



Appeal Decision

Hearing held on 20 December 2022

Site visit made on 19 December 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/P1805/W/22/3306951

Corbett Business Park, Shaw Lane, Stoke Prior B60 4EA

- 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 Mongoose Ltd against the decision of Bromsgrove District Council.
 - The application Ref 20/00643/FUL, dated 4 June 2020, was refused by notice dated 23 May 2022.
 - The development proposed is use of land for the stationing of 90 static residential park homes for the over 55s, with associated parking, internal service roads, and landscaping and acoustic fence to the north, east and west boundaries.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development in the banner heading above is taken from the decision notice, which accurately and succinctly describes the proposal.
3. During the appeal the appellant submitted an amended site location plan removing the proposed layout layer initially shown. As there are no changes to the scheme resulting from this amendment, no party has been prejudiced by my accepting the plan at the appeal stage.
4. A draft S106 planning obligation was submitted prior to the Hearing. This included, amongst other things, provisions regarding financial contributions towards infrastructure and affordable housing. A signed and executed version of the obligation was received after the Hearing in accordance with an agreed timetable.

Main Issues

5. The main issues are:
 - Whether the appeal site is a suitable location for the proposed development with particular reference to the surrounding land uses, including the effects on the living conditions of future occupiers, and on the operations of existing businesses, with particular reference to noise and disturbance; and
 - The effects of the proposed development on the supply of employment land in the area.

Reasons

Location

6. The appeal site is located within the settlement boundaries of Stoke Prior. It is positioned between a railway line and a canal to the north and south respectively, and with active employment uses to the east and west. Beyond the canal lies a business park and a residential housing development.
7. Paragraph 187 of the National Planning Policy Framework (the Framework) states that decisions should ensure new development can be integrated effectively with existing businesses and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, suitable mitigation should be provided before the development has been completed.
8. The Government's Planning Practice Guidance¹ (PPG) highlights that the cumulative impacts of more than one noise source can influence the prevalence of noise. A Noise Impact Assessment (NIA) was submitted as part of the planning application. This included a survey of the prevailing noise climate, against which the suitability of the scheme was assessed. The noise surveys carried out by the appellant would have recorded any background noise levels associated with the surrounding employment uses at the time of the survey.
9. The predominant potential sources of noise at the appeal site are from a scrapyard, vehicle dismantler and waste management company (hereafter referred to as the metal & ores site) lying to the east, the railway line to the north and industrial units to the west. The recordings within the NIA, align with my observations on site, where trains passed regularly and, amongst other things, the scraping of metal, banging and movement of materials from the metal & ores site could be clearly heard. Noise from the west was less dominant and predominantly from vehicles moving and activity within external areas.
10. The park homes are proposed to be occupied by residents that are over 55 years of age. As such, those occupiers that are retired would likely be frequently at home during the day. Moreover, they would have a reasonable expectancy that they could enjoy their gardens or have windows open during warm days without being disturbed by noise.
11. It was confirmed at the Hearing that the mitigation proposed includes a 4m earth bund with a 2m acoustic fence along the eastern boundary and a 3m acoustic fence along the northern and western boundaries. The NIA indicates that this would result in an assessment level of +4dB between the appeal site and the metal & ores site based on the BS4142:2014 method. Moreover, it would reduce the LAFMax from the railway line by 10dB, to accord with criteria within BS8233:2014 and the World Health Organisation's guidelines, with the park homes using standard glazing and window vents.
12. The nature of the site, with different sources of noise on multiple sides, means the park homes would be highly sensitive to changes in the noise climate in the future, even with the mitigation in place. The Council state that many of the

¹ PPG paragraph: 006 Reference ID: 30-006-20190722

- surrounding businesses are unrestricted in terms of their operations. However, there is no contingency within the NIA for any changes to the noise environment, such as an increase in activity or a change in operation.
13. The sounds of scraping, banging, and moving of materials by the machinery in the metal & ores site would not be easy to ignore. Even with the bund and fencing, the nature of the sounds would, in my view, be annoying to residents when occurring. The length of time that the metal & ores site activity was recorded in the survey was not significant. However, there is no certainty that such activity would not increase in the future. Moreover, particularly on warm days with windows open or within the garden, the noise from trains passing would be regularly heard by occupiers.
 14. The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. In my view, the regularity, and characteristics of the noise from multiple sources, when occurring, would not give rise to a peaceful environment for all future occupiers of the site to reside, notwithstanding the findings within the NIA and mitigation proposed.
 15. Moreover, given the commercial and industrial noise in the vicinity, the proposed residential use could give rise to a statutory nuisance being found if operations of the businesses altered from that recorded during the noise survey. This would place unreasonable restrictions on existing nearby businesses, who are located on allocated employment land, by undermining their ability to adapt or expand operations.
 16. The physical presence of the fences and bund would appear stark, and they would not provide a pleasant outlook from nearby park homes or their external grounds. Indeed, at 6m high the mitigation along the eastern boundary would be an overly dominant feature. There are no firm details before me as to how these features would be treated and I have concerns as to whether they could be adequately softened. I have reached this conclusion due to the positioning and orientation of units designed with small external areas near the east and west boundaries and the alignment of the internal road along the northern boundary.
 17. Enclosing the appeal site on three sides would result in a distinctly insular layout, which would be poorly integrated with the wider residential community in Stoke Prior. This would be exacerbated by the long access track passing between the railway line and large commercial units. As such, even with additional planting this would not be a pleasant environment to walk or cycle along. Taken together, this would be at odds with the advice within paragraph 93 (e) of the Framework, which says that decisions should ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
 18. The security benefits put forward by the appellant are noted, as is the scope for soft landscaping. However, for all the above reasons, the proposed development would not be of a good design and would fail to provide a comfortable place for all its future occupiers. I therefore conclude that the appeal site is not a suitable location for the proposed development with particular reference to the surrounding land uses, including the effects on the living conditions of future occupiers, and on the operations of existing businesses, with particular reference to noise and disturbance.

19. I therefore find conflict with the requirements of Policies BDP1 and BDP14 of the Bromsgrove District Plan (2017) (BDP), the objectives of the High Quality Design Supplementary Planning Document (SPD) and the provisions of the Framework taken together. These say, amongst other things, that in considering all proposals for development in Bromsgrove District regard will be had to the compatibility with adjoining uses and the impact on residential amenity.

Employment land

20. Policy BDP14 of the BDP relates specifically to designated employment land, such as the appeal site, and section 14.4 of the Policy establishes that proposals resulting in the loss of employment land for non-employment uses, such as housing, will not be considered favourably unless applicants can adequately demonstrate compliance with several criteria. A scheme needs to comply with either criteria 1, 2 and 3 or 4 and 5 to fully accord with section 14.4 of the Policy.
21. The first criterion relates to the quality and quantity of employment land within the local area. The appeal site is a former disposal site. Both parties agree that its ground conditions mean that the site is unlikely to be suitable for conventional development with footings and foundations. This would restrict the types of employment uses that could come forward. The main parties agreed that the site would potentially be suitable for storage purposes. From the evidence before me I have no reason to disagree. Given these specific site limitations the appeal site does not constitute quality employment land, even if the access to the site is suitable for such a purpose.
22. If an alternative non-employment use was implemented at the appeal site, the Council would likely need to make provision for additional allocated employment land. However, the site has been vacant for a considerable period, despite an extensive marketing campaign of over 19 years. As such, even if the site remained available for employment purposes, that does not mean the site would fulfil the areas need for employment land in practice and there is no evidence before me that the appeal site would not continue to remain unoccupied. In this context, I am satisfied that the proposal would not have an adverse impact on the quality or quantity of employment land within the area.
23. The second criterion refers to a net improvement in amenity. However, having regard to my findings on the first main issue, there would be an unacceptable living environment for future occupiers of the site. Moreover, as the land is vacant, there is no substantive evidence that an implemented employment use, particularly considering the constraints of the site, would have more harmful effects on amenity than the proposal would. As such, even considering the potential for soft landscaping, there would not be a net improvement in amenity overall.
24. The third criterion refers, amongst other things, to marketing for a minimum period of 12 months. In this regard, the appellant has provided details of marketing of over 19 years. This is a considerable period of time, and no user has been found during this period. The appellant's have put forward several reasons why they consider this has been, including the suitability of the route from the motorway for larger vehicles and the ground conditions and culvert running through the site, along with the competition from alternative sites. In any case, and whilst no one can be certain whether a user may come forward

in the future, the length of the marketing is significantly more than 12 months in accordance with this criterion.

25. The fourth criterion refers to there being a significant improvement to the environment, to access and highway arrangements, or sustainable travel patterns which outweighs the loss of employment land. The site is in a sustainable location, would have a safe access for its users. However, these are not significant improvements to the existing situation. Moreover, given the context of the appeal site's position between the railway line and employment uses, and proposed artificial screening on three sides, I do not consider the proposed development to result in a significant improvement to the environment overall.
26. The fifth criterion refers to whether the site is viable for an employment use or mixed use that includes an appropriate level of employment. To accord with this criterion a proposal should submit a development appraisal clearly demonstrating why the redevelopment for employment purposes is not commercially viable. I acknowledge that there are site constraints, and the ground conditions are clearly established in the evidence before me. However, the site could be suitable for storage purposes, and I have no substantive evidence that clearly demonstrates that such a use is not commercially viable.
27. I have found that the proposal would not accord with all of the criteria within section 14.4 of Policy BDP14. However, whether the proposed development would result in a net improvement to amenity or significant environmental improvements, as required within section 14.4 of Policy BDP14, do not alter the effects of the proposed development on the supply of employment land in the area, the matter lying at the heart of this main issue. Moreover, BDP14.5 says that in line with the Framework, planning policies should avoid the long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose.
28. Paragraph 122 of the Framework also clarifies that where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan that, in an interim period, prior to updating the plan, then applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area. In this regard, the scheme before me would contribute to the current unmet need for housing in the area.
29. What is a reasonable prospect, requires a judgement to be made. The evidence shows that the site has not been attractive to the market for a considerable period and there is no evidence before me that this will likely change. As such, I find that there is no reasonable prospect that the site will come forward to be used for employment purposes.
30. I therefore conclude on this main issue that the proposed development would not have an unacceptable effect on the supply of employment land in the area. On this matter, I find no conflict with the overall objectives of Policies BDP1 and BDP14 of the BDP or the Framework, when taken together, insofar as they relate to this main issue. These say, amongst other things, that in considering all proposals for development in Bromsgrove District regard will be had to financial viability and the economic benefits for the District, such as new homes and jobs.

Other Matters

31. The appeal site borders the Worcester to Birmingham Canal Conservation Area (CA). The proposed layout shows that the units would be pulled away from the boundary and the existing vegetation is proposed to be retained. As such, and given the low height of the units and in the context of the surrounding employment uses, I am satisfied that the proposal would not result in any harm to the setting of the CA. The absence of harm in this regard, or in relation to any other matters raised, including those elements necessary to mitigate effects, are neutral matters.
32. There is a residential housing development to the south of the site. This was approved on part of the same allocated employment land as the appeal site. However, it is accessed directly from Westonhall Road and is integrated with the public realm. This contrasts with the appeal site, which is accessed by a long access road around commercial units and would be a distinctly insular development. Moreover, the existing residential development does not share the same relationship to the railway line and metal & ores site as the appeal site.
33. The appellant has referred me to residential properties to the east of the appeal site within the allocated employment land. The Council advised at the Hearing that these included a mixture of unauthorised units that were immune from enforcement or unlikely to accord with the relevant building regulations. Moreover, I was told that they fall under the same landowner and for these reasons the occupiers would be unlikely to complain about noise. In any case, I do not have the full details of the circumstances that led to their existence, and I have considered the appeal proposal on its own merits.

Planning Balance

34. The Council is not currently able to demonstrate a five-year supply of deliverable housing sites, with a supply figure of 3.23 years. Paragraph 11d) and footnote 8 of the Framework establishes that in situations where the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites, the policies which are most important for determining the application are deemed to be out of date. This engages the so-called 'tilted balance' in decision-making.
35. The provision of 90 park homes would make a not insignificant contribution towards meeting the identified need in a location near services and facilities. This would also include the provision of a contribution towards off-site affordable housing, which would be secured through the submitted planning obligation. Collectively, these are considerations carrying a high degree of weight in favour of the development.
36. The re-use of previously developed land is also a benefit to be weighed in favour of the development. This is a consideration I also afford a high level of weight, bearing in mind concerns that the site could potentially lie vacant given the lack of interest in the site for employment uses over a considerable period and the potential to reduce the pressure on the Green Belt from housing.
37. The benefits to the local economy, both during the development of the site and indirectly through a likely increase in local spending by future residents, would

be proportionate to the moderate scale of the scheme. Therefore, these benefits carry moderate weight.

38. With an occupancy restriction secured by the submitted planning obligation, the units would be suitable for older persons. However, the extent that this would be the case, given that the units could be occupied by anyone over 55, or the potential for downsizing and freeing up family homes, is unquantified. This limits the weight I afford these matters.
39. Turning to the harm. The proposed design would be poorly integrated with the wider residential community in Stoke Prior and would provide poor living conditions for its occupiers. Moreover, by introducing noise sensitive receptors in this location, where there are a variety of different sources of noise, the proposal would place unreasonable restrictions on nearby employment uses by undermining their ability to adapt or expand operations. Policies BDP1 and BDP14 of the BDP are consistent with the provisions of the Framework. The conflict with these policies of the development plan, in relation to these matters, carries substantial weight. Overall, the proposal would conflict with the development plan when taken as a whole.
40. Even with the 'tilted balance' engaged, overall, the adverse impacts of the proposal would be overriding, and significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the proposal would not represent sustainable development.

Conclusion

41. For the reasons given above, I find there to be no material considerations, that would indicate that the appeal decision should be taken other than in accordance with the development plan.
42. This leads me to conclude that the appeal should be dismissed.

Mr R Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Geraint John Geraint John Planning Ltd

Ollie Cooper Geraint John Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Simon Jones Bromsgrove District Council