

Appeal Decision

Hearing Held on 28 March 2023

Site visits made on 28 March 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Appeal Ref: APP/P1615/W/22/3303430

Former 59 Tufthorn Avenue, Coleford

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by The Stantonbury Development Company against the decision of Forest of Dean District Council.
 - The application Ref P0812/21/FUL, dated 19 April 2021, was refused by notice dated 13 April 2022.
 - The development proposed is erection of 23 dwellings and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Final comments were submitted by the appellant with previously unseen evidence on the 2 February 2023. Whilst the Council received and assessed this information, it was necessary to ensure that interested parties were given the opportunity to review and submit comments in respect of the same. On conclusion of this additional consultation and following receipt of the appellant's final comments, the hearing was finally closed in writing on the 19 April.
3. An engrossed unilateral undertaking (UU) made as a deed under the Town and Country Planning Act 1990 dated the 8 November 2022 was submitted on the same date. The UU requires 40% of the 23 dwellings to be provided as affordable homes. The Council confirmed that the UU satisfactorily addressed its second reason for refusal. I address this matter below.

Main Issues

4. The Council's single reason for refusal covers two distinctly different topics and these have formed the main issues for consideration as part of the appeal. These are:
 - whether the scheme would comply with local policies that seek to deliver employment uses on the appeal site; and
 - whether the living environment created for future occupiers would be adequate, having particular regard to noise and vibration.

Context

5. The site is situated off Tufthorne Avenue and has most recently been used as a construction compound. Existing C21 housing lies opposite on Tufthorne

Avenue, and an industrial estate lies adjacent to the north-east and north-western boundaries. More broadly, the site is to the south-east of Coleford and is well-located for the town centre and its associated amenities.

6. The adjacent industrial site has around three businesses on it within the various buildings. The largest of these is Forterra Building Products Ltd (Forterra), a producer of various clay and concrete building products, which has been based at the premises since around 1989. Its external storage yard also wraps around the site to the north-east.
7. The site was previously occupied by a commercial building. The site and adjoining land to the south was introduced as an allocation for a mixed use development which became adopted policy as part of the Forest of Dean Allocations Plan (Allocations Plan) (adopted 2018) under Policy AP.67.
8. An outline planning application was submitted for the site and adjoining land in 2016 and was granted on 6 November 2018 (hereafter referred to as the OP¹). The description of the development provided for the construction of up to 65 residential units and 1,115 sqm of flexible commercial units.
9. Reserved matters approval was granted on 27 August 2019² for the erection of 65 residential units and 5 No B1 use class office units and associated works (hereafter referred to as RM approval). The associated works included the construction of an attenuation barrier of varying heights along the boundary with the industrial estate. Of the RM approval, 64 dwellings have been constructed on the adjoining land and are hereafter referred to as 'Phase 1'. The appeal site comprises the area which was intended for the B1 units.
10. The appeal proposal seeks full permission for 23 No dwellings, comprising 19 houses and 4 flats. The attenuation barrier is also proposed again, albeit with minor changes to its extent and height in the northern part of the site.

Reasons

Employment uses

11. CSP.7 of the Forest of Dean Core Strategy (2018) (Core Strategy) seeks to support economic development through the spatial strategy and its allocations with priority given to a range of development types and enabling measures, such as through the provision of office and business space (use class B1).
12. Policy AP.67 of the Allocations Plan allocates around 1.7 hectares of land, including the site, for about 60 dwellings and for employment (B1) use. The explanatory text says that the allocation would deliver housing and renewal of employment space, with the employment space forming a buffer between the adjoining employment uses and new housing. It also details that the actual capacity would be influenced by the market and that alternative employment uses capable of existing alongside the housing would be acceptable.
13. Despite not being included within the reason for refusal, the Coleford Neighbourhood Development Plan (NDP) (adopted 2017) also includes Policy CE2 which seeks to protect and support development of local employment outside of the town centre. Amongst other things, the Policy states that in order to support a change from employment to non-employment uses, the

¹ Under reference P0912/16/OUT

² Under reference P2002/18/APP

relevant property must have been empty for more than 12 months, actively and recently marketed for 12 months and without prospects of being reused in the short term. Alternatively, the Policy provides for consideration of alternative uses if the employment uses are no longer economically viable.

14. As the 23 dwellings proposed would fill the entire site, it would prevent the permitted B1 units or any other employment uses coming forward. The evidence about the exploration of alternative employment uses is relatively limited, taking the form of an email and separate brief statement from a commercial agent, the latter of which highlights global issues that have stifled demand for employment premises and sites, including the COVID-19 Pandemic. The evidence does not indicate that the site has been actively marketed through means other than discussions with agents or one potential occupier. Similarly, though it is suggested that there would be high build costs associated with the site, limited evidence of such has been submitted.
15. Additionally, though it is claimed that the employment was not specifically required to meet the floorspace targets, but more to provide a buffer between existing employment uses and the proposed housing, this does not detract from the requirements of the Allocations Plan to provide employment uses.
16. As such, the proposal conflicts with, in particular, Allocations Plan Policy AP.67 and NDP Policy CE2 which, taken together, seek to deliver employment uses on the appeal site and guard against their loss without adequate justification.

Living conditions of future occupiers

Vibrations

17. The potential for vibration effects from the adjacent Forterra premises was raised at the meeting of the Planning Committee at which the proposal was decided. Consequently, a Vibration Assessment (Matrix, June 2022) was submitted with the appeal. It considered the effects of machinery such as the aggregate hopper and block press, along with HGVs and movement of forklift trucks through both day and night. The measurement positions chosen are representative of dwellings that would be most affected.
18. Overall, the conclusions presented are that the day and night vibration dose values (VDVs) would be extremely low and would not be expected to generate an adverse comment when considered in line with BS6472-1:2008 – '*Guide to evaluation of human exposure to vibration in buildings*'. Furthermore, the predicted structure-borne noise levels that would be generated would also be substantially below L_{Amax}, slow 45dB.
19. The Council does not present any counter evidence of this nature but raises concern with the calculation of VDVs based on the assumed number of day and night movements/events. The suggestion is that a more robust survey would involve longer-term surveying to see if the assumed number of events bears resemblance to the actual number of events over the survey period. However, at the hearing it was conceded that the issue is unlikely to be so problematic for future residents that it could not be addressed through conditions requiring further monitoring and/or mitigation. Thus, this issue is not determinative.

Noise

20. Core Strategy Policy CSP.1 requires consideration be given to the potential for any new development to cause pollution and the need for any mitigation or improvement measures. Though not cited in the reason for refusal, NDP Policy CH2 requires that new housing development should safeguard and not have an adverse impact on the residential amenities of existing and future communities.
21. Sections 12 and 15 of the National Planning Policy Framework (the Framework) refer to design and the natural environment respectively. Paragraph 174 requires new and existing development to avoid contributing to, or being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Paragraph 187 also indicates that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities by avoiding the need for them to have unreasonable restrictions placed on them as a result of development permitted after they were established. Specifically, the Framework, in the current and all versions published since 2018, indicates that: *"where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."*
22. British Standards are also applicable to the consideration of noise on development proposals. The two most relevant in this case are BS8233:2014 - *'Guidance on sound insulation and noise reduction for buildings'* and BS4142:2014 - *'Methods for rating and assessing industrial and commercial sound'*, albeit updated in 2019 to 'BS4142:2014+A1:2019'. BS8233:2014 indicates that where industrial noise sources affect residential areas, the methods for rating the noise in BS4142 should be applied. BS4142 sets out that industrial noise of around 5 dB higher than the background noise level would be an indication of an adverse impact and that 10 dB or higher than the background noise level would be an indication of a significant adverse impact.
23. The noise environment was assessed as part of the outline scheme and OP was granted for a mixed use development which was based on an attenuation barrier and a range of B1 commercial buildings forming a buffer between the new dwellings and the adjacent industrial site. Conditions 9, 10 and 11 of the OP relate to noise and were applied requiring the mitigation to be provided to ensure the adequacy of living environments. Condition 9 requires the B1 units to come forward under the RM application. Condition 10 requires the dwellings to incorporate measures to ensure absolute internal and external ambient noise levels contained in BS8233:2014 of the following:
 - Resting 35 dB LAeq, 16 hour;
 - Dining 40 dB LAeq, 16 hour;
 - Sleeping 30 dB LAeq, 8 hour; and
 - Any external amenity space should achieve 55 dB.
24. Condition 11 requires a pre-occupation validation noise survey to demonstrate that the mitigation afforded by the B1 use class buildings was effectual in reducing external noise to an acceptable level, i.e. with reference back to the levels in condition 10 and BS8233:2014. Other landscaping conditions also covered the attenuation fence which was to be installed behind the B1 units.

- Notwithstanding that limited details about its density, construction materials or depth appear to have been submitted, the parties agreed that the attenuation barrier has permission already under a combination of the OP and RM consents. The barrier has not been constructed to date.
25. With the current scheme, the B1 units would not ever be built, which would promote the attenuation barrier to the sole means of noise attenuation between the appeal site and the adjacent industrial units. On the submitted site plan, this is referred to as an acoustic fence of between 2 metres to 6 metres in height spanning the length of the north-western boundary with a short return on the north-eastern boundary, albeit without any cross section detail.
 26. The current scheme was submitted with Noise Impact Assessments (Matrix, Apr 2021 and Jan 2022) which excludes reference to BS4142:2014. They focus on the consented absolute noise limits under the OP and BS8233:2014 to suggest that the theoretical performance of the attenuation barrier and internal building fabric of the dwellings will create a living environment equivalent to those for dwellings in Phase 1.
 27. Following the Council's refusal of the scheme, it engaged an external specialist to further scrutinise the noise assessments. The conclusion reached and admitted by the Council is that failing to take account of BS4142:2014 was not in line with industry best practice and the noise-related conditions on the OP were erroneously worded. This raises doubt about the suitability of the living environments created for existing Phase 1 residents, and by extension, the living environments that would be created for future residents of Phase 2.
 28. As a response, the appellant's highlights that the focus on BS8233 and exclusion of BS4142, following the Council's approach under the OP, was assumed to be based on a deliberate concession made on the basis of the site's context, i.e. the noise emissions from Forterra already affected the local area and existing houses before Phase 1, and thus, BS8233 guidance limits have been seen as capable of securing reasonable conditions equivalent to those at existing houses without adversely affecting the operations of Forterra.
 29. In the '*Review of Noise Assessment*' (Formant, 27.10.22), an approximation of a BS4142 assessment has been made, based on the noise predictions and corrections from a combination of the Matrix Phase 2 report and OP Phase 1 Assessment (Matrix, April 2017). The conclusions were that the rating sound levels would be around +28 dB greater than the background sound levels in the daytime, and +22 dB greater than the background sound levels at night.
 30. Representations were submitted to the appeal by SLR on behalf of Forterra, in addition to those previously submitted. The appeal representations included a review of the noise assessments submitted on behalf of the appellant and a separate Noise Assessment (October 2022) undertaken during both operational and non-operational periods at the industrial sites. The findings from the review exercise are that the acceptability of the Phase 2 scheme should not be assessed only in accordance with BS8233 but also with in the context of the 'agent of change' principle and BS4142:2014+A1:2019.
 31. SLR's Noise Assessment indicates that the unmitigated difference between the measured background sound level and rating level for monitoring position 1 (adjacent to Forterra) was between +46 to +49 dB and between +41 to +43 dB at nighttime. For monitoring position 2, the differences were between +33

to + 36 dB during the day and +30 to +36 dB at nighttime. To predict the effectiveness of the acoustic barrier, SLR produced a noise model which suggests that, during the daytime the difference between the rating level and the baseline background sound level would exceed plus 5dB(A) in the external amenity spaces of 18 of the 23 dwellings at a range between +6dB(A) and +25dB(A). It also suggests that at night, at external first floor level, the difference between the rating level and the baseline background sound level would exceed plus 5dB(A) at 19 of the 23 proposed dwellings by exceedances of between +6dB(A) and +22dB(A). Therefore, the results clearly demonstrate that residents would be likely to be impacted by industrial noise at least adversely, but in a number of cases, significantly adversely.

32. The response from Matrix on behalf of the Appellant highlights that these 'significant adverse' results are given without adequate consideration of the context. It is also highlighted that based on SLR's Noise Assessment, the existing dwellings (those fronting Tufthorne Avenue that pre-existed before Phase 1) experience external noise levels of between 55 to 66dB without the attenuation barrier, and do so without there having been any noise-related complaints having been submitted to the Council. The point is then made that if these noise levels are tolerated by existing residents without complaint, then the same could be expected of Phase 2 residents.
33. Much has been made of the Council's decision to allocate the site, but this was with the expectation of a different mix of development, part of which would have acted as a noise buffer, in addition to the acoustic barrier. The emphasis of the submitted documentation to justify this scheme is on the *context* of the site, but, in my view, it is being used improperly to discount what would be likely to be real and harmful impacts to future occupiers. Similarly, relying so heavily on the comparability of the noise environments for Phase 1 and future Phase 2 residents is also concerning when there are acknowledged flaws with the decision reached in relation to the former.
34. The suggested approach of requiring a comprehensive noise impact assessment by way of condition prior to commencement leaves some ambiguity about what living environment the future occupiers could expect. The suggested condition requiring a pre-validation noise survey would also present some practical difficulties, insofar as it would permit the construction of the 23 dwellings with assumption that acceptable noise levels would be created. But should those levels not be achieved, there would be challenges with trying to further adapt the attenuation barrier or retrofit the dwellings with additional measures before any occupations were permitted.
35. In my view, expecting or hoping an absence of complaints to prevail into the future is a rather precarious approach, particularly as I found the external noise environment in the vicinity of the site difficult to tolerate even as early as 07:30 AM on the day of my site visits. Therefore, I consider that far closer attention should be paid to the quality of living environment that would be created for any potential future residents of Phase 2 given its closer proximity to the industrial noise sources. The Appellant's final comments do not address the uncertainties I have identified or offer an alternative approach that satisfies me that the interests of both future residents and the adjacent business could be adequately protected.

36. Drawing all of the above together, in the absence of robust evidence to the contrary, the proposal would harm the living conditions of future occupiers, with particular regard to noise and disturbance. It would therefore conflict with, in particular, NDP Policy CH2 and Core Strategy Policy CSP.1 which collectively require new housing development to safeguard and not have an adverse impact on the residential amenities of existing and future communities. For similar reasons, the proposal would also fail to adhere to the expectations of the Framework, in particular, paragraphs 174 and 187.

Other Matters

37. I have considered the support for the scheme offered in writing from both the contractor and housing association linked with the Phase 1 scheme. Though it is encouraging to see the collaborative efforts to bring the scheme forward and ensure it is well managed for the benefit of future residents, this support does not override the concerns I have in respect of the main issues.
38. The submitted UU provides for 40% affordable housing in line with Policy CSP.5 of the Core Strategy and in the required tenure split. It was reported that all of the dwellings in Phase 1 have been transferred to Stonewater Housing Association as affordable homes, despite the planning obligation relating to that phase only requiring a 40% provision. In this case, the contractual agreements between the appellant and Stonewater sit outside of the planning appeal and the provision of all dwellings as affordable homes is not a requirement of the development plan. Thus, I attribute weight only to the proportion of affordable housing that could reasonably be secured by the submitted UU.
39. The site is within proximity of the Wye Valley and Forest of Dean Bat Special Area of Conservation (the SAC) designated³ for its population of Horseshoe bat species. The development could affect the foraging and commuting behaviours of the bats and thus, affect the integrity of the SAC. The evidence contains details of a range of measures to be embedded into the development, together with means capable of being secured by planning condition that would avoid adverse effects on its integrity. For reasons set out below, this issue is not determinative in any event.

Planning Balance and Conclusion

40. The proposal would result in the loss of an employment allocation and would fail to create adequate living environments for future occupiers with particular regard to noise. For these reasons, it conflicts with the development plan when taken as a whole.
41. The parties agreed that the Council were unable to demonstrate a five year supply of deliverable housing land against the requirement set out in the Framework, though neither could offer any indication of the scale of the deficit during the hearing. Whilst late correspondence briefly mentions a figure of between 3 and 4 years, this was not invited and nor has this figure been tested through the evidence.
42. In any event, given the acknowledged shortfall in the supply of housing land, the presumption in favour of sustainable development set out in Framework paragraph 11 d), otherwise known as the tilted balance, is engaged in this case. This requires that where there are no relevant development plan policies,

³ Under the Conservation of Habitats and Species Regulations 2017

or the policies which are most important for determining the application are out-of-date, planning permission must be granted, unless, the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development, or, any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.

43. The benefits of the scheme would be numerous and would flow primarily from the delivery of 23 homes on a sustainably located, previously developed site in the context of a shortage of deliverable housing land. The delivery of 40% affordable housing is also a notable benefit of the scheme given the acknowledged unmet need in the district and the social advantage that would be generated by enabling greater access to housing. Additional economic benefits would accrue from the construction phase, albeit these would be largely of a short term nature.
44. Whilst the acoustic barrier would offer noise attenuation benefits to existing residents, as it should already be a feature of the site under previous consents, I attribute this aspect limited weight.
45. The adverse impacts of the scheme would result from the permanent loss of employment opportunities from the appeal site. However, this conflict attracts reduced weight in the context of the shortfall in housing. Adverse impacts would also affect the future residents, in terms of insufficient protection from industrial noise. This also links with a potential risk to existing employment should any complaints result in restrictions being placed on the adjacent existing business.
46. In my view, irrespective of the extent of the housing land supply deficit, the nature and severity of the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. For this reason, the presumption in favour of sustainable development does not provide a consideration of such materiality that it indicates that planning permission should be granted.
47. In the absence of any other considerations that indicate that a decision should be taken other than in accordance with the development plan, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Paul Smith	Matrix Acoustic Solutions
Mr Daniel Washington	BBA Architects
Mr David Hambly	Stantonbury Development Company
Mr Jonathan Hambly	Stantonbury Development Company
Mr Alexander Hambly	Stantonbury Development Company

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Colgate	Principal Planning Officer - Appeals
Mr Paul Driscoll	Formant Ltd
Mr James Hunt	Appeals Technician

INTERESTED PARTIES:

Mr Tim Darling	On behalf of Forterra Building Products Ltd
Ms Marianne Cox	Councillor - Coleford Town Council

DOCUMENTS SUBMITTED:

Documents 1 & 2	Copy of outline decision notice Ref P0912/16/OUT (dated 6 November 2018) and corresponding approved plan Ref 3568-2-000
Documents 3 & 4	Copy of reserved matters decision notice Ref P2002/18/APP (dated 27 August 2019) and corresponding approved plan Ref 4166-002 Rev L
Document 5	Copy of approved landscape plan Ref 850_001 Rev B

DOCUMENTS SUBMITTED AFTER THE HEARING:

Document 6	Email From Coleford Town Council
Document 7	Email from Brideoak Homes Ltd
Document 8	SLR Rebuttal dated March 2023
Document 9	BBA Letter dated 18 April 2023
Document 10	Matrix Response dated 14 April 2023