



Appeal Decision

Inquiry Held on 1 and 2 August 2017

Accompanied site visit made on 2 August 2017

Unaccompanied site visit made 17 July 2017

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 31st August 2017

Appeal Ref: APP/Q3115/W/16/3163844

Land off St Helen's Avenue, Benson

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Gladman Developments Ltd against South Oxfordshire District Council.
 - The application Ref P16/S1301/O, is dated 18 April 2016.
 - The development proposed is described as '*Outline planning permission for up to 130 dwellings (including up to 40% affordable housing) introduction of structural planting and landscaping, informal public open space, surface water flood mitigation and attenuation, two vehicular accesses from St Helen's Avenue and associated ancillary works.*'
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The Council indicated that had it been in a position to do so, it would have refused planning permission for three reasons. At the Inquiry, I heard that following the submission of two legal agreements relating to affordable housing and other infrastructure, the Council considered only one putative reason for refusal remained:
 - *The site will be exposed to significant adverse noise impacts from both the nearby road traffic (A4074) and varying aircraft from the Benson RAF airfield which cannot be mitigated in an acceptable manner. As such the site is not suitable for residential development as the noise exposure for future residents will be 'Noticeable and Disruptive' and would be detrimental of the amenity of occupiers of the dwellings contrary to saved policy EP2 of the South Oxfordshire Local Plan 2011 and advice in the NPPF and Planning Practice Guidance.*
3. I have considered this, and the evidence before me including the comments from interested parties, in forming what I consider to be the main issues in this case.

Main Issues

4. The main issues, set out at the start of the Inquiry, are:

- The effect on the living conditions of occupiers of the proposed development with regards to noise and disturbance from the surrounding area (including the operation of RAF Benson) and;
- Whether the proposed development would make adequate provision in respect of local infrastructure, including matters such as affordable housing.

Reasons

Noise and disturbance

5. The appeal site comprises an area of around 6.34 hectares located on the southern edge of Benson and wedged between St Helens Avenue and the A4074. There is an existing Public Right of Way (PROW) that crosses the site diagonally on an approximately north-south axis. The field to the south east is currently used as a paddock for horses, whereas the field to the north west of the footpath an area of scrubland with allotments outside of the appeal site beyond. The site is partially screened by a mixture of trees and hedges.
6. To the south east of the appeal site lies RAF Benson which has been used as an operational airbase for the armed forces since 1939, with it currently housing well over 20 military and emergency services helicopters, including the military single rotary Puma and twin rotary Chinook helicopters. A number of Pumas are on stand-by for UK and overseas aid or emergency deployment, whereas Chinooks are primarily used for training purposes with training taking place during the night and day for around 21 weeks per year. In particular, Chinook training involves a number of activities such as the collection, carrying and depositing of underslung loads in and around the local area. The base also houses a number of smaller light aircraft and there is a small arms range on site. The operational hours of aircraft on the base are not subject to planning controls.¹
7. The appeal proposal, which is submitted in outline, seeks the erection of up to 130 dwellings. The appellant considers that noise impacts arising from the operation of RAF Benson can be mitigated for internal areas by three principal means; (i) the use of acoustic boundary treatments such as fencing, (ii) the use of enhanced glazing together with non-mechanical ventilation, and (iii) the orientation and layout of buildings.
8. Both parties have set out various readings for noise emanating from the operation of RAF Benson and the A4074. These results have then been compared against various documents such as British Standards, the national Planning Practice Guidance, and publications from the World Health Organisation. As pointed out in the appellant's closing submission, none of these documents provides a definitive measurement or standard for the exact circumstances in this case concerning military or emergency service helicopter flights throughout a 24-hour period, for a number of weeks per year in relation to residential development. There is, consequently, a degree of planning judgement that the decision-maker must exercise here.

¹ Oral evidence of Wing Commander D McGurk of RAF Benson to the Inquiry, 1 August 2017

9. I also note that both parties have referred me to an ARM Report which at pages 26 to 27 and pages 28 to 29 indicates that Chinooks did not fly from RAF Benson at the time of that survey and the survey for sites BEN5 and BEN7/8 indicates at that time an 'Adverse effect' for day and night LAeq, 16hr and LAmax from road traffic and aircraft. It also indicates that the increase in night time LAmax which may arise with the potential introduction of Chinook helicopters at RAF Benson bringing about a significant adverse effect. However, given the surveys undertaken by the main parties here are site specific, they are of more relevance to this appeal.
10. The WHO Guidelines on Community Noise 1999 set out at page ixiv, that '*to protect the majority of people from being seriously annoyed during the daytime, the outdoor sound level from steady, continuous noise should not exceed 55dB LAeq in...outdoor living areas.* At the accompanied site inspection I heard helicopters, including of the Chinook and Puma variety, undertaking movements such as taking off and hovering. These did not emit a 'steady, continuous noise' or thrum.
11. Instead there were variations in the thudding and whooshing noises from both the Puma and Chinook helicopters that were flight training at that time². This is not the steady and continuous noise that one might experience from a heavily trafficked road, for example. The flight activity in this case also includes low frequency noise which, put simply, the various documents on noise indicate can be particularly irritating to humans.
12. The appellant measured external sound at a level of 54dB LAeq (16 hours), and indicated that this was an 'average' day with helicopters flying. This is noise at a level just below the 55dB outdoor level that the WHO 1999 guidance at table ixv, page ixiv³ suggests. I note the appellants point in the agreed Noise Statement of Common Ground (NSOCG) that the '*most appropriate noise guideline level for garden areas would be 55dB LAeq as the site is in a noisier environment given its proximity to the A4074*⁴'. However, the WHO guidance is clear in that this dB LAeq level should be lower if the noise is not steady and continuous, as I have found here. In such circumstances, the Council's preferred noise guidance level of 50dB LAeq would be more appropriate in this case given the type of noise involved.
13. What this means in practice is that when using the gardens and external areas around the dwellings, future occupiers will be subjected to low frequency, non-continuous noise levels at a level close to or in excess of that set out in the WHO guidance as acceptable. The appellant indicates in the NSOCG that '*no noise mitigation is required*' for external areas. Given that I have found that the external areas would be subject to noise in excess of guidelines levels, I find that the proposal would result in significant adverse impacts on quality of life when future occupiers use external living areas. This is an unacceptable impact which would have a direct effect on the living conditions of future occupiers, for which no mitigation has been suggested.
14. In terms of internal noise levels, the dispute between the parties mainly revolves around whether the mitigation in the form of enhanced glazing and

² The site inspection was arranged so as to take place at a time and date when RAF Benson indicated that training flights were to take place involving Chinook Helicopters.

³ CD 8.6

⁴ NSOCG Para 3.1.3

non-mechanical ventilation would be acceptable or not. It should be acknowledged at this point that for the enhanced glazing work effectively the windows need to be closed. This could be for a period of at least Monday to Thursday for up to 21 weeks a year (based upon Chinook night-time flying). This excludes flying and training taking place during daylight hours and also noise from fixed-wing aircraft.

15. As acknowledged by the appellant, the appeal site is within a rural area where occupiers would be very likely to want to utilise both their gardens and also open windows. Whilst it is clear that RAF Benson seeks to manage the disturbance caused to local residents by restricting night-time and day-time flights; this is as a matter of courtesy and there are no planning controls which restrict the operational hours of the base.
16. The reality in practice is that future occupiers would want or wish to open their windows in fine weather; both during the day and night. When this occurs throughout the year and any given 24 hour period, occupiers would be subjected to noise levels which would give rise to significant adverse impacts on health and quality of life.
17. The main parties agree that the noise from the A4074 could be mitigated and this is not an atypical approach given the character of this noise. I do not find that the noise from the A4074, which could be mitigated, would result in adverse impacts on living conditions. However, the noise from RAF Benson would clearly be very different. Not only would it intrude into the external living areas such as gardens which would have no mitigation measures, but it would require future occupiers to close windows and rely upon passive ventilation whenever flights and training may occur during both the day and night.
18. National policy, local policy, or international guidance, do not suggest that opening windows for ventilation is a fundamental right. However, human nature is such that where one can open a window when it is fine weather, then a window will be opened. The noise and open windows in this case is a matter which should be considered in deciding whether noise levels would or would not be acceptable.
19. It seems somewhat fanciful to suggest, as the appellant does, that future residents will need to look on the RAF website to ascertain possible flight times and days of operation, then plan their sleeping arrangements around these, or remember to close windows, and so on. The reality is that bedroom windows will be left open (unless they are designed to be kept fixed shut, which I understand is not being suggested here) and when this coincides with night-time training future occupiers will be subject to noise which is very likely to disrupt sleep.
20. As a result of this, there is a strong likelihood that there would be complaints raised from future occupiers to curtail flights to and from RAF Benson fuelled by such actions. The change in land use envisaged here is likely to lead to pressure for restrictions being placed upon the airbase; even if only limited to the RAF wishing to maintain a neighbourly relationship with the local community. Such restrictions, whether imposed formerly or as a result of controls outside of the planning system, on an established use that contributes to both the 'Defence of the Realm' and in providing emergency responses to

crisis and incidents within the UK and abroad, would be at odds with the broad spirit of town and country planning to act in the wider public interest.

21. I therefore find that such a situation for future residents here would not provide a good standard of amenity for the future occupiers of either the land or the buildings proposed. When using external areas, occupiers will be subject to the loud noise of passing and hovering helicopters. Internally, and in the summer months in particular, occupiers would have to either have to sleep in sealed rooms, relying upon non-mechanical ventilation or alternatively noise entering through open windows. Ultimately, the result is a proposed development that fails to adequately address the connections between people and places and the integration of this new development into the built environment.
22. Accordingly, I conclude that the proposed development would result in an unacceptable impact on the living conditions of occupiers that would give rise to significant adverse impacts on health and quality of life with regards to noise and disturbance from the surrounding area (including the operation of RAF Benson). As such, the proposal would be contrary to Saved⁵ Policy EP2 of the *South Oxfordshire Local Plan 2011 (adopted 2006)* (SOLP), which, amongst other aims, seeks to ensure that noise sensitive development will not be permitted close to existing or proposed sources of significant noise or vibration. It would also conflict with policies of the *National Planning Policy Framework* (the Framework) including Paragraphs 17 and 123.
23. I have been referred to a site at 22-24 Blacklands Road and Land to Rear Blacklands Road, Benson for 11 dwellings which was granted planning permission by the Council. The appellant considers that the similarities between that site and the appeal site lend succour to their case. However, I saw that not only is this site in a different geographical location to the appeal site, but it is also located further away from the southern underslung load site which the RAF Wing Commander from RAF Benson indicated is used for night time training specifically because it is farther away from residential properties compared to the Blacklands Site and the northern underslung training area.
24. In addition, there are also differences between the sites, with the buildings along Brook Street and Passey Crescent providing some potential attenuation of noise from RAF Benson, for example. Given such differences, I do not find that the granting of permission for the Blacklands Road site provides justification for the approval of the appeal scheme before me.

Local infrastructure

25. The appellant has submitted two legal agreements under Section 106 of the TCPA. The first⁶ relates to the provision of affordable housing and associated monitoring fee, and the second⁷ to other infrastructure such as a highways contribution, a bus shelter and relocated bus stop, monitoring fees, open space and the provision of play equipment.
26. The Council has submitted various documents which set out the justification for the various infrastructure contributions sought, and how these align with the requirements of the CIL Regulations and Paragraph 204 of the Framework.

⁵ CD6.3 – 'Saved' by SoS Direction letter dated 24 November 2008

⁶ See APP7 for documents submitted at Inquiry

⁷ APP6

Policy CSH3 of the *South Oxfordshire Core Strategy 2012* (CS) seeks the provision of 40% affordable housing on sites of more than three units, with Policy CSH4 of the CS setting out that such housing needs to meet standards such as Lifetime Homes. Policy D10 of the SOLP seeks to ensure that proposals make adequate provision for the management of waste in new developments. Policy CSI1 of the CS seeks the provision of on and off site infrastructure and services to meet the needs of the new development.

27. The proposal in this case would provide for 40% of the dwellings to be affordable housing. It would therefore fulfil the aims of Policy CSH3 of the CS. This provision of affordable housing is therefore a public benefit that weighs in favour of the appeal scheme. Whilst obligations have been submitted in respect of other infrastructure as the appeal is to be dismissed on other substantive issues it is not necessary to consider these in any further detail given that the proposal is unacceptable for other reasons.

Overall Conclusion

28. Section 38(6) of the Planning and Compulsory Act 2004, as amended, requires that if regard is to be had to the development plan for the purpose of any determinations to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
29. In this case, the proposal would conflict with Saved Policy EP2 of the SOLP. It would therefore conflict with the adopted development plan. The appellant asserts that as Policy EP2 does not provide for mitigation to be taken into account it should be considered 'out of date'. The second sentence of the Policy states '*In addition, noise sensitive development will not be permitted close to existing or proposed sources of significant noise or vibrations.*' The Council considers that although PPG24, which the supporting paragraphs of Policy EP2 refer to, has now been replaced it is clear that mitigation is a factor to take into account when applying the second sentence of the Policy.
30. Given that the Policy does not refer to mitigation within its second sentence (but does in its first sentence) it is clear that when read plainly, Policy EP2 is not fully consistent with the Framework. For example, the main parties agreed that the term 'avoid noise' includes mitigation as set out at Paragraph 123 of the Framework. The second sentence of the Policy does not include such terms.
31. Crucially, given the exclusion of mitigation or avoidance within the terminology of Policy EP2, I find that an approach similar to that suggested by the appellant is the most logical in this case. However, this is in the terms that the Policy is less consistent with the Framework in accordance with Paragraph 215, and not out of date, as the Policy still reflects elements of Paragraph 123, for example. Besides the lack of mitigation terminology, it is fairly consistent with the Framework, including Paragraph 123, in seeking to ensure noise is a matter considered in planning proposals. In such circumstances, I afford Policy EP2 significant weight in terms of Paragraph 215 of the Framework.
32. In terms of other material considerations, the main parties agree within the Statement of Common Ground (SOCG) that the Council is currently unable

demonstrate a five year supply of deliverable housing⁸. It is agreed between the main parties that the Council's current position is 4.12 years and that the appeal site would '*make a substantial contribution towards the Council's current five year housing land supply deficit*'⁹. With no evidence to the contrary I agree. As a result, Paragraphs 14 and 49 of the Framework (the Framework being an important material consideration) are of relevance.

33. The planning balance test set out in Paragraph 14 of the Framework, at the second limb, second bullet point indicates that where relevant policies are out-of-date decision-taking means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
34. In this case, the proposal would result in significant adverse impacts on health and quality of life that cannot be adequately mitigated. This is an adverse impact which would conflict with a fundamental aim of planning, which should always seek to secure high quality design and a good standard of amenity for future occupants of land and buildings. It also seeks to ensure that sufficient land of the right type is available in the right places at the right time. My conclusions in respect of the noise issue do not indicate that this is land in the right place. I therefore afford this factor substantial weight against the proposal.
35. In terms of benefits, the proposal would result in the creation of jobs during the construction phase, the economic contribution from construction spend, and expenditure from new residents. These are economic benefits which I afford modest weight to. It would also provide up to 130 dwellings in a district that is currently unable to demonstrate a five year supply of deliverable housing sites; this is a significant benefit in favour of the scheme. Of these dwellings, 40% would be policy compliant affordable housing in an area which has an outstanding affordable need of 530 units¹⁰. I afford significant weight to this social benefit of the proposal in providing affordable housing. The proposal would provide some limited biodiversity enhancements to the site and publicly accessible open space which should be afforded modest weight.
36. On balance, whilst I accept that there is a pressing need to deliver housing (including affordable housing) and especially so in an area with a shortfall in its delivery of a five year housing supply, I find that the specific harm arising in this case, and therefore the adverse impacts, significantly and demonstrably outweigh the benefits proposed. As such, the Framework does not indicate that planning permission should be granted. For similar reasons, the proposal would also be contrary to Policy CS1 of the CS, which is similarly phrased.
37. In applying S38(6) of the PCPA, I find that the proposal would not accord with the adopted development plan and that there are no material considerations that indicate otherwise. For the reasons given above, and having taken all matters raised into account, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

⁸ Statement of Common Ground July 2017, Section 4.3 Five Year housing land supply

⁹ Ibid, Para 4.3.5

¹⁰ Ibid, Paras 4.6.1 to 4.6.4

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Flanagan of Counsel instructed by Mr I Price, Senior Litigation and Planning Lawyer South Oxfordshire District Council

He called: Mrs S Crawford, BA(Hons), Dip TP
Development Management Team Leader

Mr D Baker, BSc(Hons), MSc, MCIEH, MIOA
Environmental Health Practitioner, MAS Environmental

FOR THE APPELLANT:

Mr A Evans of Counsel, instructed by

He called: Miss D J Richardson, BA(Hons), MA, MRTPI
Planning Director, Gladman Developments Ltd

Mr C M Dawson, BSc (Hons), MA, CEnv, MEnvSc, MIOA,
MIAQM, FRMetS
Technical Director Wardell Armstrong LLP

INTERESTED PERSONS:

Wing Commander D McGurk On behalf of base commander RAF Benson/MoD

Mr J Fowler Vice Chairman, Benson Parish Council and
Chair of Benson Neighbourhood Plan Team

DOCUMENTS SUBMITTED AT INQUIRY

From LPA:

- LPA1 Appearances for South Oxfordshire District Council
- LPA2 Short Supplementary Proof of Evidence of Daniel Baker
- LPA3 Statement Supporting Section 106 Monitoring Fees
- LPA4 Compliance with Community Infrastructure Regulations (2010) as amended
- LPA5 Opening Statement of Hugh Flanagan dated 1 August 2017
- LPA6 Note on S106 monitoring fees
- LPA7 Conditions should the appeal be allowed
- LPA8 Regulation 123 of the Community Infrastructure Levy (CIL) Regulations (2010) (as amended) – Note on Compliance of Planning Obligations Sought by Oxfordshire County Council
- LPA9 Closing Submissions on behalf of SODC

From Appellant:

- APP1 Appearances on behalf of Gladman Developments Ltd
- APP2 Court of Appeal Judgement – *Barwood Strategic Land II LLP and (1) East Staffordshire Borough Council and (2) SoS CLG, et al*, [2017] EWCA Civ 893, dated 30 June 2017
- APP3 High Court Judgement – *Forest of Dean and SoS CLG and Gladman Developments Ltd*, [2016] EWHC 421 (Admin), dated 4 March 2016
- APP4 Supreme Court Judgement - *Suffolk Coastal District (Appellant) v Hopkins Homes Ltd and another, et al*. [2017] UKSC 37, dated 10 May 2017
- APP5 Opening Remarks on behalf of Gladman Developments Ltd by Alan Evans
- APP6 Unilateral undertaking relating to matters other than affordable housing (referred to as S106B)
- APP7 Unilateral undertaking relating to affordable housing (referred to as S106A)
- APP8 Note to clarify two points raised during cross examination of the noise witness on 02 08 17 (with reference to Mr Dawson)
- APP9 Appeal decision relating to Thames Farm, dated 2 August 2017, Reference APP/Q3115/W/16/3161733
- APP10 Closing Submissions on behalf of Gladman Developments Ltd

From Interested Parties:

- IP1 RAF Benson – A summary of flying activity (from Wing Commander McGurk)
- IP2 Comments from Mr J Fowler, Vice Chairman Benson Parish Council