

Appeal Decision

Site visit made on 12 January 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2021

Appeal Ref: APP/P0240/W/20/3260426

Units 3, 5 and 7 Ivel Road, Shefford, Bedfordshire SG17 5JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Nohra Currie, Monogram Technologies Ltd against the decision of Central Bedfordshire Council.
 - The application Ref CB/19/04226/FULL, dated 5 December 2019, was refused by notice dated 24 July 2020.
 - The development proposed is demolition of 2 no. existing industrial units and proposed construction of 9 no. dwellings with 26 parking bays and the regeneration of existing unit.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of 2 no. existing industrial units and proposed construction of 9 no. dwellings with 26 parking bays and the regeneration of existing unit at Units 3, 5 and 7 Ivel Road, Shefford, Bedfordshire SG17 5JU in accordance with the terms of the application, Ref CB/19/04226/FULL, dated 5 December 2019 subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mrs Nohra Currie, Monogram Technologies Ltd against Central Bedfordshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The Council amended the description of development from that given on the planning application form. The appellant has used the Council's description on the appeal form, but neither of the main parties has provided confirmation that a revised description of development has been agreed. I have therefore used the original description of development in my formal decision above.
4. I have been referred to policies within the emerging Central Bedfordshire Local Plan 2015-2035. The emerging plan was submitted to the Secretary of State in 2018, but is yet to be adopted and is therefore subject to change. Moreover, I have not been provided with details of unresolved objections to the plan, and therefore the weight that these policies carry in my decision is limited.

Main Issue

5. The main issue is whether or not the relationship between the proposed dwellings and adjacent development would be acceptable with particular regard to the effect of noise and disturbance on living conditions for future occupiers of the dwellings.

Reasons

6. The main part of the appeal site is set back from Ivel Road to the rear of commercial premises which I saw were occupied by a mix of businesses. The site additionally includes access from Ivel Road which also serves the neighbouring units. The appeal proposes the demolition of vacant buildings known as units 3 and 5, and the erection of 9 dwellings. It is also proposed to retain and refurbish Unit 7 which currently provides a dance studio use.
7. The proposal would result in new residential occupiers on the site who would be sensitive to noise, and I accept that the dwellings would be in fairly close proximity to the neighbouring commercial uses, as well as to the dance studio on the site. However, the appellant has provided a 'Measurement of Environmental Noise' report which includes an assessment of existing noise conditions at the site. This indicates that the dominant source of background noise is traffic on Ivel Road, rather than adjacent commercial premises, and outlines that the measured existing background noise levels are not excessive. Based on these levels, the report advises that relevant guideline standards for internal noise levels would be achievable within dwellings with windows open for both daytime and night-time periods. It recommends that standard double glazed units can be used to meet noise criteria and that any trickle vents should be capable of meeting the same standard, but no requirement for other mitigation is identified.
8. With reference to noise levels generated at peak hours by an example dance studio use, the report further indicates that noise levels experienced at the closest proposed dwelling to the dance studio would be lower than existing levels on the site, and comparable to the recommended night-time internal ambient noise levels within bedrooms. Nevertheless, it further notes potential for acoustic insulation to the dance studio building and that measures such as avoiding openable windows facing dwellings would additionally reduce noise at the external façade of the building.
9. The Council's report on the application confirms that the Pollution Officer was satisfied with the findings of the submitted noise information. The Council is not bound by the comments of this consultee, but it has offered no clear evidence in support of an alternative conclusion. The adjacent units are already neighboured by a number of close-by dwellings, but I have not been provided with any evidence of complaints regarding the use, or other objective information to substantiate the Council's assertion that activity and comings and goings, including by large vehicles, results in a significant level of noise. Nor is there clear evidence demonstrating that noise from the established dance studio on the site impacts on the occupiers of dwellings on Oakwood Road which are much closer to it than the nearest proposed dwelling.
10. Moreover, the Council has not put forward any substantive challenge to the methodology employed within the appellant's noise report, or other firm evidence to refute the credibility of its conclusions that noise levels experienced would not be excessive or require special mitigation to achieve relevant guidelines.
11. The proposal would result in some changes to the envelope of the dance studio building which could potentially impact noise levels associated with its use. However, the Council has not provided any convincing explanation why it would be inappropriate to secure the implementation of suitable mitigation to protect nearby occupiers from noise by means of a planning condition as recommended

by the Pollution Officer. Nor has it justified why a suggested condition to impose more restrictive operating hours on the dance studio that are currently permitted would be reasonable or necessary.

12. In the absence of any compelling evidence to the contrary, I therefore find that noise resulting from adjacent uses would not result in significant harm to the quality of life of occupiers of the proposed dwellings, or require mitigation beyond measures that I am satisfied could be secured by a planning condition. Given this, I see no reason that the presence of the dwellings on the site would lead to additional restrictions or unreasonable constraints on the operations of existing uses in the vicinity which paragraph 182 of the National Planning Policy Framework (the Framework) seeks to avoid. As a consequence, I consider that the development would be integrated effectively with adjacent uses.
13. For these reasons, I am satisfied that the living conditions of occupiers of the proposed dwellings would not be harmed by noise or disturbance and I conclude that the relationship of the dwellings with adjacent development would be acceptable. Accordingly, I find no conflict with Policy DM3 of the Core Strategy and Development Management Policies 2009 which seeks high quality development and requires, amongst other things, compliance with guidance on noise.

Other Matters

14. The appellant has provided a Transport Note which details modifications proposed to the access from Ivel Road, including a footway. There is no compelling evidence before me that this arrangement would result in harm to the safety of pedestrians or other highway users. I also see no reason that there would be significant inconvenience to other users of the access given the remaining width and the levels of traffic that the evidence indicates would be likely to use it. I note representations by interested parties referring to ownership and rights of use of the access, and advising that agreement would not be given for a new pavement along it. However, such legal matters are separate from the planning process. The appellant confirms that there would be further discussions with relevant parties regarding the access should permission be granted, and I have no firm reason to consider that there would be no prospect of agreement to enable the works. I am therefore satisfied that a 'Grampian' condition which would require that the indicated access is provided in advance of the development being occupied would be appropriate.
15. Given the arrangement of windows to the development and relationship with neighbouring dwellings, there would not be unacceptable overlooking to neighbouring occupiers. There is no firm evidence that the development would introduce or exacerbate a safety concern for adjacent properties, and suitable boundary treatment to the development can be secured by condition. Any disruption during construction would be for a temporary period only and could be mitigated by careful construction management.

Conditions

16. I have considered suggested conditions having regard to the tests set out at paragraph 55 of the Framework and amended some where necessary, or for the sake of consistency or brevity. I have also avoided the use of pre-commencement conditions unless necessary for a condition to achieve its purpose, in which case the appellant has agreed the wording of the relevant condition.

17. In addition to the standard time limit (1), I have imposed a condition specifying the approved plans (2) for the avoidance of doubt and in the interest of certainty. Conditions to secure an Ecological Design Strategy (3) and site investigation work (4) before development takes place, as well as provision for remediation (5), are necessary to safeguard health and the environment and to protect and enhance biodiversity.
18. Conditions to require details of ground and slab levels of buildings (6), details of materials (7) and provision for landscaping (8) are required to ensure a satisfactory appearance and relationship with neighbouring occupiers. However, no clear justification to require details prior to any works taking place has been provided and I have amended the timing accordingly. To ensure suitable provision, I have also imposed conditions relating to areas for the storage and collection of waste (9) and details of boundary treatments (10). The latter condition would enable consideration of the details of any gates, and therefore I see no reason that a separate suggested condition would be necessary.
19. In the interests of highway and pedestrian safety, conditions to require details of the junction within the site (11), implementation of the indicated footway along the access (12), visibility splays (13) and parking (14) are required. The Council suggested that the footway should be provided prior to commencement of development of the residential site, but it is not clear why this would be necessary so far in advance of occupiers being present and I consider that a requirement for provision in advance of works above ground level would provide appropriate certainty that it can be secured. I have also altered condition 12 to refer to use by pedestrians rather than just residents. To promote sustainable travel, conditions requiring electric vehicle charging points (15), as well as cycle storage (16) as suggested by the Highways Officer, are necessary. I have also imposed a condition for development to follow the Council's Construction Code of Practice for Developers and Contractors (17) to minimise impacts on neighbouring occupiers.
20. Given alterations proposed to the fabric of the dance studio building, I consider that noise mitigation measures (18) are necessary to protect living conditions for neighbouring and future occupiers of the site, although details are not essential prior to any development taking place. For similar reasons, I have attached a condition restricting the hours during which the studio operates (19), but the evidence does not demonstrate why these need be more restrictive than those applying to the existing use. I have therefore sought the parties views on a condition with adjusted hours from those initially suggested by the Council. Finally, standards for emergency vehicle access and fire safety requirements are covered within Building Regulations and would apply to the development, and it has not been demonstrated that corresponding conditions would be necessary.

Conclusion

21. The proposal would make effective use of the previously developed site to deliver new homes within an existing built up area benefitting from access to local services and public transport. It would accord with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. For the reasons given above, I therefore conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 8856-01 Rev B, 8856-02 (Proposed site views and dance studio elevations 20.12.19), 8856-03, 8856-04, 8856-05 (Existing industrial units to be demolished and site photos 09.01.20), 8856-06 Rev A, 191.0001.001 (Proposed Access Arrangement), CBC-002 (Tree Protection (demolition)), CBC-003 (Tree Constraints (as surveyed)), and CBC-004 (Tree Protection (construction)).
- 3) No development shall take place until an Ecological Design Strategy (EDS) addressing enhancement has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include:
 - i) a review of the site potential and constraints;
 - ii) detailed working methods to achieve stated objectives which may include locations of hedgehog holes in fences and integrated bird boxes to be erected in accordance with RSPB guidelines on appropriate scale plans;
 - iii) type and source of materials to be used where appropriate, e.g. native species of local provenance;
 - iv) a timetable for implementation demonstrating that works are aligned with proposed phasing of development; and
 - v) details of persons responsible for implementing the works.

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.
- 4) No development shall take place until a Phase 2 site investigation has been undertaken and a detailed report of the findings, in accordance with the recommendations of the Phase 1 Site Investigation report prepared by Wesson Environmental and dated February 2020 (Ref: 001MOTEP1), has been submitted to and approved in writing by the Local Planning Authority. Where found to be necessary by the Phase 2 report, a remediation strategy to deal with the risks associated with contamination of the site shall also be submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall include an options appraisal giving full details of the remediation measures required and how they are to be undertaken. The strategy shall include a plan providing details of how the remediation works shall be judged to be complete, and arrangements for contingency action.
- 5) Where remediation works are found to be necessary by the Phase 2 Site Investigation pursuant to condition 4, a validation report shall be submitted and approved in writing by the Local Planning Authority to demonstrate the effectiveness of any agreed remediation strategy prior to first occupation of any dwelling hereby permitted. The validation report shall include responses to any unexpected contamination discovered during works.
- 6) Notwithstanding the details shown on the approved plans, no development resulting in alteration to the existing ground level shall take place until details of the existing and final ground and slab levels of the buildings hereby permitted have been submitted to and approved in writing by the

Local Planning Authority. Such details shall include sections through both the site and the adjoining properties, the location of which shall first be agreed in writing with the Local Planning Authority. Thereafter the site shall be developed in full accordance with the approved details.

- 7) Notwithstanding the details shown on the approved plans, no development above proposed ground level shall take place until details of the materials to be used for the external walls and roofs of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) No development above proposed ground level shall take place until a landscaping scheme to include details of all hard and soft landscaping works and a scheme for landscape maintenance for a period of five years following the implementation of the landscaping scheme have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained in accordance with the approved landscape maintenance scheme, and any which die or are destroyed within five years following the implementation of the landscaping scheme shall be replaced during the next planting season.
- 9) Before any dwelling hereby permitted is first occupied, details of a refuse collection point at the site frontage and outside of the public highway and any visibility splays shall be submitted to and approved by the Local Planning Authority. The scheme shall be fully implemented prior to occupation of any dwelling, and shall be retained thereafter.
- 10) Before the development is first occupied, a scheme indicating the positions, design, materials and type of boundary treatment to be erected and including any gates to the site shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved scheme before the development is first occupied, and shall be thereafter retained.
- 11) Before the development is first occupied, the junction of the site access with the residential development shall be constructed in accordance with details which have first been submitted to and approved by the Local Planning Authority, and shall be retained thereafter.
- 12) No development above proposed ground level shall take place until the 1.5m wide footway at the north side of the access as indicated on approved plan no. 191.0001.001 has been constructed in accordance with the approved details. The footway shall thereafter be permanently retained for the use of pedestrians.
- 13) Visibility splays as indicated on approved plan no. 191.0001.001 and the north splay at the junction of the access with the public highway indicated on approved plan no. 8856-06 Rev A shall be implemented prior to the development being brought into use. The required visibility splays shall be maintained free of any obstruction to visibility exceeding a height of 600mm above the adjoining footway level.

- 14) Before the development is first occupied, parking shall be provided and vehicular areas surfaced in accordance with details indicated on approved plan no. 8856-01 Rev B, and shall be retained as such thereafter for those purposes.
- 15) Prior to construction of the vehicular parking areas associated with the dwellings hereby permitted, a scheme for the charging of electric vehicles shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before any part of the development is first occupied and shall be retained as such thereafter.
- 16) Before the development is first occupied, secure and covered parking for cycles on the site shall be provided in accordance with details which have first been submitted to and approved by the Local Planning Authority, and shall be retained as such thereafter for those purposes.
- 17) The development hereby permitted shall be undertaken in full accordance with the Council's adopted 'Construction Code of Practice for Developers and Contractors'.
- 18) Before the dance studio hereby permitted is first brought into use, a scheme to protect occupiers of the proposed dwellings and neighbouring occupiers from noise associated with its operation and use shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall take into account recommendations identified within the updated Measurement of Environmental Noise report prepared by E2 Consultants (Ref: 10277-1). All works which form part of the approved scheme shall be completed before the dance studio is first brought into use and shall be retained thereafter.
- 19) The dance studio use of the building known as Unit 7 hereby permitted shall only take place between the following hours:

0700 to 2100 hours, Mondays to Fridays and
0900 to 1400 hours on Saturdays,
And shall not take place at any times on Sundays.

End of Schedule