



Appeal Decision

Site visit made on 21 May 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/P3040/W/24/3336687

Land At Former Bunny Brick Works Site, Loughborough Road, Bunny, Nottinghamshire NG11 6QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by BMET Ltd against the decision of Rushcliffe Borough Council.
 - The application Ref is 21/0219/OUT.
 - The development proposed is the erection of up to 110 dwellings and up to 5,600sqm of employment units including associated infrastructure, access, roadway, parking and landscape/amenity areas.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 110 dwellings and up to 5,600sqm of employment units including associated infrastructure, access, roadway, parking and landscape/amenity areas on Land At Former Bunny Brick Works Site, Bunny, Nottinghamshire NG11 6QN in accordance with the terms of the application, Ref 21/0219/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline with approval sought for access.
3. Layout, appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. Detailed plans were submitted showing the accesses. The layout drawings submitted are clearly described throughout the evidence as indicative and I have treated them as such in this decision.

Main Issue

4. The main issue is whether or not the scale of residential development proposed is acceptable having regard to the development plan.

Reasons

5. The Rushcliffe Local Plan Part 1: Core Strategy 2014 (the Core Strategy) sets out a number of spatial objectives including the provision of high-quality new housing, economic prosperity for all, and regeneration. To those ends, the Rushcliffe Local Plan Part 2: Land and Planning Policies 2019 (the Part 2 Plan), allocates the appeal site, the former Bunny Brickworks, under Policy 23 for a mixed-use development of around 100 homes and employment purposes.

6. Policy 23 includes a number of caveats, notably that the area is identified for “around 100 homes” and that the “southern half” of it must be safeguarded and developed for employment purposes. Given the surrounding land uses and well-vegetated nature of the site boundaries, the policy also includes requirements around amenity and habitats. It is not the role of this appeal to unpick or rehearse the allocation, examination or adoption processes which led to Policy 23 becoming a part of the development plan.
7. Set against those requirements, the appeal proposal shows detailed designs for two accesses. One is on the eastern side, shared with the existing materials recycling facility, ostensibly for the employment part of the proposal. The other is on the northern boundary of the site, nominally for the proposed residential part of the proposal. The appeal proposal also specifies a maximum number of dwellings and amount of employment floor space on the site.
8. Nottinghamshire County Council as Local Highway Authority have no objections to the proposed accesses, subject to conditions. Visibility splays are considered appropriate for the proposed uses and the surrounding road conditions, and there are no outstanding or unresolvable constraints or capacity issues.
9. There is nothing in the wording “around 100” in the allocation, or “up to 110” in the application which would prevent lower numbers of homes coming forwards in any future reserved matters applications, to meet the other criteria in Policy 23 and the overarching requirement to comply with other policies in the Part 2 Plan.
10. Similarly, there is nothing in the parts of the proposal which are actually before me for consideration (that is, the accesses) to suggest that the employment and residential requirements of the allocation could not properly and appropriately be reconciled. In this I note the commentary in the supporting text to Policy 23 which highlights the long standing, undelivered former allocation on the site, as well as the acknowledgement that the provision of around 100 dwellings is appropriate.
11. Policy 23 establishes the principle of development on this site and does so in the context of a previous undelivered employment allocation. This outline application establishes more detailed parameters (in this case, a maximum number of dwellings and a maximum square-metage of employment space) and secures the positions and detailed designs of the accesses. The fine-grain detail, of appearance, landscaping, layout and scale, including the balance to be struck between residential and employment, are matters reserved for future approvals. There is nothing in the evidence before me, particularly from the Council, that suggests that these future approval processes cannot properly reconcile the various requirements of Policy 23 whilst also complying with the other policies in the development plan. Whereas there is clear evidence showing one form of development which may be accommodated within the site, subject to those processes.
12. What has been applied for does not therefore conflict with the development plan, specifically the requirements of Policy 23 of the Part 2 Plan set out above. The appeal proposal is an important step towards the site making its planned contribution towards the regeneration, employment and housing aims of the Core Strategy. It also accords with National Planning Policy Framework (the Framework) aims for the planning system to be plan-led and for development to accord with the development plan.

Other Matters

13. I note representations both to the application and appeal, concerning such matters as highway safety, drainage, sewerage, facilities and infrastructure, biodiversity effects, amenity, public transport accessibility and sustainability. These matters were assessed in detail by the Council in their consideration of the application, and they found that the proposal was, or could be made, through the imposition of conditions, acceptable in all of these regards. In light of the evidence before me, including all representations, I agree with those conclusions.
14. Third parties and the operators of the materials recycling facility to the south of the appeal site have also made representations on the compatibility of the appeal proposals with existing, surrounding uses. Whilst this is clearly an important matter for consideration, there is nothing in the evidence which suggests that the appeal proposal would not be compatible with surrounding uses. I am therefore satisfied that subject to appropriate design details, existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development, such as this, permitted after they were established, consistent with the requirements of the Framework.

Planning obligation

15. I have had regard to the evidence, the relevant guidance in the Framework and considered whether the requirement for contributions towards affordable housing, open space, bus stops, libraries, primary and special education meets the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010. I am satisfied that such a contribution would be necessary to make the development acceptable in planning terms, directly relates to the development and is fairly related in scale and kind to the development.
16. A signed and sealed unilateral undertaking under section 106 of the Act has been provided. The Council has confirmed that this meets their requirements, both legally and with regard to what it will secure and deliver. I agree with that conclusion. On that basis, I consider that the proposal could secure satisfactory contributions towards the matters listed above.

Conditions

17. The Council has suggested a number of conditions to be attached, should planning permission be granted. Having had regard to the requirements of the Framework and the Planning Practice Guidance (the PPG) I have imposed standard outline conditions, amended from those suggested by the Council for clarity and precision. I have not included the suggested wording of the Council requiring the areas for residential and employment uses to be "broadly in accordance with... the submitted indicative layout". Such a condition would not be precise, and I do not consider it would be reasonable, given the status of that drawing, the nature of the application before me and the content of Policy 23.
18. The remainder of the conditions suggested by the Council, and considered by the appellant, have been imposed, subject to minor corrections and the removal of tailpieces where these would be inappropriate.

19. I am therefore satisfied that the conditions I have imposed meet the tests in, and requirements of both the Framework and the PPG, that they have been kept to a minimum and only imposed where necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects.

Conclusion

20. Taking all of the above together, I find that the proposal would not conflict with the development plan, and there are no material considerations which indicate that a decision be taken other than in accordance with the development plan.
21. The appeal should therefore be allowed, and outline planning permission granted.

S Dean

INSPECTOR

Schedule of Conditions

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing BBW-AEC-XX-XX-DR-CE-02001 Rev P1 'GENERAL ARRANGEMENT NORTH ACCESS'
 - Drawing BBW-AEC-XX-XX-DR-CE-02002 Rev P1 'GENERAL ARRANGEMENT EAST ACCESS'
5. No development shall be carried out until a Phasing Plan, including details of phasing for the approved development has been submitted to and approved in writing by the local planning authority. The phasing plan shall include details of:
 - a. the timing of the provision of infrastructure to serve the proposed development (including road improvements and drainage facilities) in relation to the provision of any new residential units;
 - b. the timing of biodiversity, SUDS and landscaping features; and
 - c. the timing of the provision of on-site recreation/open play space provision in relation to the provision of any new residential units.

The development shall be carried out in accordance with the approved phasing plan.
6. No development shall take place in the relevant phase, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a. the parking of vehicles of site operatives and visitors
 - b. loading and unloading of plant and materials
 - c. storage of plant and materials used in constructing the development
 - d. the erection and maintenance of security hoarding including
 - e. decorative displays and facilities for public viewing, where appropriate
 - f. wheel washing facilities
 - g. details of techniques for the control of noise, dust and vibration during demolition and construction.
 - h. a scheme for recycling/disposing of waste resulting from demolition
 - i. and construction works.
 - j. The siting and appearance of contractor's compounds including heights of stored materials, boundaries and lighting together with measures for the restoration of the disturbed land and noise mitigation.

The approved Statement shall be adhered to throughout the construction period.

7. No development shall take place in the relevant phase (other than for the access to approved by under this permission) until details of the following in respect of that phase have been submitted:-

- i. A detailed layout plan of the proposed development
- ii. The siting, design and external appearance of the proposed buildings;
- iii. details of finished ground and floor levels in relation to an existing datum point, existing site levels and adjoining land
- iv. Cycle and bin storage facilities;
- v. Sections and cross sections of the site showing the relationship of the proposed development to adjoining land and premises;
- vi. The means of enclosure to be erected on the site;
- vii. The finishes for the hard-surfaced areas of the site;
- viii. The layout and marking of car parking, servicing and manoeuvring areas;
- ix. Plans, sections and cross sections of any roads or access/service roads or pedestrian routes within the application site, and this shall include details of drainage, surfacing and lighting;
- x. The means of access within the site;
- xi. Details of the means of foul and surface water drainage;
- xii. The number and location of the affordable dwellings to be provided together with the mix of dwellings in terms of number of bedrooms and proportion of houses and flats and tenure;
- xiii. Details of how renewable/ energy efficiency, climate change proofing has been incorporated into the phased to include a scheme for the provision of electric charging points and measures to conserve and recycle water;
- xiv. A statement providing an explanation as to how the design of the development has had regard to the Design and Access Statement submitted with the application and include an assessment the development against the Building for Life Standards.
- xv. Details of connectivity between the residential and employment areas
- xvi. Details of on-site recreation space/facilities to serve the proposed development. Details to be submitted shall include landscaping, planting and any equipment to be provided on the proposed amenity spaces with equipment for the proposed LEAP
- xvii. Noise Impact Assessment and mitigation

The development shall thereafter be undertaken in accordance with those approved details.

8. No development shall commence in any relevant phase until details of the new accesses, internal new roads have been submitted to and approved in writing by the Local Planning Authority including longitudinal and cross-sectional gradients, street lighting, drainage and outfall proposals, construction specification, provision of and diversion of utilities services, and any proposed structural works. The development shall be implemented in accordance with these details to the satisfaction of the Local Planning Authority.

9. No part of the development hereby approved shall commence until a detailed surface water drainage scheme based on the principles set forward by the approved Flood Risk Assessment (FRA) and Drainage Strategy has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development.

The scheme submitted shall provide evidence or details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development.

10. No development shall take place until the existing trees and/or hedges which are to be retained in or adjoining that phase have been protected in accordance with details to first be submitted and approved by the Borough Council. The approved scheme of protection shall be retained for the duration of the construction period. No materials, machinery or vehicles shall be stored or temporary buildings erected within the perimeter of the fence, nor shall any excavation work be undertaken within the confines of the fence without the written approval of the Local Planning Authority. No changes of ground level shall be made within the protected area without the written approval of the Local Planning Authority.
11. Prior to the commencement of development, a scheme of archaeological investigation including a program of trial trenching shall be submitted to and approved in writing by the Borough Council and the scheme of investigation shall be carried out strictly in accordance with the details and methodology as approved.
12. No development shall take place (including demolition, ground works, vegetation clearance) until a construction ecological management plan (CEMP) incorporating Reasonable Avoidance Measures (RAMs) has been submitted to and approved in writing by the local planning authority. The CEMP shall include a pre- commencement Badger Survey. The CEMP shall build upon the recommendations of:

- Ecological Impact Assessment (Weddle Landscape Design- October 2021) Section 5.2
- Preliminary Ecological Appraisal (Weddle Landscape Design- March 2021) - Section 5
- Badger Survey (Weddle Landscape Design- May 2021)- Section 5 [confidential]

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

13. No development shall take place until an Employment and Skills Strategy for the construction phase of the approved development shall be produced in consultation with the Economic Growth team and submitted to and approved in writing by the Borough Council. This strategy will be based on the relevant City framework and will provide opportunities for people in the locality to include employment, apprenticeships and training, and curriculum support in schools and colleges. The strategy will be implemented by the developer throughout the duration of the construction in accordance with the approved details and in partnership with relevant stakeholders.

14. The development (excluding any demolition) hereby permitted must not commence until a detailed Remediation Scheme (RS) has been submitted to and approved in writing by the Local Planning Authority. The submitted RS must include:

- a) full details of how the contamination on the site is to be remediated and include (where appropriate) details of any options appraisal undertaken;
- b) the proposed remediation objectives and criteria; and,
- c) a verification plan.

The RS must demonstrate that as a minimum the site after remediation will not be capable of being classified as contaminated land under Part 2A of the Environmental Protection Act 1990.

15. The development hereby permitted must not be occupied or first brought into use until the site has been remediated in accordance with the approved RS and a written Verification Report (VR) confirming that all measures outlined in the approved RS have been successfully carried out and completed has been submitted to and agreed in writing by the Local Planning Authority. The VR must include, where appropriate the results of any validation testing and copies of any necessary waste management documentation.

16. Any topsoil (natural or manufactured), or subsoil that is to be imported onto the site must be assessed for chemical or other potential contaminants in accordance with a written scheme of investigation which shall be submitted to and approved in writing by the local planning authority prior to the material being brought onto the site. Only material that has been tested in accordance with the approved investigation scheme shall be imported onto the site.

17. No development shall take place in any relevant phase (other than for the access approved under this permission) until the details of the landscaping scheme for that phase, to include those details specified below, have been submitted to and agreed in writing by the Borough Council:

- a) the treatment proposed for all ground surfaces
- b) full details of tree planting;
- c) planting schedules, noting the species, sizes, numbers and densities of plants. Measure to provide habitat enhancements should be adopted including the use of native fruiting species within landscaping and retention and gapping up hedgerows, new hedgerows, retention of mature trees and the use of bat and bird boxes / tubes.
- d) finished levels or contours;
- e) all existing trees, hedges and other landscape features, indicating clearly those to be removed;
- f) details of all boundary treatments including height, design, location, materials and finish; and
- g) details of how the landscape proposals comply and compliment the ecological requirements set out in the other relevant conditions
- h) details of minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs and lighting)
- i) proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines).

The works shall be carried out as approved. Any trees or planting which die, are removed or become seriously damaged or diseased within 5 years of completion of the development within that phase shall be replaced in the next planting season with others of a similar size and species.

18. Prior to the commencement of development, an addendum update to the Ecological Impact Assessment (Weddle Landscape Design- October 2021) shall be submitted to and approved in writing by the Borough Council. Any mitigation measures or further surveys required shall be implemented in accordance with the approved details to the satisfaction of the Local Planning Authority.

19. No development in any phase shall take place (other than for the access approved under this permission) until a landscape and ecological management plan for that phase (LEMP) has been submitted and approved in writing by the Borough Council. This plan shall cover all public open space, ecological enhancement areas and Green/blue infrastructure. The agreed mitigation and enhancements shall be implemented in accordance with the agreed works and timetable for implementation set out in the approved management plan and shall allow for the means to implement this plan in perpetuity.

20. No development shall take place in any relevant phase (other than for the access approved under this permission) until the technical approval under S38 has been agreed with Nottinghamshire County Council for the construction of the roads and associated works within that phase of the site. The development shall thereafter be implemented in accordance with the approved details and no dwelling in that phase shall be occupied until the roads necessary to serve that property have been constructed to base level.

21. The development hereby permitted must not progress above damp proof course/ foundation level until such time that a Noise Impact Assessment (NIA) has been submitted to and approved in writing by the Local Planning Authority. The NIA must be prepared by a suitably qualified acoustician and as a minimum must include the following:

- a) A survey of the existing level of noise on and around the site, identifying the locations of all noise generating source(s) and the maximum and minimum noise levels from those source(s) from within and around the site, including the employment units to the South of the development and the Bunny Materials Recycling Facility to the south of the application site.
- b) A prediction of the level of noise impact on the proposed development as a result of existing noise source(s) around the site;
- c) Propose mitigation measures to protect future occupiers of the proposed development from existing noise generated off the site.

The development hereby permitted must be carried out and completed in accordance with the approved NIA and any mitigation measures proposed must be fully implemented prior to the development being occupied or first brought into use.

22. No part of the development hereby permitted shall be brought into use until the access driveways and parking areas are constructed with provision to prevent the unregulated discharge of surface water from the driveways and parking areas to the public highway. The provision to prevent the unregulated discharge of surface water to the public highway shall then be retained for the life of the development.

23. No dwelling shall be occupied until an appropriate agreement under Section 278 of the Highways Act 1980 has been entered into with the Highway Authority and the following highways works have been completed:

- a) Widening the footway to 2m width on the south side on Gotham Lane from the residential access road of the development to suitable a location where an informal crossing facility can be provided.
- b) Widening the existing narrow footpath to 2m width, linking Gotham Lane to the A60 Loughborough Road.
- c) Widening the footway to 2m width on the west side of the A60 Loughborough Road from the footpath to the informal crossing north of the A60 Loughborough Road.
- d) Re-aligning the road markings at the junction of A60 Loughborough Road and Gotham Lane to extend the right turning lane to accommodate more vehicles turning right into Gotham Lane.

24. The residential development shall not be occupied or be brought into use until the owner or the occupier of the site has appointed and thereafter continue to employ or engage a travel plan coordinator, to be responsible for the implementation delivery monitoring and promotion of the sustainable transport initiatives set out in the Travel Plan, whose details shall be provided and shall continue to be provided thereafter to the Borough Council.

25. The travel plan coordinator shall submit reports to and update the TRICS database in accordance with the Standard Assessment Methodology (SAM) or similar to be approved and to the Local Planning Authority in accordance with the Travel Plan monitoring periods to be agreed. The monitoring reports submitted to the Local Planning Authority shall summarise the data collected over the monitoring period that shall have categorised trip types into new trips, pass-by-trips, linked trips, diverted trips, and transferred trips, and propose revised initiatives and measures where travel plan targets are not being met including implementation dates to be approved in writing by the Local Planning Authority.
26. The travel plan coordinator shall within 3 months of occupation of the final dwelling produce or procure a full travel plan that sets out final targets with respect the number of vehicles using the site and the adoption of measures to reduce single occupancy car travel to be approved by the Local Planning Authority. The Travel Plan shall be implemented in accordance with the approved timetable and be updated consistent with future travel initiatives including implementation dates to the satisfaction of the Local Planning Authority.
27. Delivery and waste collection times for the commercial uses shall be restricted to the following times, to cause the minimum amount of disturbance to neighbouring residents:
- Monday-Friday 0700 - 1800 hours
Saturday 0800 - 1700 hours
Sunday/Bank Holidays No deliveries or waste collection
28. If trees T16 and T101 and offsite tree T24 are to be impacted by the development a further Roost Assessment must be undertaken, the results of which shall be submitted to and the mitigation measures approved in writing prior to the commencement of works on these identified trees.
29. No non-residential unit shall be occupied until a scheme has been submitted to and agreed in writing by the Borough Council to cover the following:
- a) hours of operation of those premises
 - b) details of delivery handling equipment and industrial processes to be undertaken;
 - c) details of externally mounted plant, equipment, tools and machinery or internally mounted plant, equipment, power tools and machinery which vents externally;
 - d) associated structural planting and external and internal buffer zones to mitigate any noise generated;
 - e) details of refuse collection and bin storage and servicing arrangements;
 - f) details of security lighting or flood lighting to be installed on the employment premises or associated open areas including lux plot of estimated illumination and designed, located and installed so as not to cause nuisance to neighbouring residents or to users of the highway and to avoid significant impacts on foraging commuting bats;
 - g) hours of deliveries taken at or dispatched from and waste collection;
 - h) details of any outdoor storage or display of goods or materials.

The units shall thereafter be used, and any plant/equipment shall be installed, and retained in accordance with the approved scheme.

30. The commercial buildings hereby approved shall not exceed a height of 10.2 metres above the existing ground levels and the total floor area shall not exceed 5,600sqm.
31. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the employment development hereby approved must only be used for uses within Use Class E(g)(i), (ii), and (iii), and/or Use class B2 and/or Use Class B8 purposes and for no other purpose whatsoever (including any other purpose within Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or any provision equivalent to that class in any Statutory Instrument revoking and/or re-enacting that Order with or without modification) without express planning permission from the Local Planning Authority.
32. The dwellings hereby permitted shall be designed to meet the higher 'Optional Technical Housing Standard' for water consumption of no more than 110 litres per person per day.
33. The residential part of the development hereby approved shall comprise no more than 110 dwellings.

End of Schedule of Conditions