occupiers would be likely to place additional demand on local services and facilities, and Oxfordshire County Council has confirmed that the nursery and primary provision would not conflict with the restriction on pooling of contributions set out in regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010. A contribution would also be secured towards implementing parking restrictions on Bessemer Close that would be required to effectively manage parking demand arising from the development, and to provide bus stops in the vicinity of the site to promote sustainable transport. Consequently I am satisfied that in these respects the undertaking would accord with the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 or paragraph 204 of the Framework. It was confirmed at the Hearing that the bus service contribution is no longer sought.
22. There are three areas of dispute in relation to the submitted unilateral undertaking. Firstly, a contribution to improved cycle infrastructure would enhance links from the development to local schools and other nearby facilities. As new residents are likely to use the improved cycle route it would be fairly and reasonably related to the development. The cycle improvements have been identified in the Council's Sustainable Transport Strategy and the appeal scheme would fund over a third of the total cost of the project and thus I consider there is a reasonable likelihood of the project being completed. I am satisfied therefore that the contribution would meet the relevant provisions in the CIL regulations and the Framework.
23. Secondly, the Council seek a financial contribution towards a welcome pack for new residents and to run community events. It states that such events, co-ordinated by a dedicated officer and specific to the local area are important to achieving community integration. The requirement for a contribution is set out in a draft Planning Obligations SPD.
24. However, the proposed dwellings are located within the settlement of Bicester near to existing dwellings, social and community uses and so there is no reason to believe that new residents could not be readily integrated with the existing community. Council-run events would normally be funded by Council Tax, payable by new as well as existing residents. I therefore consider that an additional financial contribution is not necessary and would not meet the relevant tests set out in the regulations and Framework.
25. Thirdly, a contribution is sought towards the monitoring of the contributions payable to the County Council. Oxfordshire County Council contend that if the undertaking is considered to be necessary, the proper costs of administering it cannot be found to be unnecessary simply because the administration is a function of the local planning authority⁶. It also considers that the monitoring contribution is justified due to the number of trigger points in the planning obligation. However there is no direct reference within the Framework or

⁶ OCC refer to appeal ref. APP/V3120/A/13/2210891

Planning Practice Guidance to funding the monitoring of legal agreements and five of the six trigger points require one-off payments and so the monitoring of the agreement would not be particularly complex. As such I consider the monitoring contribution is not necessary to make the development acceptable in planning terms. Consequently the proposed contribution would not meet the 3 tests set out in the regulation 122 of the CIL regulations or in paragraph 204 of the Framework.

26. Finally, concerns have been expressed that the introduction of housing could undermine the viability of existing and future occupiers of the nearby Class B8 units. However, these are operating successfully within the permitted Use Class adjacent to existing housing and as such there is nothing to indicate that additional housing in the locality would prejudice the continued viability of these units. As a result I have given little weight to this matter in determining the appeal.

Conditions

27. I have found that the development is acceptable subject to certain conditions, framed in regard to the Planning Practice Guidance. I have specified the approved plans for certainty, and shall require details of landscaping to be submitted as reserved matters. The details should be submitted no later than three years from the date of this planning permission, and are required to ensure a satisfactory appearance.
28. Samples of materials to be used in the development, and details of windows, porches and canopies are necessary to safeguard the character and appearance of the surrounding area. I have imposed conditions requiring sound insulation within all habitable rooms and the provision and retention of refuse storage, in the interests of residential amenity. Details of the acoustic properties of boundary enclosures are also required to safeguard residential amenity through mitigation of noise impacts.
29. A surface and foul water drainage strategy is necessary to ensure that the site is properly drained and to reduce surface water run-off within the site and to the highway. A construction traffic management plan, and provision and retention of car and cycle parking and turning areas are required in the interests of highway safety. Details of means of access required for the same reason.
30. I have amended the wording of the suggested condition for a travel plan information pack so that it should be provided to each household rather than each resident as this is more precise and capable of being enforced. This condition and a further condition to require a travel plan statement are both necessary to promote sustainable travel choices.
31. In addition, due to the former industrial use of the site the potential for site contamination should be investigated and remediation works undertaken where necessary. I have therefore imposed a condition to that effect.

Conclusion

32. I have found that the proposal would be acceptable and would accord with the development plan as a whole.

33. For the reasons set out above I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nathan Kraker, MRTPI	Appellant, Vanderbilt Homes
M Harvey	Rudd
Colin Pullan	Nathaniel Lichfield Planning
Ken Dijksman, MRTPI	Dijksman Planning (UK) LLP
Kyriakos Papanagiotou	KP Acoustics

FOR THE COUNCIL:

Linda Griffiths	Principal Planning Officer, Cherwell District Council
Clare Mitchell MA Hons	Urban Designer, Cherwell District Council
Trevor Dixon	Environmental Protection Manager, Cherwell District Council
Steven Newman	Senior Economic Growth Officer, Cherwell District Council

INTERESTED PERSONS:

Richard Oliver	Oxfordshire County Council
Hannah Battye	Oxfordshire County Council
Craig Rossington	Oxfordshire County Council
Naomi Herring	Oxford Mail
M Patchett	

Documents submitted at the Hearing

- 1 Statement of Common Ground
- 2 Addendum to BS4142 Noise Assessment (KP Acoustics) dated 24/11/16, submitted by the appellant
- 3 S106 Cycle scheme plan, submitted by Oxfordshire County Council
- 4 S106 statement , submitted by Oxfordshire County Council

Schedule of Conditions

- 1) No development shall commence until full details of the landscaping (hereafter referred to as "reserved matters") have been submitted to and approved in writing by the local planning authority.
- 2) The development to which this planning permission relates shall be begun not later than the expiration of two years from the final approval of the last reserved matters to be approved.
- 3) In the case of reserved matters, application for approval shall be made not later than the expiration of three years from the date of this planning permission.
- 4) The development shall be carried out in accordance with the following plans and documents: S101 location plan; S102 Existing Site Survey; C101 Rev C Coloured Site Plan; C102 Rev D Coloured Street Scene; C103 Rev A Illustrative Views; C104 Rev A Illustrative Views; P101 Rev F Proposed Site Layout (Ground Level); P102 Rev H Proposed Site Layout (Roof Level); P105 Rev A Proposed Street Elevations; P106 Proposed Site Sections; P110 Rev A 3 Bed House Types Plans and Elevations; P111 Rev A 3 Bed (Affordable) House Types Plans and Elevations; P112 4 Bed House Types Plans and Elevations; P113 Rev A 4 Bed (Detached) House Types Plans and Elevations; P114 Rev B Flats 34-70 Ground Floor Plans; P115 Rev B Flats 34-70 First Floor Plans; P116 Rev B Flats 34-70 Second Floor Plans; P117 Rev B Flats 34-58 Elevations (1 of 2); P118 Rev B Flats 34-58 Elevations (2 of 2); P119 Rev A Flats 59-70 Elevations; P120 Plan 2 – Amenity Space Management Plan; Schedule of Accommodation Rev E.
- 5) Prior to the commencement of the development hereby approved, samples of all materials to be used in the construction of the development shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) Prior to the commencement of the development, full details of the doors, windows, dormer windows and porches/canopies hereby approved, at a scale of 1:20, including a cross section, cill, lintel and recess detail and colour/finish, shall be submitted to and approved in writing by the local planning authority. Thereafter the doors, windows, dormer windows, porches and canopies shall be installed within the development in accordance with the approved details.
- 7) Prior to the commencement of the development hereby approved, full details of the enclosures all along the boundaries and within the site shall be submitted to and approved in writing by the local planning authority. The details shall include the acoustic specification of the enclosures to ensure that noise levels at the boundary of the external amenity areas shall not exceed 55 dBA. Thereafter the full means of enclosure shall be erected in accordance with the approved details, prior to the first occupation of the dwellings.
- 8) Prior to the first occupation of the development hereby permitted, refuse and recycling bins shall be provided for each of the residential units approved and retained as such thereafter.

- 9) Prior to the commencement of the development hereby approved, a detailed drainage strategy and scheme for the surface water and foul sewage drainage based on sustainable drainage principles and a hydro-geological context of the development shall be submitted to and approved in writing by the local planning authority. The approved surface water drainage scheme shall be carried out before the commencement of any building works on the site and the approved foul drainage scheme shall be implemented prior to the first occupation of any dwelling hereby approved.
- 10) Prior to the commencement of the development hereby approved, full details of a scheme for acoustically insulating all habitable rooms within the dwellings such that internal noise levels do not exceed the criteria specified in Table 4 of the British Standard BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings* shall be submitted to and approved in writing by the local planning authority. Thereafter, and prior to the first occupation of the dwellings they shall be insulated and maintained in accordance with the approved details.
- 11) Prior to the commencement of any development on the site and upon demolition of the existing buildings on the site, further investigation, to include intrusive investigation, in addition to the remedial works identified in section 7.1.3 of the Geotechnical Investigation Report from SP Associates reference SO950-2 shall be carried out. No development shall take place unless the local planning authority has given its written approval that it is satisfied that the risk from contamination has been adequately categorised and the necessary remediation approved in writing by the local planning authority has been carried out in accordance with the approved details.
- 12) Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the local planning authority. The means of access shall be constructed and retained in accordance with the approved details.
- 13) Prior to the commencement of the development hereby approved, full specification details of the parking and manoeuvring areas, access road and footways, including construction, layout, surfacing and drainage shall be submitted to and approved in writing by the local planning authority. Prior to the first occupation of the development the parking and manoeuvring areas shall be provided on the site in accordance with the approved details and shall be retained unobstructed except for the parking and manoeuvring of vehicles thereafter.
- 14) Prior to the first occupation of the development hereby permitted, a plan showing the number, location and design of cycle parking for the site shall be submitted to and approved in writing by the local planning authority. The cycle parking shown on the agreed plan shall be provided prior to the first occupation of the development and shall be retained and maintained for the parking of cycles in connection with the development thereafter.
- 15) Prior to commencement of the development a travel plan statement in accordance with the Oxfordshire County Council travel plan guidance document will be submitted to and approved in writing by the local planning authority.

- 16) Prior to the first occupation of the development travel information packs shall be provided to each household. The details shall be submitted to and approved in writing by the local planning authority.
- 17) Prior to commencement of the development hereby approved, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the local planning authority. The approved CTMP shall be implemented and operated in accordance with the approved details.