



Welwyn Hatfield Borough Council

Town and Country Planning Act 1990

Appeal by: CUFFLEY PROPERTIES LTD

Everest House, Sopers Road, Cuffley, Potters Bar, EN6 4SG

Against the refusal of prior approval for the change of use from offices (B1(a)) to dwellinghouses (C3) to create 45 residential dwellings

Local Authority Reference: 6/2020/0447/PN11

Planning Inspectorate Reference: APP/C1950/W/20/3251057

Written Statement of Local Planning Authority

1.0 Introduction

1.1 This written statement sets out the case for Welwyn Hatfield Borough Council (the Council) in response to the appeal by Cuffley Properties Ltd against the decision of the Council to refuse prior approval for the change of use from offices (B1(a)) to dwellinghouses (C3) to create 45 residential dwellings at Everest House in Sopers Road, Cuffley

1.2 Permission was refused for a single reason, stated as follows: -

Insufficient information has been provided in relation to the impact of noise from adjacent commercial premises on the occupiers of the proposed dwellings. Schedule 2, Part 3, Class O, Paragraph (3)(d) of the Town and Country Planning (General Permitted Development) Order 2016 (or as amended) states that the local planning authority may refuse an application where, in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, limitations or restrictions specified in this Part as being applicable to the development in question. As such, the prior approval is refused.

2.0 Relevant legislation and policy

Legislation

2.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) – GPDO

Planning policy

2.2 National Planning Policy Framework 2019 (NPPF)

2.3 Welwyn Hatfield District Plan 2005 (District Plan)

3.0 The Council's case on the principal issue

3.1 The principal issue in this case is the noise impact from commercial premises on the intended occupiers of the development.

3.2 Policy D1 of the District Plan requires a high standard of design for development.

3.3 Policy R19 of the District Plan states that proposal will be refused if the development is likely to be affected by unacceptable noise from other land uses.

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- 3.4 Paragraph 180 of the NPPF outlines that planning decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life
- 3.5 Paragraph 182 of the NPPF states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
- 3.6 A determination as to whether prior approval will be required includes the provisions of paragraph W of the GPDO. Paragraph W.10(b) outlines that the local planning authority must, when determining an application have regard to the NPPF, so far as relevant to the subject matter of the prior approval, as if the application were a planning application.
- 3.7 The planning application was supported by a Noise Impact Assessment by KR Associates, Version 1.0 – 3rd February (NIA 1). This assessment identified a 73dB LAeq external noise level, along with a 49dB internal noise level with windows open. It was also unclear how the internal noise level had been calculated or which rooms it refers to, as generally it is accepted that a partially open window provides an attenuation of 10 to 15dB, which would make the internal noise level 59 to 64dB internally. The Council’s Public Health & Protection Officer was consulted for the planning application and considered that these noise levels would result in serious concerns regarding noise from nearby commercial/industrial noise sources. There would be serious impacts on things people take for granted, such as holding a conversation or watching television.
- 3.8 The appellant’s statement of case contends that neighbouring commercial properties only operate during the day, however this is not the case. The Council’s Public Health & Protection Officer recently visited the industrial estate during the daytime and workers he spoke to confirmed that a number of units open 24/7. The same Public Health & Protection Officer also confirms that in 2019 at 1am during the out of noise service that some businesses were open and there were HGV and van activity.
- 3.9 Together with advice from the Council’s Public Health & Protection Team, the Council have instructed an acoustic consultancy named ‘MAS Environmental Ltd’ to review NIA 1 and the Noise Impact Assessment submitted under the appeal (by RBA Acoustics, reference 10224.RP01.EBF.1, 15 April 2020, revision number 1) and hereby referred to as NIA 2. The full review by MAS Environmental Ltd is attached in Appendix 1.
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- 3.10 NIA 1 focuses on the existing commercial operations and not their potential, contrary to the basic principles of protecting existing business uses from constraint.
- 3.11 The survey indicates there are only four existing commercial site operations that can impact the proposed development. This appears incorrect as beyond those four there are additional uses to the south part of the industrial estate that can have impact. This is likely to include HGV movements during night time periods. There is also an electrical substation to the west which will emit low frequency noise. In any event the noise impact assessment needs to consider and measure all these sources along with their potential increase or change.
- 3.12 At paragraph 2.4.5 the NIA recognises the existing residential development to the north of Everest House. Whilst correct, it is screened from the most part of the industrial estate by Everest House and is located further from the estate road where commercial traffic operates. It is not therefore comparable in terms of noise exposure.
- 3.13 There are also misleading statements in NIA 1. It misleads over its application of the WHO 2009 Night Noise Guidelines. Those guidelines are clear that they apply to transport sources of noise and should not be assumed as applicable to site specific sources of noise with character as found here. These guidelines do not apply acceptability criteria in circumstances as identified in this case. Furthermore, the WHO Guidelines for Europe 2018 were clear there is insufficient evidence to apply transport guidelines as an acceptability criterion for neighbourhood noise which this falls within.
- 3.14 The analysis of BS4142:2014 is additionally misleading in the NIA as the ‘cherry-picked’ wording implies it is not applicable to new residential development. This is wholly incorrect. It states in particular it *“is for the purposes of ... assessing sound at proposed new dwellings or premises used for residential purposes.”*
- 3.15 The analysis of BS8233:2014 is also misleading in the NIA as it includes a table applicable to steady anonymous (without specific character) sources of noise and not industrial and commercial source of noise as found impacting this site. In fact BS8233:2014 directs the user to use BS4142 for industrial site noise. None of these caveats or guidance points are reported by the authors.
- 3.16 In other matters, the NIA 1 excludes vehicle noise on the estate road (Sopers Road); there is a reliance on published sound power levels; the background sound survey gives rise to extensive concerns; the approach to internal noise levels is erroneous; sources of noise are vague and misleading; assumptions made in the modelling using ISO9613 are not credible; there is a failure to rate the noise contrary to BS4142:2014 and then compare this with existing background sound levels; there is a failure to
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separately assess low frequency noise; and the high level of façade noise reduction presented in the report from outside to inside is not considered sound. Further detail into the unacceptability of both NIAs are explained in the MAS Environmental Ltd review.

- 3.17 The assessment as presented in NIA 1 indicates highly serious intrusion. It is only argued as acceptable through applying guidance incorrectly and false assumptions that if residents can prevent excessive noise through closing windows there is not any constraint or pressure on existing operations or intended occupiers.
- 3.18 In terms of NIA 2, this report applies the same misapplication of guidance as NIA 1 and ignores the extensive caveats that are breached by so adopting the approach.
- 3.19 A varied layout is presented by the appellant under this appeal however it is considered that the analysis of impact remains substantially in excess of any acceptable criteria and unacceptable levels of noise would still arise.
- 3.20 Both noise impact assessments have failed to properly assess outside noise and inapplicable guidance has been applied which allows much more noise. In both cases it is considered that the occupiers of the flats would be exposed to levels of noise which would significantly affect their quality of life.
- 3.21 A condition requiring windows to be closed and sealed shut would be an excessive measure to overcome the location of the development within an established commercial estate. To require the occupants of the 45 flats to live in accommodation where they could not open a window to allow air to circulate and to rely on mechanical ventilation, would not only be a waste of natural resources but would also result in an oppressive environment for residents and not provide a high standard of amenity for existing and future users as required by the NPPF.
- 3.22 Furthermore, having regard to the levels of noise indicated in the two NIAs, it is considered that allowing the appeal would very likely result in unreasonable restrictions being placed on established businesses in conflict with paragraph 182 of the NPPF.
- 3.23 The NIAs are erroneous and do not permit independent and proper assessment of the suitability of this site. The same conclusion therefore remains that insufficient information has been provided in relation to the impact of noise from adjacent commercial premises on the occupiers of the proposed dwellings.

7.0 Conclusion

- 7.1 The Council considers that the grounds for refusing planning permission and dismissing this appeal are clear and unequivocal and, accordingly, the Council respectfully asks the Inspector to dismiss this appeal. It is considered that a condition requiring windows of all flats were to be closed and sealed shut would, in turn, be harmful to the living conditions of the occupiers. The Council consider that conditions would not make an otherwise unacceptable development acceptable in this case. As such, no conditions can be recommended should the Inspector be minded to allow the appeal.

Appendix 1 – Review of proposed development in terms of noise by MAS Environmental Ltd.

**Summary Review of proposed development
Everest House Sopers Road
Potters Bar, Cuffley**

in relation to

**Agent of Change policy, Nuisance risk, Windows and
the KRA Noise Impact Assessment submitted.**

Undertaken by

**Mike Stigwood, Director & Lead Consultant,
MAS Environmental Ltd.,**

10th August 2020

Ref: MAS/WHBC/Eve200810

1.0 Summary Findings and Conclusions

- 1.1 The requirement in this case is to assess impact on future residents from commercial and industrial noise and the need then for potential constraint upon existing business operations and future potential business uses due to excessive land use conflicts created. Residents have a high level of protection in such circumstances which can lead to the constraint and demise of existing neighbourhood pollution sources. This has been inadequately assessed in this case.
- 1.2 The noise assessment is woefully inadequate and does not permit independent assessment of the suitability of this site. It is therefore reasonable to conclude there is insufficient information to determine the application. The alternative conclusion through adopting the assessment as presented is that if the noise assessment is reasonably predictive of noise levels then the noise is substantially in excess of any acceptability criteria and results in serious land use conflict. This in turns leads to a conclusion refusal is warranted.
- 1.3 The criteria for assessment considered appropriate, with windows open, is supported by other planning appeal decisions including the Inchtore, Meppershall and Benson decisions attached to this report.
- 1.4 Internal noise criteria applied in the developer's assessment for this type of noise that contains "specific character" is incorrect. It permits grossly excessive noise. There is a catalogue of flaws in the assessment but even at a basic level it indicates excessive noise impact and consequent demise and constraint of the existing business uses should the development proceed.
- 1.5 The assessment authors appear to demonstrate a failure to understand and apply fundamental principles of assessment which when addressed change this assessment to one clearly indicating serious noise intrusion and land use conflict.
- 1.6 Setting aside serious concerns over methods applied in the noise impact assessment (NIA) and the extensive misinterpretation of guidance, the very limited data presented indicates serious noise intrusion is likely and serious land use conflict would arise. The NIA identifies serious noise intrusion will arise with dominant industrial noise inside dwelling rooms, even with windows closed. It

- wrongly assumes these can be assessed against table 4 in BS8233:2014. This is contrary to the standard itself and a wholly misleading comparison applying the wrong guidance to the noise type experienced.
- 1.7 The data provided indicates assessment conducted in accordance with BS4142:2014, as required for these sources of noise, demonstrates a very substantial exceedance of acceptability criteria that could not remotely be mitigated. With open windows internal levels of 49dBA are predicted. The noise is correctly classifiable as highly intrusive and attention grabbing at an unconscious level and therefore readily disrupts activities. Even if this was a benign anonymous source of noise without attention drawing character it would be at least 20dBA too loud i.e. about four times louder than acceptable. However, the nature and character of the noise places it substantially more than that above any criteria of acceptability.
 - 1.8 A true assessment of just how intrusive and unacceptable this noise is cannot readily be undertaken due to a series of erroneous steps in the assessment that are directly contrary to the guidance applied.
 - 1.9 Post any approval, substantial constraint upon the use and normal operations at the remaining commercial sites is readily identified. Permitting this development would be directly contrary to the 'agent of change' requirements for appropriate mitigation as set out in the NPPF at paragraph 182. The forms of mitigation, as required in this case are not practical without forming poor housing amenity and a particularly low quality of life for residents. In turn this must be expected to lead to the demise of many of the commercial operations.
 - 1.10 There is also a failure in the assessment to consider noise character for which decibel penalties are normally applied and its comparison with true background sound levels. Those obtained in the noise survey are inappropriately described as background sound levels.
 - 1.11 The noise impact assessment is misleading in many respects and adopts an approach contrary to the many guidance documents. Furthermore, it does not comply with or identify caveats and restrictions set out in the guidance.
 - 1.12 The method adopted of predicting noise impact with no correlation with actual site sources excludes obvious key sources of noise and is incapable of reflecting the actual noise impact arising from the commercial operations that can or do

- take place in the vicinity of the proposed development. The assessment approach adopted generates concerns at a fundamental level and is not reliable. A renewed analysis is required applying the guidance as written. It also needs to be widened to include internal noise and low frequency noise.
- 1.13 Fundamental noise analysis techniques have been ignored and an artificial approach to predicting existing sources of noise adopted without any corroboration it is accurate. No weight should be given to the assessment undertaken. Site observations indicate significant sources both daytime and at night arise. There are serious errors over the sources of noise assessed.
- 1.14 Notwithstanding the serious extent of concerns with the impact assessment, it identifies a façade level of 73dBA which is substantially in excess of any acceptability criteria. This also excludes the requirement to increase the noise for its character through applying decibel penalties and comparing this rated level to background sound levels. Even without these steps being completed, it indicates very serious noise intrusion is predicted. With these steps applied it strongly supports refusal.
- 1.15 Closing windows is not a solution to excessive noise as it remains dominant inside with background levels also reduced and due to its attention drawing characteristics must be expected to continue to disturb normal living. Imposition of such a measure is factual evidence of material interference of use of property and as such supports a conclusion constraint would be supported by the courts.
- 1.16 I have seen the RBA Acoustics report which is argued supports the KRA report. Simply it also adopts the same misapplication of guidance which as a result is generous to the developer and ignores all the contraindicating caveats. Little weight should be given to this RBA report as it similarly fail to reflects the extensive problems with the KRA reports I have identified and its clear evidence of unacceptable noise.
- 1.17 The varied designed also do not change the analysis of impact which remains substantially in excess of any acceptable criteria.
- 1.18 There appears to be a fundamental misunderstanding amongst some acousticians on two levels and arising in this case:

- i) There is a wrong assumption the decibel values in BS8233: 2014 table 4 can appropriately be applied to commercial noise sources which contain specific character. This is directly contrary to that guidance and specifically contrary to the science of acoustics and gives the wrong result. It also leads to a direct contradiction of the guidance within BS4142:2014 that BS8233:2014 directs readers to use in cases such as this.

- ii) There is a wrong assumption that if people can close windows to address excessive noise it cannot cause an actionable nuisance or grounds for constraint. This is directly contrary to the fundamental elements of what determines nuisance i.e. material interference with use and enjoyment (exercise of rights) over property. Having to close windows to stop nuisance is direct evidence that the noise materially (as opposed to trivially) interferes with use.

2.0 Introduction

2.1 This is a summary review of the application and appeal proposals and will be subject to further detailed analysis and where necessary additional onsite assessment.

2.2 Background to site.

2.3 The current situation is a heavy commercial and industrial area which can and does operate 24 hours a day. A residential development to the north end of the site has encroached upon this wholly industrial and commercial land use area but it is extensively shielded from most commercial sources of noise by Everest House itself, the building now sought to be changed to residential use. Regardless its permission is not a basis for permitting this development.

2.4 Conversion of Everest House to a residential use in such close proximity to a significant number of commercial land uses indicates serious land use conflict would arise and it is clear suitable forms of mitigation are not readily achievable due to the position of the building in relation to commercial uses and the range of commercial uses and times of operation permissible.

2.5 Primary National Policy within the NPPF

2.6 Since approval of the previous residential use and notwithstanding its screening from much of the noise sources, central government have adopted the 'agent of change' policy as set out in paragraph 182 of the National Planning Policy Framework.

2.7 Paragraph 182 states: “ ... *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 (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.*”

2.8 This policy is clear in its intent to protect existing business and commercial uses of land from the consequences of their operations impacting uses of land sensitive to their emissions such as noise, smell, dust and light. The objective

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- is to ensure the developer 'agent of change' seeking to impose sensitive land uses in localities where such impacts are a consequence of exiting land uses, must adequately mitigate those impacts so that the existing business operations are not constrained or harmed.
- 2.9 This process requires mitigation in a manner and form that would prevent constraint or even the demise of businesses and the range of commercial uses currently and that can practicably be undertaken on the land.
- 2.10 The main risk to business operations are from civil and statutory nuisance actions along with constraints imposed by other regulators such as the Environment Agency who are obliged to control noise as a pollutant from certain sites.
- 2.11 In addition to the 'agent of change policy aspects of the NPPF there is a duty to minimise noise impacts.
- 2.12 What constitutes constraint.**
- 2.13 Constraint does not just operate in relation to existing land uses and their times of operations but their potential future operational levels. Thus, just because a site may not currently operate 24 hours every day or at weekends as well as weekdays is not a reason to fail to protect such operating rights. An existing or future land user may wish or need to expand their operational times and / or change the nature of their work. We are currently seeing this with major supermarkets and Covid 19 which has led to a significant shift towards home delivery of food including by the elderly. In turn this is leading to a major shift in delivery times to local stores and the nature and number of delivery vehicles.
- 2.14 Where the 'agent of change' cannot adequately protect existing and potential future commercial operations this indicates the unsuitability of the development contrary to government policy in this regard. The primary question is whether the development proposed in the circumstances and location proposed is a suitable use of the land.
- 2.15 When considering the suitability of a site for residential development there is a need to determine noise impact upon both their internal and external environments. Any significant constraint on the use, comfort, convenience or rights of residential land users is liable to be actionable against those causing

such constraint as a civil wrong and / or through statutory nuisance. This is in addition to constraints protecting residents under various regulatory regimes such as Environment Agency permit controls or the licensing authority.

- 2.16 If operable windows or doors need to be kept closed to reduce noise to acceptable levels and / or external areas are adversely impacted in terms of commonly expected uses, for example getting a baby to sleep, meeting and greeting etc. then the constraints are clearly material and actionable via several routes.
- 2.17 In addition to regulatory constraints on sites that impact dwellings, restraint commonly arises through civil nuisance (tort), public nuisance action, statutory nuisance (whether by the local authority or separately by a private individual) and also separately through community protection powers.

3.0 Review of the KR Associates Noise Report of 3rd February 2020 (NIA)

3.1 General observations

3.2 The NIA focuses on the existing commercial operations and not their potential, contrary to the basic principles of protecting existing business uses from constraint.

3.3 The survey indicates there are only four existing commercial site operations that can impact the proposed development. This appears incorrect as beyond those four there are additional uses to the south part of the industrial estate that can have impact. This is likely to include HGV movements during night time periods. There is also an electrical substation to the west which will emit low frequency noise. In any event the noise impact assessment needs to consider and measure all these sources along with their potential increase or change. Such a process requires a review of existing planning controls on the sites as any future user of the commercial sites may operate differently to those currently observed.

3.4 At paragraph 2.4.5 the NIA recognises the existing residential development to the north of Everest House. Whilst correct, it is screened from the most part of the industrial estate by Everest House and is located further from the estate road where commercial traffic operates. It is not therefore comparable in terms of noise exposure.

3.5 Everest House were offices which fall within use class B1 and is recognised as generally compatible with residential uses due to the absence of significant noise. This categorisation does not apply to the uses screened by Everest House from the existing residential development. The existing residential use also appears approved prior to the development of the 'agent of change' policy within the NPPF.

3.6 Some NIA misleading statements

3.7 **'Agent of change' policy.** The NIA misleads over government guidance as it fails to identify or address the clear policy in paragraph 182 of the NPPF as discussed above.

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- 3.8 The NIA also misleads over its application of the WHO 2009 Night Noise Guidelines. Those guidelines are clear they apply to transport sources of noise and should not be assumed as applicable to site specific sources of noise with character as found here. These guidelines do not apply acceptability criteria in circumstances as identified in this case. Furthermore, the WHO Guidelines for Europe 2018 were clear there is insufficient evidence to apply transport guidelines as an acceptability criterion for neighbourhood noise which this falls within.
- 3.9 The analysis of BS4142:2014 is additionally misleading in the NIA as the cherry-picked wording implies it is not applicable to new residential development. This is wholly incorrect. It states in particular it *“is for the purposes of ... assessing sound at proposed new dwellings or premises used for residential purposes.”*
- 3.10 The analysis of BS8233:2014 is also misleading in the NIA as it includes a table applicable to steady anonymous (without specific character) sources of noise and not industrial and commercial source of noise as found impacting this site. In fact BS8233:2014 directs the user to use BS4142 for industrial site noise. None of these caveats or guidance points are reported by the authors.
- 3.11 **Approved Document F.** Reliance on this document is misleading as it is directed at compliance with the Building Regulations and not the Town and Country Planning Acts. The latter is a separate raft of law with different aims and objectives.
- 3.12 Exclusion of vehicle noise on estate road.**
- 3.13 At paragraph 3.4.2 the authors confirm they exclude noise from commercial vehicles on the industrial estate road. This leads to an erroneous assessment in a wide range of respects. In particular, commercial vehicle noise on a highway is still actionable in nuisance either when it is not arising as a result of traffic (For example vehicles parked with engines or refrigeration plant running) or when it is “connected” with premises as in this case.
- 3.14 In any event disturbance to residents is not mitigated by the place of occurrence. There is a fundamental difference between the gradual rise and fall of traffic noise as vehicles pass compared to engine stops and starts, loading and unloading, manoeuvring and similar actions on the highway. Failure to consider this important source of noise further undermines the noise impact assessment.

3.15 Reliance on published sound power levels.

3.16 The NIA is further flawed by this reliance on different sound power sources. Any assessment of existing noise impact needs to consider the sources generated and not a theoretical source of noise which can occur.

3.17 Whilst there is some benefit of using known sources of noise identified in known circumstances this may not and commonly does not relate to individual operations which differ at different sites and types of operation. This site has presented an ideal opportunity to measure and assess existing operational noise emissions and compare these to potential increases but this opportunity has not been used.

3.18 Background Sound survey.

3.19 This part of the survey gives rise to extensive concerns which will be expanded upon in due course. Some key concerns are highlighted below without further discussion:

- a) The methodology is contrary to that identified in the standard BS4142.
- b) The location is not representative of locations at higher floor levels or south facing facades.
- c) The unattended methodology is incapable of excluding intrusive sources of noise against which the background sound is compared. In essence it is not a background sound level.
- d) The site aerial photography indicates significant roof plant and sources which likely run continuously. There is no assessment of these.
- e) The period of assessment was too short and made under atypical wind direction. It is not from sources to receiver.
- f) The methodology does not remotely reflect a method of assessing background sound absent intrusive sources of noise.
- g) The method adopted must lead to elevated background sound as it includes sources of noise against which it should be compared, especially fixed plant.

- h) There is no assessment above ground floor level. As the building is in place this was readily achievable.

3.20 Internal noise levels.

- 3.21 The entire approach to this is erroneous. The current building exists and therefore permitted internal assessment at different floor levels with windows open and closed compared to predicted reductions for such scenarios. This is the minimum form of assessment in a case such as this but was not undertaken.

3.22 Sources of noise.

- 3.23 A wide range of sources of noise are indicated for this locality but have not been assessed either in terms of their type or times of occurrence. Apart from one open workshop there is a complete failure to assess fixed and mobile plant noise sources. Similarly there is a failure to assess the use of hand tools. The assessment is primarily directed at car park noise and vehicles being loaded and unloaded. Furthermore, music noise has been included which is clearly outside of the scope of BS4142 and BS8233.
- 3.24 The assessment wrongly associates the Noise Act controls for music venues as the indicator of nuisance. This is incorrect and without basis. It is a separate offence unrelated to frequency and duration and times of occurrence, other than it applies after 23:00 hours. It does not and cannot determine nuisance. Other guidance indicates mere audibility of regular music noise inside the home is unreasonable. This level of misleading analysis and error is of substantial concern.

3.25 Modelling assumptions.

- 3.26 The assumptions made in the modelling using ISO9613 are simply not credible and there is no basis or justification for the sources and their locations chosen in various cases. It represents no more than one hypothetical scenario amongst many that are feasible.
- 3.27 What is required is an analysis of actual and feasible operations on the sites along with analysis of fixed and portable plant and other operations to determine likely noise impact. This basic step has not been undertaken.

3.28 Noise rating

3.29 There is a failure to rate the noise contrary to BS4142:2014 and then compare this with existing background sound levels. When undertaken in accordance with the standard this indicates the boundary of significant adverse impact is exceeded by a substantial margin.

3.30 Low frequency noise.

3.31 There is a failure to separately assess these sources of noise impact.

3.32 Façade reductions.

3.33 The high level of façade noise reduction presented in the report from outside to inside is not considered sound and requires a detailed check. In effect this is of the order of 50dBA and not normally found to arise for standard facades of this type. However, even with such a reduction the internal dominant noise would remain the industrial and commercial sources and therefore these would dominate inside and be actionable.

3.34 Summary on report

3.35 Further analysis of the assessments is planned but in summary, only limited weight can be applied to the procedures adopted and the resulting outcome. Nevertheless the assessment as presented indicates highly serious intrusion. It is only argued as acceptable within the NIA through applying guidance incorrectly and contrary to the caveats within the documents themselves. Acceptability is also based on a false assumption that if residents can prevent excessive noise through closing windows there is not any constraint or pressure on existing operations. This is entirely contrary to how nuisance is determined.

3.36 It is concluded little weight can be given to the assessment by KRA and its data used indicates serious impact is expected when assessed in accordance with the correct procedures.

3.1 I have seen the RBA Acoustics report which is argued supports the KRA report. It only does so by adopting the same misapplication of guidance and ignoring the extensive caveats that are breached by so adopting the approach they have. Simply it also adopts the same misapplication of guidance which as a result is generous to the developer and ignores all the contraindicating caveats. Little

weight should be given to this RBA report as it similarly fails to reflect the extensive problems with the KRA reports I have identified and its clear evidence of unacceptable noise on the data presented. These breaches are readily identifiable and should be reported.

- 3.2 I have found extensive problems with the KRA report which should be patently obvious to experienced acousticians. I am concerned that none at all are identified in the RBA report.
- 3.3 The varied designs also now presented do not change the analysis of impact which remains substantially in excess of any acceptable criteria.

Mike Stigwood

MAS Environmental Ltd.,

10th August 2020

Appendices A,B and C include Appeal Decisions relating to window open or closed during assessment.



Decision by Claire Milne, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-340-2117
- Site address: Land 150M South West of Moncur Farm, Moncur Road, Inchtute, PH14 9QF
- Appeal by: Hadden Construction Ltd against the decision by Perth and Kinross Council
- Application for planning permission 17/02159/FLM dated 8 December 2017 refused by notice dated 15 March 2018
- The development proposed: erection of 66 dwelling houses, formation of SuDs pond, landscaping and associated works (allocated site H24)
- Date of Inquiry: 9 and 10 July 2019
- Date of site visit by Reporter: 24 May 2018 (accompanied) and 11 July 2019 (unaccompanied)

Date of appeal decision: 27 September 2019

Decision

I dismiss the appeal and refuse planning permission.

Preliminary

The scale and nature of this proposed development is such that it is consistent with the description of development set out in Class 10(b) of Schedule 2 of The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. It was however the subject of a screening opinion by the council to the effect that Environmental Impact Assessment (EIA) was not required. I agree with the council's decision that, based on the characteristics and location of the development, together with the potential impacts, the proposal was not a development that required EIA.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Part of the site lies within the Inchtute Conservation Area and in accordance with the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, I must also give special regard to the preservation or enhancement of the conservation area.

Development plan

2. The development plan consists of the TAYplan Strategic Development Plan, 2016, and the Perth and Kinross Local Development Plan, 2014. While general reference is



made to the policies of TAYplan in seeking to deliver distinctive places and ensure the provision of new homes, no detailed evidence is led regarding this plan relevant to the appeal.

3. The council considers the proposal to be contrary to the local development plan, in particular policies RD1 Residential Areas, EP8 Noise Pollution and NE3 Biodiversity. Other policies relevant to the appeal include PM1 Placemaking, NE2 Forestry, Woodland and Trees, HE3 Conservation Areas and ED1A Employment and Mixed Use Areas.

4. The appeal site is allocated within the local development plan for 16 dwellings and identified to contribute to the housing requirement over the period to 2024. The developer requirements for the site refer to noise attenuation measures along the A90 road, provision of public space and paths including the incorporation of the core path into the layout, reuse of the existing stone wall, and the creation of an avenue of trees to mitigate anticipated tree loss. The IPL factory, adjacent to the site, is identified in the plan as an area of existing employment use which Policy ED1A seeks to retain for such uses.

5. Having regard to the provisions of the development plan the main issues in this appeal are with regard to visual impact, residential amenity and noise, and the impacts of the proposal in terms of biodiversity, trees and woodland, and with respect to the conservation area.

Biodiversity

6. Dealing firstly with the matter of biodiversity, the appellant states that an error was made in the submitted Ecological Report in that the date of February 2016 was quoted for the field survey when in fact it was undertaken in February 2017. Although cited as a reason for refusing the application, the council has confirmed that it is willing to accept the appellant's position, if correct, and is satisfied with the findings and outcomes of the surveys subject to conditions to address certain ecological matters.

7. No statutory designated sites are located within or near to the site and no records of protected or notable species were identified through the surveys. Habitats generally across the site were considered to be of low ecological value although the presence of mature trees and the existing stone wall have the potential to support certain species. The proposal includes for replacement tree planting with the aim of ensuring no net loss of biodiversity.

8. Overall, I am satisfied that there remain no outstanding matters with regard to the protection and enhancement of biodiversity on the site which could not be dealt with through suitable planning conditions. Therefore I find the proposal would conform to Policy NE3.

Trees and woodland

9. Policy NE2A seeks to protect existing trees on development sites while Policy NE2B supports the loss of individual trees or woodland only where this is unavoidable and where mitigation measures are to be provided. A total of 125 trees (a figure of 129 is also quoted by the appellant) are proposed for removal across the site with more than 200 to be

planted. From the submitted Landscape Strategy, it is clear that the majority of those to be removed are located on the eastern edge of the site adjacent to Moncur Road. The strategy seeks to improve the existing tree cover in this location by providing new planting within a structured tree buffer intended to provide a dense screen between the development and the adjacent factory.

10. The landscape proposals for this edge of the site include compensatory planting within proposed garden ground of semi-mature native specimens between 5.5 to six metres high, supplemented by smaller trees and native shrubs. I acknowledge that the local development plan anticipates replacement new tree planting, however the extent to which this fully mitigates for the loss is a detailed matter for the planning application and therefore relevant to this appeal.

11. An irregular wooded belt extends along the full length of the eastern edge of the site, only broken by the access point midway along Moncur Road. The tree belt is important to the landscape setting of the site and supports its visual containment in terms of the wider landscape. It also plays a key role in screening the adjacent factory from the development site. I consider that the proposed planting of replacement trees within garden ground is unlikely to provide the same degree of canopy cover and screening at the outset of the completed development. My views on this matter are further explained in paragraph 67 of this decision. I am also not convinced that the extensive removal of the existing trees, most of which are of moderate quality and not assessed as dying or decayed, is justified in this instance. This would, in my view, not be in the interests of the amenity of the area and would be contrary to Policy NE2.

12. The conservation area designation extends into the south-eastern corner of the site in an area which is to be utilised for sustainable drainage (SuDs). A total of 12 trees are planned to be removed from this location with replacement tree planting proposed elsewhere on the site. While I have concerns regarding the extensive removal of existing trees to the north of the proposed access, the extent of tree removal in the proposed SuDs area is relatively modest. It is also argued as necessary to secure suitable ground conditions for the proposed drainage facility. On balance, I find this to be acceptable.

Conservation Area

13. The existing tree grouping located immediately south of the SuDs area is to be retained, along with the stone wall. The setting of the conservation area in this particular location and the existing trees of historic value, including the avenue of Redwoods, would not, in my opinion, be adversely affected by the proposed development.

14. Third parties have raised concerns over the impact of any proposed acoustic fencing to be introduced onto the boundary wall where it features within the conservation area. Although I note these concerns at this stage and the potential impact this could have on the conservation area, the details of this are not before me. Furthermore, this is only likely to affect a very small area of the conservation area at house plot 1. In considering the issue of the proposed acoustic measures more widely, I have separate and considerable reservations over their impact on residential amenity, which I deal with elsewhere in this decision.

15. Overall, I do not consider that the proposal would raise any particular concerns with regard to the character, appearance or setting of the conservation area and I find it consistent with Policy HE3.

Residential amenity and noise

16. The existing character and amenity of the area surrounding the site is mixed. The site is situated at the north-eastern edge of the village, west of Moncur Road. The village has expanded in recent years with new homes developed to the east and south-east. The appeal site lies between the A90 road and the IPL factory. It narrows at its north-eastern end bringing these features closer on both sides. The established residential environs of the village broadly finish at the Muir Homes development east of Moncur Road. Beyond this, the A90 road and the IPL factory contribute to the character at this end of the village. Given the activities associated with these adjacent land uses and the potential for adverse effects including noise impacts, any residential development introduced onto the appeal site requires careful consideration with regard to siting and layout, and with regard to any necessary mitigation.

17. Policy NE8 presumes against the locating of noise sensitive uses near to sources of noise generation. Where such a situation arises, mitigation of the adverse effects of the noise would be expected through the negotiation of design solutions. In exceptional circumstances, conditions to control noise levels may be used. While the principle of residential development on the site is supported, the fundamental concern of the council is that the development has not been designed primarily in order to reduce the impact of noise and to comply with Policy NE8. Consequently, there would be an adverse impact on residential amenity that may also generate complaints which could risk ongoing operations at IPL. The council's concerns relate to noise from road traffic on the A90 as well as that associated with the adjacent factory.

Noise - relevant guidance and advice

18. PAN 1/2011: Planning and Noise considers it preferable that satisfactory noise levels are achieved within dwellings with windows sufficiently open for ventilation. The PAN does not cover every situation but recognises that local circumstances and the existing noise character of the area should influence the eventual approach. Where levels cannot be achieved with open windows, design solutions are suggested. The PAN also recognises that closed windows with an alternative means of ventilation may in some circumstances be unavoidable, with mechanical ventilation used only as a last resort.

19. The PAN is supported by a Technical Advice Note (TAN). Chapter 4 outlines various mitigation design measures which may be deployed. These include providing adequate distance between a noise source and a noise-sensitive building, and screening by natural barriers. The list also includes improving sound insulation in noise-sensitive buildings along with screening with acoustic barriers. The TAN does not provide any examples where new noise sensitive development is being introduced that is affected by both road traffic and industrial noise.

Noise assessment

20. The appellant considers the dominant noise source to be traffic on the A90 and has used British Standard BS8233: 'Guidance on sound insulation and noise reduction for buildings' to assess this. BS8233 is recommended where noise levels are assumed to be steady and anonymous and is therefore appropriate for road traffic noise. An internal daytime target of 35dB and night time target of 30dB is used, set by BS8233 and World Health Organisation (WHO) Community Noise Guidelines. The measured levels indicate that noise at the proposed residential properties would be above that recommended and appropriate mitigation is proposed.

21. During the daytime, with windows open, the assessment concludes that 48 properties would be subject to either 'moderate' or 'major adverse' impact. With windows closed there will be no adverse impact. During the night time, with windows open, nine properties would be subject to 'moderate adverse' impact. With windows closed there will be no adverse impact.

22. The proposed mitigation for the effect of traffic noise from the A90 consists of a 30-40 metre buffer along the boundary of the A90. A four metre acoustic barrier (1.8 metre acoustic fence atop a 2.2 metre bund) is to be introduced along the boundary with the A90 and continue around the north of the site. Individual plots closest to the A90 have also been orientated so that the gable ends of the units face the road or so that the house provides acoustic screening to garden areas. Within certain plots, additional 1.8 metre acoustic fencing is to be introduced.

23. For external garden areas, BS8233 states that it is desirable that the external noise level does not exceed 50dB with an upper guideline value of 55dB which would be acceptable in noisier environments. BS8233 also recognises that such values may not be achievable in higher noise areas, such as city centres and urban areas adjoining the strategic transport network. Where development is desirable, it accepts some compromise might be required.

24. The appellant's assessment concludes that BS8233 guidelines will not be achieved but considers it not unusual to have some residual impact and points me to other examples and comparisons with other housing developments near to the A90. The predicted noise levels in the majority of the gardens in the proposed scheme would be up to 10dB exceedance, with around half the properties experiencing a 'moderate adverse' impact.

25. The proposal includes the retention and renovation of the existing two metre high stone wall along the boundary with Moncur Road. Further mitigation stated by the appellant, but not proposed at this stage, would be to increase the height of the stone wall with a one metre acoustic fence to reduce noise levels within affected gardens.

26. When looking at night time noise from the IPL factory, the appellant based their original assessment on IPL's commissioned report. This used BS4142: 'Methods for rating and assessing industrial and commercial sound' and included a character correction resulting in a 30dB exceedance above the background noise level. The report also promoted use of a 45dB maximum limit no more than 10 times per night which is consistent with WHO guidelines. A maximum level of 77dB was measured. The appellant questions

the report's assessment and is critical of the short period of noise monitoring used by IPL in order to establish the context of the noise source. They do not consider such measurements to be representative of the normal noise output from the factory.

27. BS8233 indicates that for industrial noise affecting residential areas, BS4142 should be applied. BS4142 describes methods for determining, at the outside of a building, noise levels from factories, industrial premises or fixed installations, or sources of an industrial nature in commercial premises, and the background noise level. For specific IPL factory noise, the appellant's witness agrees that this would be appropriately assessed using BS4142. An assessment under BS4142 considers the level and character of the sound by applying corrections. The level is then assessed against the background levels with a difference of 10dB or more an indication of significant adverse impact.

28. The appellant undertook their own measurements of noise from IPL activity over a period of three months from December 2018 to March 2019. The results indicate that the night time noise level, which is generally limited to the movement of lorries in and out of the factory, is not as predicted in IPL's report and the A90 road traffic is the dominant noise source. While an adverse impact is indicated, potentially significantly adverse, the number of lorry movements is estimated to be low at three to four each night. The appellant's assessment concludes that within the daytime, the level of IPL noise does not, in the main, give rise to a significant adverse BS4142 assessment. Periods of more intense factory activity is considered to occur occasionally which would have a significant adverse impact on the proposed residential development at first floor level. However, the appellant indicates that this should be considered in the context that for the majority of a typical daytime there is not high activity.

29. There is evidence of lorries parking on the public road adjacent to the appeal site. The appellant questions why this practice is necessary. Notwithstanding, the noise from the refrigeration units mounted on the top front of cabs of the lorries is assessed, particularly for its effects at night. This distinctive low frequency hum noise is assessed using Defra NANR45 methodology. With suitable acoustic glazing the appellant considers noise from the units will be below the NANR threshold and unlikely to cause disturbance to the future residents. In any case, this practice is not regarded as a regular occurrence.

30. Noise from fixed building services plant at IPL consisting of floor mounted condensers, wall mounted condensers and an emergency generator is also assessed. With specified acoustic glazing and windows closed the appellants assessment indicates that noise will be below the recommended NR5 criteria.

31. A key area of dispute between the parties is whether the assessment should be made on the basis of a windows open or windows closed approach. What is evident from the assessment is that with a windows open approach, the levels would exceed certain targets. In order to achieve satisfactory internal night-time noise levels with windows closed, additional mitigation to the scheme would be required (secured by condition) in the form of appropriate glazing and ventilation.

32. The use of closed windows and attenuated ventilation scheme is considered by the appellant to be a suitable mitigation measure for sites meeting specific needs identified in the local development plan. They also consider it to be a recognised approach for

residential development sited near the boundary with transport corridors and it avoids using excessively tall acoustic barriers.

33. The PAN states a preference for windows to be sufficiently open for ventilation. The council regards an assessment with windows closed to be premature in relation to this proposed development. In referencing the guidance, it considers satisfactory internal levels with windows open and any alternative design, layout and mitigation should be explored first.

34. In considering the matter of open windows, the Royal Environmental Health Institute of Scotland (REHIS) Briefing Note 17: Noise Guidance for New Developments states that satisfactory internal levels should only be achievable with windows closed and alternative ventilation in exceptional circumstances. While exceptional circumstances includes meeting specific needs identified in the development plan, this generally only applies to sites within urban areas. The appellant suggests little weight be attached to the briefing note given irregularities in the way it interprets standards and the PAN and TAN guidance. Alternate reference is made to Professional Practice Guidance on Planning and Noise, New Residential Development (ProPG), May 2017 which does not preclude closed window target levels providing a local planning authority accepts that there is a justification. Justification might arise where a site was in an urban area or adjacent to transportation noise sources.

35. A further and related area of dispute between the parties is whether BS4142 or BS8233 should be used in an assessment of industrial noise in this case.

36. The method adopted by the appellant utilises the criteria in BS8233 and then augments this to account for the distinctive character of IPL activity. In terms of night time assessment, the appellant does not consider it possible or appropriate to use BS4142 as there is no industrial noise present. Using BS4142 is considered to have limitations as it is an external based assessment of internal noise impacts which means certain mitigation measures fall outwith its scope. It is on this basis that the appellant refers to the assessment requiring to be done 'in context' and to take account of the ability to incorporate design measures such as acoustic screening, façade insulation and ventilation systems.

37. The council's witness, along with that representing IPL consider the appellant's arguments are based on a misapplication of the relevant science and guidance. They dispute the appellants 'hybrid' method indicating that although BS8233 directs the user to BS4142 in the case of industrial noise, it does specifically promote the appellant's method as it cannot address the consequences of noise with special characteristics. Furthermore, the appellant's method does not address the low frequency noise element from the lorry refrigeration units.

38. From an analysis using BS4142, the significance and characteristics in the industrial noise are considered to exceed any boundary of acceptability by a substantial margin. The council and IPL therefore consider that further analysis of absolute levels (using BS8233) is not necessary although when done so these are also assessed as high. The exceedance levels apply during the daytime and the night time and also impact gardens. In looking at the TAN levels of significance, the impact of the proposed development is assessed as large/very large and the effect on new residents will range from moderate to major. Given

this, the council and IPL are firmly of the view that these matters can only be addressed through a change to the layout and by adding additional mitigation measures.

39. References are made to an appeal decision (PPA-170-2123) dealing with a noise sensitive development being introduced where there was extant industrial sound. In that case the reporter gave more weight to guidance on absolute noise levels contained in BS8233 and the WHO Guidelines, than to BS4142. The reporter considered new residents would be concerned with absolute levels, having not previously experienced the noise emissions from the industrial estate, which he regarded as part of the established background noise levels.

40. The question over which British Standard to apply is a similar scenario played out in a number of cases which I have been referred to. Parties will be aware that I am not bound by the conclusions reached in these decisions and I must have regard to the evidence presented in this case. In the case cited above, an earlier planning approval is referred to which established that the industrial noise as assessed under BS4142 did not exceed the acceptability criteria as it was absent of special characteristics. The reporter in that case was presented with assessments that utilised BS8233 but which contained no caveats or explained their limitations. There was also no opposing expert evidence on this matter. Based on the circumstances, the reporter was able to satisfy himself that the development met both BS8233 and the WHO guidelines, but also BS4142. The context was therefore noticeable different and, in my view, does not provide unreserved support for the appellant's method of assessment in this case.

Noise characteristics

41. At my site inspection I observed operations at the IPL factory over two separate occasions, spending around an hour each time viewing it from the appeal site and the public road. I was notified by the operator in advance of when HGVs arriving at the factory were expected and therefore timed my visit accordingly. Both visits were made in the afternoon.

42. Although traffic noise from the A90 road is an obvious feature at the appeal site, I was also aware of the noise emanating from the activities at the adjacent factory. IPL receives potatoes either from harvesting or from cold storage and temperature control is essential for maintaining the quality of the product. This requires refrigeration plant at the site to operate continuously and also intermittently on each lorry. I witnessed various activity including lorries arriving and leaving the site which required them to visit the weighbridge located immediately to the west of the factory building. One fork lift truck was operating in the large hardstanding area to the south of the factory loading pallets onto a lorry parked in his area - this occurred for the entire time I was present. There was also a JCB present in this area which left the site shortly after I arrived. Another fork-lift was operating to the west of the factory unloading a lorry parked in that location.

43. The noise experienced was varied and consisted of vehicles starting up, manoeuvring, engines idling, hissing from the brakes and metal clangs as lorries drove onto and off the weighbridge. There were various sounds associated with the operation of the fork lift trucks loading and unloading pallets, along with a reversing beeper. Lorries were

parked on the public road adjacent to the footpath although I did not witness any sitting for long periods with their engines and refrigeration units running.

44. The level of activity at the time of my visit did not appear to be particularly busy with only two out of the nine bays in use at my second visit. However, there were some obvious thuds and bangs which drew my attention. Even though only a small number of vehicles were present, given the almost continuous level of activity ongoing at the site there were prolonged periods of persistent and obvious noise. Night time activity has been reported with the arrival and departing of lorries although the appellant queries how often this occurs. I consider it likely that some night time lorry activity arises to account for driver distance travelled, rest periods and shifts changing. I also am aware that there are peak periods when the factory will be more busy and operations would be substantially increased, potentially affecting the daytime and night time levels.

45. The site houses three refrigeration units on the south, west and north of the factory building. Two of these are running on an almost constant basis and I was aware of the low frequency noise emanating from the fans present on the external walls of the factory.

46. My experience of the noise from IPL is that it can be particularly intrusive with attention grabbing characteristics including tonality, impulsivity and low frequency all of which is more noticeable given its unpredictability. While I accept that background traffic from the A90 will mask some of the industrial noise, the new buildings are also likely to mask some of the background noise making the industrial noise more prominent in some areas.

Future operations at IPL

47. At the Inquiry there was some discrepancy regarding the number of complaints that had been received from occupiers of existing houses against the activities at IPL. Evidence was led that some complaints had been received regarding lorries parked at night on Moncur Road, with their refrigeration units running, but that this had subsequently been resolved. No outstanding complaints were highlighted.

48. The council and IPL are of the view that the attention drawing character of the industrial noise is expected to lead to complaints from future residents who would be entitled to complain. Where there is a statutory nuisance identified, the local authority is obliged to serve an abatement notice and there would be an obligation on the regulators to control or restrict operations at IPL.

49. I note the appellant's position that the apparent lack of extensive noise complaints from occupiers of existing houses, despite IPL's claims of night time noise levels, indicates that the risk of such occurrences in the future is unlikely. They separate this from complaints made about vehicles that might park on the public road which are unrelated to IPL and therefore do not affect it.

50. In order to reinforce this latter point, the appellant has assessed noise from vehicle pass-bys at the existing residential properties. Using a BS4142 assessment, the impact of night time IPL lorry movements is significantly higher at the existing measured house than the proposed development. This is due to the façade being closer to the road, the lack of

acoustic barrier (a three metre barrier is assumed on the boundary of the proposed development and Moncur Road) and the higher speed of the lorries as they pass.

51. I do not regard the lack of complaints to date as firm evidence that they would not be made in the future. There can be many reasons why existing residents may not have complained, one of which may be the long-term exposure to such activity. Statistically, only 5-20% (taken from WHO) of an affected population will complain with the majority adopting other coping strategies. Advance information at the time of house sales may also have deterred complaints. The existing properties are located further away from the site and the bedrooms do not directly face the factory. Low frequency noise from the refrigeration units on the lorries parked on Moncur Road would also be shielded to some extent by the roof-mounted cabs.

52. For a new noise sensitive development close to an existing noise source, the PAN considers relevant the likely level of noise exposure at the time of the application and any increase that may reasonably be expected in the foreseeable future. The IPL site currently benefits from unrestricted hours and days of operation. I am aware that most activities at the site do not currently operate continuously over a 24 hour, seven day period. However, there is the potential for certain activities to increase. I am also aware that this may impact on the amenity of existing properties.

53. The business has expressed its intention to increase its operations although the timescales and details of this are not before me. I am unable to anticipate the exact effect of this and what might reasonably be expected to happen in the future or require separate permission. Therefore, I have confined my considerations to the current observed and submitted measurements.

Noise conclusions

54. Parties are agreeable that the A90 road noise measurements are generally representative of 24 hour period. The noise measurements made by IPL in July 2017 are claimed to be typical of activity at IPL in busier periods, which can occur 24 hours per day. Other measurements made by the council in July 2018 are not considered to undermine these and are representative at that time. The appellant's measurements undertaken more recently differ in various aspects but again are considered to reflect that assessed at that time.

55. The PAN advises that it is usually necessary for assessments to assess the acceptability of noise level for separate periods (day, evening, night and weekend) chosen to suit the hours of operation of the proposed development. From my visits to the site and from the evidence submitted, the extent of activity at IPL fluctuates at different times of the day and night, across different days and at different times of the year. I have no reason to doubt all the measurements that have been submitted which I consider reflect the variety of activity that takes place and which was recorded at that particular time.

56. I accept that residents will make a conscious choice to purchase a property at the appeal site and therefore should be aware of the surroundings and the existing sound environment. They should also be aware of their ability to keep the windows closed to avoid any potential impact from noise, while ensuring adequate ventilation within the

property. Notwithstanding, I also consider it reasonable that new residents will expect to be able to open the windows at certain times and will do so. If windows are sealed shut and not openable then there could still be an impact from open doors. Furthermore, I consider residents would expect to have full use of their gardens.

57. At peak times when the factory is busy, noise is likely to increase. I do not consider that at such times it can be assumed that residents would become used to the in-built ventilation; as at other times (when there is less industrial activity) they may have been used to having their windows open. The appellant refers to IPL's factual statement as evidence of the lack of night time activity (after 10pm). I note however that unknown peaks can occur throughout the year and also the appellant's own assessment identified some night time activity. Certainly if evening and weekend activity does occur, it will be at times when residents would expect to be able to enjoy a more peaceful environment.

58. This is not a site within a city centre or even what I would regard as a built-up location. The proposed development contains a variety of house types all of which include private gardens. The site sits at the edge of the village and retains a strong visual association with the surrounding countryside. I consider that residents will expect to connect with the outside environment and make full use of their gardens during the daytimes and evenings, and some will likely want to sleep with the windows open, even at less warmer times of the year. This is not an unreasonable situation to expect in a rural village location.

59. The use of closed windows and the particular type of glazing proposed is an excessive response to the particular circumstances presented by this case. Although I agree with the appellant that achieving satisfactory levels with windows open is not an absolute requirement of the PAN and that the noise character of the area should also be taken into account, alternative forms of mitigation should be considered first. To not do so suggests such factors can be set aside which I do not consider to be the basic intention of the approach set out in the guidance. The use of ventilation systems is meant to be a last resort, which I understand to mean when all other avenues have been explored and discounted. I do not consider that this has been done sufficiently in this case.

60. The use of conditions to deal with the required design measures has been suggested as a standard way to mitigate for the adverse noise effects. In other circumstances I might be able to accept this and support a range of mitigation measures. However, this is not a borderline case where noise levels are marginal. The exceedances in this case suggest such a response is not appropriate. From the evidence submitted, I consider multiple dwellings would be subject to excessive road traffic noise, some subject to both excess traffic and industrial noise, and others affected by varied and intermittent industrial noise and also low frequency noise. The lack of protected facades in some instances would further exacerbate the impact and the lack of quiet areas externally is not likely to provide residents with a reasonable degree of peaceful enjoyment of garden areas, contrary to the PAN.

61. While I accept that the site is identified for housing development in the local development plan, the number of units proposed in this development is significantly above that allocated. I do not agree that acceptance of noise impacts must be an inevitable consequence for residential development near transport corridors and I find no exception to

support such an approach in this instance and in the circumstances presented. In reaching this conclusion I also take account of the safeguarding of the IPL site as an existing employment site and the potential for the proposed development to introduce a new constraint which could lead to complaints.

62. In concluding on this matter, I do not consider it acceptable to submit future residents to assessed noise levels which would compromise amenity standards and lead to adverse health effects. Such an approach would be contrary to current guidance and Policy EP8 of the local development plan.

Visual amenity

63. Concerns over the overall scale, density and layout of the proposed development along with ensuring the protection of visual amenity, have been raised in the representations. These concerns closely relate to the council's considerations of amenity.

64. The council indicates that the local development plan allocation of 16 units was not necessarily based on any physical capacity of the site or detailed assessment; the actual density and unit numbers would normally be borne out of a detailed layout and design along with other factors. The total site area is 3.6 hectares and indicated to have a developable area of two hectares. Based on this developable area, the proposal for 66 units would represent a density of 33 units per hectare. Relative to existing residential densities in the village, I generally find this to be acceptable. However, in this case, I find the site's particular characteristics and surrounding land uses have a major influence on what might be considered an appropriate developable area which in turn would affect the density achievable.

65. In meeting the requirements of Policy PM1, the design, density and siting of development needs to complement its surroundings and respect the character and amenity of the place. I find similar expectations in terms of Policy RD1 regarding infill residential development.

66. Along with a proposed landscape and acoustic buffer adjacent to the A90, the proposal would retain an extensive area of existing trees and landscaping in the south-west and north-east ends of the site, and a proposed SuDs area in the south-east. The existing stone wall along Moncur Road is to be repaired and retained on the eastern boundary of the site. It is clear that all these physical features have had a marked influence on the submitted developable area and the housing layout, with many of the proposed dwellings sited more towards Moncur Road.

67. The submitted Landscape Strategy also acknowledges the need for a structured tree buffer to provide a dense screen between the development and the factory. The actual extent of this buffer is unclear but would replace the existing tree belt. Achieving a robust visual barrier equivalent or superior to the existing tree belt might be possible if sufficient depth of new planting could be secured in a structured scheme and it was managed appropriately. However, I am not convinced that the proposal to introduce new tree planting within what will be individual gardens would deliver this effectively over the longer term and also ensure the protection of the stone wall. For certain units, for example plots 53-54 and plot 1 where there would be a distance of less than 6 metres and 7 metres

respectively between the gable end and the stone wall, there appears to be limited space for any significant tree planting that would fulfil this purpose.

68. The existing factory building currently has a strong visual presence in this part of Moncur Road. It is also visible at the proposed entrance to the appeal site and glimpse views are possible through the existing trees above the existing stone wall. Some of the proposed houses on the eastern side are to be sited some 15-20 metres from the edge of the factory building.

69. Similarly, the vehicles travelling along the A90 dual carriageway are currently highly visible. From a landscape and visual perspective, the council supports the proposed acoustic barrier. This would also form a visual barrier. The proposed bund and fence would also continue to the rear of plots 49 to 54 at the north-eastern end of the site.

70. As indicated above, I do not support the removal of the existing trees along Moncur Road which currently help to screen the factory building. I am also not satisfied that the proposed landscape strategy for this boundary resulting from the submitted layout, would ensure that a robust visual barrier could be provided or maintained. Consequently, within plots 53-54, the existing factory would be evidently present on one side with the proposed bund and fence on the other. Given the relative distances, these features are likely to visually dominate these properties. Similarly, occupiers of housing in plots 55, 56 and 57 to 60 could also experience adverse effects with regard to the visual outlook from their properties and gardens.

71. I acknowledge that there is no right to a view from an individual property. However I do regard whether the necessary acoustic features and the proximity of a large commercial building would be so overbearing as to unacceptably affect the living conditions normally enjoyed through the use of a house and garden, as a matter which ought to be protected in the public interest.

72. Overall, I find that due to the surrounding land uses and the associated measures required to deal with noise attenuation, the visual amenity of certain proposed houses would be adversely affected to an unacceptable degree. I find there to be limited scope to mitigate this impact without altering the position of certain units which is likely to have a consequential impact on the developable area and the overall number of houses proposed.

73. The council has combined its assessment of compatibility with the potential noise impacts arising from the neighbouring land uses to determine the proposed development as 'over-development'. While I acknowledge the council's position that the overall layout reflects a welcoming and identifiable extension of the settlement, I do not share its views that the layout is appropriate in terms of meeting place making objectives or that noise associated with the neighbouring land uses is the only concern with regard to residential amenity. Due to the potential for adverse visual effects as described above, I do not accept that the proposed siting and layout of the development should be supported in its present form. Therefore, I find the proposal contrary to policies PM1 and RD1 as I do not consider that it complements its surroundings or respects the character and amenity of the place.

74. The appellant considers that a site capacity lower than proposed would be counter-productive as it would compromise the delivery of the generous infrastructure planned for

the site. No evidence is before me to substantiate this particular point and while I am aware that there is often a fine balance in terms of development viability and the provision of necessary infrastructure, any less units would normally mean less infrastructure contributions. I am not persuaded that the appellant's view on this matter provides sufficient justification to override my other concerns raised above.

Other matters

75. A number of other issues are raised in the representations. These include the matter of upgrading the existing turning area at the front of the primary school to meet the council's public transport aims for the site, along with wider traffic impacts and road safety, suitable drainage connections, provision of affordable housing, education capacity and contributions to schools. I am not aware from the council that any of these matters are insurmountable. However, had I been minded to grant planning permission I may have needed to consider these further.

Material considerations

76. The Proposed Perth and Kinross Local Development Plan was published in 2017 and submitted for examination in September 2018. The appeal site is allocated within the plan for between 52-80 units; it was significantly increased from the former local development plan allocation of 16 units to reflect the settlement's density patterns and meet the housing requirements for the area.

77. In response to this planning appeal following refusal of planning permission on noise grounds, and the advice received from its noise consultant, the council's position at examination was that the site capacity range may need to be reduced significantly. While acknowledging that this might trigger a shortfall in the Greater Dundee Housing Market Area land supply, the council suggested this could be met by allocating an alternative site at Longforgan.

78. The proposed plan's developer requirements are unchanged with regard to this site except text has been added referring to noise attenuation landscape buffers being required adjacent to the IPL factory. There is a recognition therefore within the emerging plan of the potential for discord with the adjacent land uses, an issue which has been borne out by my considerations of this appeal.

79. The report of examination was published on 11 July 2019. The reporter reaches the conclusion that, in principle, the level of development proposed does not appear unreasonable for a site of this size. He also acknowledges both the adjacent land uses and that the IPL factory is an important employment site safeguarded in the plan. While noting the lack of any serious noise problem during his site inspection, he acknowledges that the time of year visited (April) may not be when the factory would be most active. In recognising the level of detail before him and not wanting to prejudge the outcome of this planning appeal, and remarking that he is unable to conclude that noise constraints could not be overcome by innovative design and/or noise attenuation measures, he is satisfied that an indicative capacity of 52-80 units is appropriate. He is also satisfied that if this planning appeal was unsuccessful, there is an alternative potential windfall site and no issues are envisaged with regard to a housing shortfall.

80. I asked the main parties to the Inquiry for their comments on the conclusions reached in the report. Generally, parties' views are that the outcome of the report does not alter the submissions to the inquiry or my scope in dealing with this appeal, and that the consideration of an appropriate layout and design is clearly a relevant matter.

81. I note the appellant's comments that relative to the proposed plan, the proposed 66 units is not excessive and that it falls within the proposed allocation range. I am also aware that the unit numbers indicated in the emerging plan are indicative. I consider that the conclusions reached in the examination report neither favour nor oppose the proposed development, in principle. I have also been referred to a previous reporter's conclusions at an earlier local plan examination in relation this site. Based on the specific proposal before me, I am entitled to reach my own conclusions with regard to the proposed scale of development and any resultant loss of amenity. Furthermore, based on the conclusions reached in the most recent examination report, I do not consider that the outcome of my decision would prejudice the emerging plan or jeopardise the maintenance of an effective housing land supply.

82. Scottish Planning Policy contains a presumption in favour of development that contributes to sustainable development, setting out a number of guiding principles. These include giving due weight to net economic benefit and supporting good design, as well as avoiding over-development and protecting the amenity of new development.

83. The appellant refers to the economic benefits of the proposed development including job provision and local investment. It will also make a contribution to meeting the need for affordable housing and reduce pressure for the development of other greenfield sites. While these are matters which I take into account, I do not consider that they are outweighed by the adverse impacts from the proposed development. In particular I find that the proposal fails to demonstrate that it would support good design (in terms of siting and layout) or protect the amenity of future occupiers. I am also not satisfied that the need to introduce mechanical ventilation for summertime cooling would be in the general interests of sustainability. In my view, in its current form, the proposal would not represent a sustainable development where the presumption should apply.

Conclusions

84. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Claire Milne

Reporter



Appeal Decision

Inquiry Held on 9-12 January 2018

Site visit made on 12 January 2018

by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2018

Appeal Ref: APP/P0240/W/17/3175605

100 High Street, Meppershall, Central Bedfordshire, SG17 5LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Landcrest Developments Ltd against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/01012/OUT, dated 4 March 2016, was refused by notice dated 29 November 2016.
 - The development proposed is the demolition of existing dwelling and erection of up to 38 dwellings with all matters reserved except access.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application subject to this appeal was submitted in outline with all matters other than access to be reserved. It was accompanied by supporting information and an illustrative layout plan indicating 38 dwellings. During the application process amended and additional supporting information was submitted to the Council in order to attempt to overcome concerns that had been raised, including in relation to the activities at Bury Farm and their potential impact on future occupiers of houses at the appeal site, in respect of noise and disturbance.
3. After the determination of that application a number of amended and additional supporting documents were produced and submitted by the appellant as part of a revised application for the site. The revised application was expressed in the same terms as the appeal proposal and related to the same site. It was subsequently refused planning permission for the same reasons as the appeal proposal. The amended and additional documents submitted as part of the revised application consisted of a revised Heritage Assessment, dated 7 February 2017; a Structural Survey Report, dated 18 April 2017; a Noise Assessment referenced P01-16279 Rev 6, dated 22 September 2017; and an illustrative sketch layout referenced 17539 – 1005 Rev E, indicating 35 dwellings. The Statement of Common Ground (SoCG), dated 7 January 2018, indicates that the appellant wishes to rely upon these supporting documents for the appeal. It also indicates that the Council does not object to the inclusion of these documents as they had been considered and consulted upon as part of the revised application.

4. A further iteration of the illustrative sketch layout was submitted with the appellant's appeal documentation (referenced 17539 - 1005 Rev F). This indicates 35 dwellings but differs to that referenced 17539 - 1005 Rev E in so far as it indicates landscaping along the western boundary of the site, and a 3m high acoustic screen along its southern boundary. At the Inquiry I sought the views of the parties as to the status of the various sketch layouts and in particular that referenced 17539 - 1005 Rev F to which both the appellant's and the Council's noise evidence refers.
5. The parties agreed that as the appeal was submitted in outline with all matters other than access to be reserved, the various layout plans were for illustrative purposes only. It was no part of anyone's case that the description of development should be changed from that given in the heading above. It was also agreed that the plan referenced 17539 -1005 Rev F had been included in the appellant's noise reports that had accompanied the subsequent planning application on the site and had therefore been subject to public consultation. The Council also confirmed that it did not oppose the consideration of the evidence on the basis of the plan referenced 17539 - 1005 Rev F. Having regard to all of the above I am therefore satisfied that no parties would be prejudiced by my consideration of the appeal on the basis of the plan referenced 17539 - 1005 Rev F, albeit for illustrative purposes. I informed the parties at the Inquiry that I would deal with the appeal on this basis.
6. I made an accompanied visit to the appeal site and the nearby Bury Farm on 12 January 2018. During my site visit I was afforded the opportunity to listen to the noise environment with the grain dryers and the grain dresser at Bury Farm in operation, with only the grain dryers in operation, and with neither the grain dryers nor the grain dresser in operation. The rest of my site visit on 12 January 2018 was undertaken on an unaccompanied basis, with the agreement of the parties.
7. On 5 March 2018 the Government published the consultation draft of the revised National Planning Policy Framework. As this is a consultation document its content could change. It is not extant government policy and does not change my conclusions on this appeal.

Main Issues

8. The planning application was refused by the Council for three reasons. Firstly, that the development by virtue of its siting and scale, would result in harm to the character and appearance of the site, and the area, through urbanisation of the countryside, the poor relationship between the site and the built up area of Meppershall, and the demolition of non-designated heritage assets at the site. Secondly, that the development, by virtue of its proximity to Bury Farm, would result in unsatisfactory living conditions for future residents, through noise and disturbance and that this harm could not be acceptably mitigated thereby resulting in poor quality accommodation. Thirdly, that the absence of a completed legal agreement securing the provision of affordable housing and financial contributions required to mitigate impacts of the development on local infrastructure would mean that the proposal would not constitute sustainable development.
9. In relation to the Council's first reason for refusal the SoCG indicates that following consideration of the further information submitted with the revised application for the site, referred to above, the parties are in agreement that the

demolition of non-designated heritage assets on the site should not be a barrier to the grant of planning permission. It also indicates that accordingly the Council no longer seeks to pursue this element of the first reason for refusal. I concur with that approach and as a consequence take this matter no further.

10. The SoCG indicates that subject to the submission of a satisfactory executed legal agreement relating to Affordable Housing and Education Contributions the Council would not contest its third reason for refusal. A completed Unilateral Undertaking (UU) dated 11 January 2018 was submitted at the Inquiry. The UU includes obligations relating to the provision of Affordable Housing and financial contributions in respect of education provision. As a consequence the Council did not contest its third reason for refusal and confirmed in closing submissions that the third reason for refusal had been addressed. I return to the matter of the UU below.
11. At the time of its consideration of the planning application subject to this appeal, the Council accepted that it could not demonstrate a five year supply of deliverable housing sites (5YHLS). Furthermore, the planning application was determined prior to the judgment of the Supreme Court¹ on the interpretation of the phrase '*relevant policies for the supply of housing*' at paragraph 49 of the National Planning Policy Framework (the Framework). The judgment confirmed that a 'narrow interpretation' of policies for the supply of housing is the correct one for the purposes of paragraph 49 of the Framework. Subsequent to its consideration of the planning application, and at the time of preparing its written evidence, the Council indicated that it could demonstrate a 5YHLS.
12. The appellant disputed this in written evidence. However, the SoCG indicates that it is now a matter of common ground between the main parties that the full Objectively Assessed Housing Need (OAN) for Central Bedfordshire is 32,000 dwellings for the period 2015-35; the annual OAN for Central Bedfordshire is 1600 dwellings per annum; that Luton's unmet need should not be included in the housing requirement for 5YHLS purposes, albeit Luton's unmet need is a material consideration of significant weight; the Council is not a persistent under delivering authority for the purposes of paragraph 47 of the Framework; and that the appropriate buffer to apply when calculating the 5YHLS is 5%. The SoCG indicates that it is now common ground between the main parties that the Council can demonstrate a supply of 9812 dwellings as having a realistic prospect of delivery over the next 5 years and that accordingly it can demonstrate a 5YHLS.
13. In the light of all that I have read, heard and seen therefore the main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to potential noise and disturbance.

¹ Suffolk Coastal DC v Hopkins Homes Ltd & SSCLG and Richborough Estates Partnership LLP & SSCLG v Cheshire East BC [2017] UKSC 37

Reasons

Development Plan and policy context

14. The adopted development plan for the area within which the appeal site lies comprises the Central Bedfordshire Core Strategy and Development Management Policies Development Plan Document (DPD) (2009) (the Core Strategy), the saved policies of the Mid Bedfordshire Local Plan First Review (2005) (Local Plan) and the Site Allocations DPD (2011). These plans all pre-date the Framework. However, paragraph 215 of the Framework indicates that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The parties agree that there are no saved policies of the Local Plan, or specific policies in the Site Allocations DPD, that are relevant to this appeal.
15. A new Local Plan for Central Bedfordshire is being prepared. The Central Bedfordshire Pre-submission Local Plan 2015-2035 (emerging Local Plan) was published in January 2018. However, given the early stage in the plan's preparation I attach limited weight to it.
16. The reasons for refusal refer to a number of policies of the Core Strategy. However, having regard to the Council's position regarding the non-designated heritage assets at the site referred to in its first reason for refusal and its position regarding the third reason for refusal, the remaining pertinent policies referred to are policies CS14, DM3 and DM4. Whilst the proposal falls to be considered against the development plan as a whole under Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act) the relevant policies for the purposes of determining this appeal focus upon policies CS14, DM3 and DM4 of the Core Strategy. Accordingly, I have proceeded on this basis.

Character and appearance

17. The appeal site lies on the edge of Meppershall, to the west of High Street, at the southern end of the village. It consists of a detached dwelling (100 High Street) and land to the rear of the dwellings at Nos 84-100 High Street. Access to the site is currently provided by a narrow vehicular access from High Street.
18. There are a number of buildings and structures on the site associated with its former horticultural use which, the evidence indicates, ceased operating some time ago. The buildings and structures on the site, which include former glasshouse structures, a boiler house, chimneys and water towers, are in various states of disrepair and dereliction. There are large areas of overgrown vegetation, a pond and grassland on the site. The Landscape and Visual Impact Assessment (LVIA) submitted by the appellant indicates that the current use of the site is primarily given over to grassland and from what I saw on my site visit I agree with this assessment.
19. The site is contained by boundary planting made up of scrub, hedge and trees to the west and north. To the north, south and west of the site is countryside and to the east are the rear garden boundaries of 84-98 High Street, which are separated from the site by mature vegetation and High Street itself. The open countryside to the west of the site is in arable use. To the north is an area of open land and then the open rear gardens to Nos 2 and 3 Long Acre. The western part of the northern boundary comprises a paddock and a mixed

- agricultural landscape lies further north with small paddocks turning into large scale arable field systems further away from the village. Within the countryside immediately to the south is a paddock area as well as a group of agricultural buildings associated with Bury Farm. Campton Road runs along the southern edge of Bury Farm with a mixed agricultural landscape further south.
20. The existing dwelling at 100 High Street together with its immediate curtilage is included within the settlement envelope of Meppershall as defined in policy DM4 of the Core Strategy. However, the majority of the site lies outside the settlement envelope of Meppershall. Therefore, notwithstanding that part of it is occupied by former horticultural buildings/structures, it is within the countryside for planning policy purposes.
 21. Policy DM4 of the Core Strategy relates to development within and beyond settlement envelopes. Beyond settlement envelopes, the policy only expressly permits limited extensions to gardens. Accordingly, the appeal proposal for residential development on a site, the majority of which lies beyond the settlement boundary of Meppleshall, would fail to accord with policy DM4 of the Core Strategy.
 22. In the light of the advice at paragraph 215 of the Framework the weight to be attributed to policy DM4 of the Core Strategy is a matter of dispute between the parties. However, both agree that in the light of the findings of the Inspector in a recent appeal decision² at Potton it should not be afforded full weight. In considering policy DM4 of the Core Strategy the Inspector in the Potton case found that it is not fully consistent with the policies of the Framework, which seek to recognise the intrinsic character and beauty of the countryside rather than to specifically 'protect' it. He went on to conclude that in such circumstances, it should be afforded moderate weight. I agree with the Inspector's findings in relation to the consistency of policy DM4 of the Core Strategy with the policies of the Framework, which seek to recognise the intrinsic character and beauty of the countryside and I see no reason, from the evidence, to conclude that it should be afforded any lesser weight to that indicated by the Inspector in the Potton case. I deal with the matter of the link between paragraphs 215 and 14 of the Framework and whether an inconsistency with the Framework renders a relevant policy out of date below.
 23. The other policies of the Core Strategy against which the proposal falls to be assessed in relation to this main issue are policies CS14 and DM3. These policies require development to be of the highest quality by, amongst other things, respecting local context, and the varied character and local distinctiveness of places. They are consistent with the core planning principles of the Framework that planning should always seek to secure high quality design and take account of the different roles and character of different areas.
 24. The village of Meppershall is essentially linear in character being arranged along High Street and Shefford Road running broadly north to south. The 'central core' of the village, which contains the bulk of its services and housing, lies further north within the vicinity of the junction of High Street and Fildyke Road. The appeal site is not within this 'central core' like the new housing development referred to as the Croudace development but is instead, as indicated above, at the southern end of the village. The settlement pattern within this part of the village is not one of 'development in depth' but rather of

² APP/P0240/W/17/3176444 64 Biggleswade Road, Potton (Core Document 13.01)

- a linear nature. This is notably so on the western side of High Street where, with the exception of the small development of 4 houses at Long Acre, the pattern of development is essentially one of single plot depth that fronts on to High Street with countryside beyond.
25. Notwithstanding that layout is a reserved matter, it seems to me that the appeal proposal, for up to 38 dwellings, would inevitably result in a residential estate type development at some depth with dwellings sited behind existing properties fronting High Street. Accordingly, it would be out of keeping with the prevailing settlement pattern and at odds with the existing arrangement of built form in this edge of settlement location, at the southern end of the village. It would appear as an alien intrusion into the countryside.
26. In terms of the visual impact of the appeal proposal I note that the LVIA submitted by the appellant identifies only one viewpoint (No 5), being the view from High Street, Meppershall (along which the John Bunyan Way, a long distance walking route, passes), with significant visual effects. The other eight viewpoints are identified as having minor or negligible visual effects. The Council however raises specific concerns about the visual impact of the proposal from both viewpoints No 5 and No 1, as indicated in the LVIA. I took these in at my site visit.
27. The existing view from viewpoint No 5 is of the dwelling at No 100 High Street, with its well planted boundary to the road, and the adjacent narrow access track, which runs alongside the dwelling and leads to the land to the rear, which was previously in horticultural use. There is no view of open countryside from this viewpoint. Nevertheless there is equally no view of urban development. Rather it has a rural aspect, appropriate to the character of the village and particularly to this part of it.
28. Access is not a reserved matter and the proposed access plan indicates that the main access into the site would comprise an engineered bellmouth junction with a 5.5 metre wide carriageway and two 2 metre wide footpaths. Accordingly, as acknowledged by the appellant's witness, it would result in a significant change and appear very much as an 'urban estate road' leading to a housing estate. Although the appeal proposal is in outline form with all matters other than access reserved for future consideration, it seems to me that some houses would undoubtedly be clearly visible, whilst others would be partially visible. The illustrative layout plan suggests as much. Accordingly, anyone passing the site along High Street, which forms part of the John Bunyan Way, could not fail to be aware that there was a housing estate at some depth beyond the existing building line of the dwellings on the western side of High Street. This would be out of keeping and at odds with the prevailing character and appearance of the southern end of the village.
29. When approaching Meppershall along Campton Road the site is not visible along the full length of the road due to the undulating topography and the curve of the road. Nevertheless there is a sizeable stretch of the road where the site is visible over the fields through gaps in the hedgerow. With regard specifically to viewpoint No 1, along Campton Road, the site is visible across the fields through a substantial gap in the hedgerow. The agricultural buildings associated with Bury Farm are visible from this viewpoint. However, despite being large, they comprise part of a farmstead within the countryside. As such they do not appear out of character in this location.

30. The housing development, known as the Croudace development, which is under construction in the core of the village is also visible in the distance from viewpoint No 1 and there are also glimpsed views of the houses fronting on to High Street. However, any views of the houses on High Street are restricted to their rooftops. Furthermore, in relation to the existing built development on the appeal site, whilst the tops of the chimneys on its eastern boundary are visible the former glasshouses are not. Accordingly, the existing built form of the site has no impact on the view of the countryside from this viewpoint.
31. Having regard to the illustrative layout plan a residential development of up to 38 dwellings would inevitably result in development towards the western edge of the site. The parties agreed at the Inquiry that the proposed dwellings would be likely to have an eaves height of at least 5m, and ridge heights of around 9m. On that basis there would be significant views of the dwellings from viewpoint No 1. I appreciate that there would be the potential for a scheme of landscaping to provide some screening. However, the proposed development, even with some alternative means of providing an acoustic buffer to the acoustic fence indicated on the illustrative layout plan, or even with a reduction in the extent of any fence/buffer, would appear as a prominent backland development extending beyond the existing building line of the dwellings in this part of the village, and into the countryside. Despite not being subject to any landscape designation the countryside in this location provides the rural setting to the southern edge of Meppershall. Accordingly, notwithstanding that the Council's landscape officer did not object to the proposal, I consider that the proposed development would, by virtue of its incursion into the countryside, erode the rural character and appearance of this end of the village and cause material harm to its character and appearance.
32. Taking account of all of the above therefore, notwithstanding that the appearance, landscaping, layout and scale of the development would be reserved for future consideration, I conclude that the proposed development would cause significant harm to the character and appearance of the area. Accordingly, it would be contrary to Core Strategy policies CS14 and DM3 and the core planning principles of the Framework that planning should always seek to secure high quality design and take account of the different roles and character of different areas. It would also be contrary to policy DM4 of the Core Strategy albeit for the reasons indicated above the conflict with this policy is afforded only moderate weight in this appeal.

Living conditions

33. The appeal site lies to the north of Bury Farm and its associated agricultural buildings. The operations at the farm include storing, drying and dressing grain for Bury Farm and four other farms. The parties agree that there are various noise sources associated with the operations at Bury Farm. These are the grain dryer fans within the agricultural buildings used as grain stores to the south of the appeal site, a free-standing grain dresser unit within another agricultural building to the south, tractor and lorry movements and a hand held blower.
34. Of the three grain dryers only two operate at any time. However, when in use noise from their operation is continuous and tonal. In addition they can operate for 24 hours per day/7 days per week throughout the harvest period (July to October). The grain dresser, can also operate throughout the harvest

season. It is quieter than the grain dryers but the large roller shutter door and smaller side door, which the evidence indicates are left open when it is in operation, mean that the noise of the grain dresser is likely to break out of the building. The noise from the vehicles used to move grain around the farm and to load and unload grain from lorry deliveries and from the hand held blower used to keep the grain stores clean when required, during the harvest season, is restricted to daytime hours, albeit sometimes this occurs in the very early morning. There is no dispute between the parties that the grain dryers are the dominant source of noise associated with the activities at Bury Farm.

35. The appropriate methodology to be employed in the assessment of noise is a matter of dispute. At the Inquiry the parties provided much detail and extensive technical information about their respective preferred assessments. In addition both main parties sought to question the credibility and reliability of the others expert technical witness on this main issue. It is unfortunate that both parties omitted to bring some matters of relevance to their evidence on this main issue to the attention of the Inquiry in the first instance. However, this does not lead me to necessarily question their credibility as reliable witnesses. I do not doubt that both are technical experts in their field albeit they hold differing views regarding the appropriate methodology to be employed in the assessment of the noise sources in this case and whether or not the proposal would provide satisfactory living conditions for future occupiers of the proposed dwellings with regards to potential noise and disturbance.
36. The Council contends that the proposal should be assessed on the basis of BS 4142³ which provides methods for rating and assessing sound of an industrial and/or commercial nature and that this is the appropriate standard to apply when introducing new residential development into the vicinity of a dominant noise source, as is the case here. However, the appellant contends that the rigid application of such an approach would render housing on the site acceptable only if noise levels are lower than the current background levels, takes no account of proposed mitigation levels by focusing on external facade levels, and pays no attention to the current noise levels at the existing neighbouring properties on High Street or the absence of complaints from existing residents. The appellant contends that the approach advocated by the Council should be rejected in favour of an alternative 'hybrid' approach which, it is maintained, provides a more practical and sensible approach for the assessment of noise in this case and is commonly used by acousticians and planning authorities.
37. It is not disputed that if the proposal was to be considered on the basis of a BS 4142 assessment as espoused by the Council then it would be found wanting. Accordingly, it is not necessary to consider the details of such an assessment but rather to consider the appropriateness of the 'hybrid' approach, advocated by the appellant, as an alternative.
38. The 'hybrid' approach takes as its starting point that part of BS 8233⁴ which identifies satisfactory noise levels both internally and externally and then seeks to address the particular character of the relevant noise, which in this case is the tonality, by reducing the target level as considered appropriate in line with

³ BS 4142:2014 Methods for rating and assessing industrial and commercial sound (Core Document 11.02)

⁴ BS 8233⁴:2014 Guidance on sound insulation and noise reduction for buildings (Core Document 11.03)

- the method set out in BS 4142. In this case the appellant has included a +6 dB penalty, as a 'worst case' assessment.
39. The appellant refers to the note at paragraph 8.5 of BS 4142 which states that other guidance and criteria in addition to or alternative to this standard can also inform the appropriateness of both introducing a new noise-sensitive receptor and the extent of required noise mitigation, and suggests that BS 8233 and BS 4142, when read together, are consistent with the 'hybrid' approach. However, I note that no specific endorsement of the 'hybrid' approach is provided in the correspondence between the appellant and the Chairman of the BS 4142 Committee, which sought clarification about the reference in the note referred to above and the appropriateness of applying the criteria/guidance used in this case. Furthermore, no evidence of any specific endorsement of the merits of the 'hybrid' approach by way of a peer review in any relevant journal or of any article or report endorsing the approach were provided to the Inquiry.
40. Two appeal decisions⁵ were referred to in evidence by the appellant as examples of where the 'hybrid' approach has previously been used. However, I am not aware of the full circumstances of these cases. Neither the Council nor the appellant's witnesses appeared at either of the Inquiries. Furthermore, in relation to the Par case it appears that the matter of the methodology to be employed was not in dispute between the parties. Accordingly, I do not afford these decisions any great weight.
41. The appellant also referred in evidence to a prior approval⁶ decision of the Council where it is contended that the 'hybrid' approach had been used to derive the internal noise standards to be achieved by a noise mitigation scheme referred to in the relevant condition. The Council's witness in this case did not advise the Council on that proposal and was not able to provide the details. Therefore, I do not afford this matter any great weight in my consideration of this case.
42. At the Inquiry the appellant's witness accepted that the 'hybrid' approach is not specifically endorsed in national policy/guidance, there being no specific reference to it within the Framework, the Planning Practice Guidance (PPG), the DEFRA Noise Policy Statement for England, BS 8233 or BS 4141. The ProPG⁷ referred to by the appellant in support of the 'hybrid' approach was produced by the Chartered Institute of Environmental Health, the Institute of Acoustics and the Association of Noise Consultants. It is intended to provide practitioners with guidance on a recommended approach to the management of noise within the planning system. However, the ProPG is clear that it does not constitute an official Government code of practice and neither replaces nor provides an authoritative interpretation of the law or government policy. In any event it also indicates in its introduction that its scope is restricted to the consideration of new residential development that will be exposed predominantly to airborne noise from transport sources. That is not the position here. I appreciate that the ProPG does indicate that some of its content is relevant to other sources of noise. However, I am also mindful that it then goes on to state that detailed consideration of other sources of noise (such as dominant noise from industrial,

⁵ APP/R0660/A/12/2170820 Land at Crewe Road, Crewe (Core Document 9.08) and APP/D0840/A/14/2225653 Land to the east of Mount Crescent, Par, Cornwall (Core Document 9.22)

⁶ Decision Notice ref CB/17/02134/PADO Hampden House (Core Document 11.09)

⁷ Professional Practice Guidance on Planning and Noise (Core Document 11.01)

- commercial or entertainment premises) is outside its scope. Accordingly, in the light of the above it seems to me that the ProPG is not applicable to this case and therefore it is not necessary to consider its details further.
43. Having regard to all of the above, the degree of support for an assessment based on the 'hybrid' approach is somewhat lacking. Its appropriateness as an alternative to the Council's BS 4142 assessment is therefore questionable. Even if this were not to be so, and the 'hybrid' approach was to be considered appropriate, whilst the external noise targets proposed for the gardens would be met, mitigation would be required in order to achieve the internal noise targets proposed.
44. Given the outline nature of the appeal proposal there is the potential for the details of the proposal submitted as reserved matters to seek to minimise the impact of the noise from the activities at Bury Farm as much as possible, for example by positioning the quieter facades of the houses further away from the noise source, and to provide a screen for the existing dwellings from the noise sources at Bury Farm. Nevertheless, the appellant accepts that in this case achieving the 'target levels' for the internal rooms of the proposed dwellings during the times when the grain dryers at Bury Farm are operational will, in many cases, be dependent upon keeping windows shut. A system of mechanical ventilation and heat recovery (MVHR) is therefore proposed for all of the proposed dwellings on the site. The acceptability of this is a matter of dispute between the parties.
45. The Council acknowledges that there are instances where it has accepted MVHR on other developments. However, I note that the circumstances in the various cases referred to by the appellant are different to this case either because of the location of the site, or the source of the noise.
46. In cases of new residential development where the proposed mitigation relies on windows being kept closed most of the time, the PPG specifically refers to the necessity of a suitable means of alternative ventilation. This would suggest that, in principle, similar solutions as that proposed here, may form an accepted part of the approach to mitigating against the impact of noise. This was considered to be so in the two appeal decisions specifically referred to by the appellant, namely the Crewe Road case referred to above and the Secretary of State decision on the Aspenden Road case⁸.
47. I note that the Inspector in the Crewe Road case found that, neither the location of the site, be it an urban or semi-rural location, nor the nature of the noise, be it industrial or road traffic noise, makes a difference to the 'in-principle' acceptability of MVHR. However, I am also mindful of the findings of the Inspectors in two more recent appeal decisions included in the appeal documentation, namely the Somerby Hill and St Helen's Avenue⁹ cases.
48. In the Somerby Hill case the Inspector made a distinction between the acceptability of assisted mechanical ventilation on a development on a greenfield site towards the edge of a settlement within a rural setting, as opposed to, say, a development on an urban-located site close to existing noise-generating uses. Furthermore, in the St Helen's Avenue case the

⁸ APP/J915/A/14/2224660 Land at Aspenden Road, Buntingford, Hertfordshire (Core Document 13.03)

⁹ APP/E2530/W/16/3163514 Land to the north side of A52, Somerby Hill, Bridge End Road, Grantham (Core Document 9.21) and APP/Q3115/W/16/3163844 Land off St Helen's Avenue, Benson (Core Document 9.20)

Inspector found that the need for future occupiers of a development in a rural area, such as is the case here, to sleep, especially in the summer months, in sealed rooms, relying upon alternative means of ventilation, or alternatively to experience noise entering through open windows, would result in a development that fails to adequately address the connections between people and places and the integration of the new development into the built environment. Such a situation, he found, would not provide a good standard of amenity for the future occupiers of that development. I agree and consider these findings to be particularly applicable in this case. The Crewe Road decision therefore does not provide an insurmountable precedent as to the acceptability of MVHR.

49. I also note that the Inspector in the Crewe Road decision suggested that residents with MVHR will quickly become used to mechanical ventilation. However, I am mindful that in the case subject to this appeal noise from the grain dryers would occur during the day and night, throughout the harvest period, and then not for the rest of the year. In such a circumstance it seems to me that it is not reasonable to assume that the residents of the proposed development will necessarily become used to living with MVHR. Where a window can be opened then it is very likely that it will be opened, particularly when the weather is fine during the summer months, which is the very time of year when the grain dryers are likely to be in continuous use. The opening of windows would compromise the intended mitigation and result in the internal noise levels proposed by the 'hybrid' approach being exceeded such that satisfactory living conditions would not be provided for the future occupiers of the proposed dwellings.
50. Having regard to all of the above therefore, I am not satisfied that the appeal proposal would provide satisfactory living conditions for future occupants of the proposed dwellings as a result of noise and disturbance from the activities at Bury Farm. Although not specifically referred to in the Council's relevant reason for refusal it is also pertinent to consider the effect that the residents of the proposed houses may have on the operation of Bury Farm. This formed a minor part of the Council's case at the Inquiry and is a concern of the owner of Bury Farm.
51. I note that there have been relatively few complaints from existing neighbours about noise from the activities at Bury Farm. However, this is not a matter to which I attach any particular significance. Bury Farm has been in operation for some time and the last new grain dryer was installed over 20 years ago. I would suspect therefore that among existing residents there is likely to be an element of resignation and acceptance of the noise associated with the grain dryers. Accordingly, I give little weight to the level of complaints about noise from Bury Farm from existing residents as an indication of the future likelihood of complaints.
52. Paragraph 123 of the Framework indicates, amongst other things, that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. I note the findings of the Inspector in the Crewe Road case in relation to the reasonableness of any complaints being made against the nearby business use and the likelihood of any such complaints being successful. However, these were made on the basis that he considered the proposed mitigation measures to be suitable and that therefore there would

be a good standard of amenity for future residents. As detailed above this is not my finding in this case. Therefore, I consider there can be no certainty that there would not be complaints from future residents about noise and disturbance from the activities at Bury Farm. Accordingly, I cannot be satisfied that the viability of this long established rural business would not be compromised.

53. To conclude on this issue therefore, having regard to all of the above I am not satisfied that the appeal proposal would provide satisfactory living conditions for future occupants of the proposed dwellings in relation to noise and disturbance. Accordingly, it would be contrary to policies CS14 and DM3 of the Core Strategy which require high quality development.

Planning balance and conclusion

54. I have found above that the appeal proposal would be contrary to policies DM4, CS14 and DM3 of the Core Strategy. Whilst I attribute moderate weight to the conflict with policy DM4 I attribute full weight to the conflict with the other relevant policies, namely CS14 and DM3. Accordingly, I consider that the appeal proposal would be contrary to the development plan as a whole.
55. Section 38(6) of the Act requires that applications for planning permission must be determined in accordance with the development plan unless material conditions indicate otherwise. The Framework has the status of a material consideration which (when considered together with any other relevant material considerations) may or may not indicate that an appeal should be determined otherwise than in accordance with the development plan.
56. Paragraph 14 of the Framework provides that where the development plan is absent, silent or relevant policies are out of date the presumption in favour of sustainable development means that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted. The test of whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole is commonly referred to as 'the tilted balance'.
57. There is no dispute that the Council can demonstrate a 5YHLS for the purposes of this appeal. However, the appellant contends that policies DM4 and CS5 of the Core Strategy which are indicated in the SoCG as relevant to this appeal are out of date and that therefore 'the tilted balance' comes into play. The Council disputes this.
58. In support of their respective cases the main parties have referred me to a number of other appeal decisions where this issue has been considered. However, none of these are determinative in their own right on this matter. In the Langford decision¹⁰, referred to by the appellant and which dates back to June 2015, the Council accepted that the relevant policies for the supply of housing which was considered at the time to include policy DM4 of the Core Strategy were out of date. However, this was prior to the judgment of the Supreme Court that found the 'narrow interpretation' to be the correct one for

¹⁰ APP/P0240/A/14/2228154 Land to the east of Station Road, Langford, Bedfordshire (Core Document)

the purposes of paragraph 49. In the case of the Flitton¹¹ decision also referred to by the appellant there is only limited information as to the arguments put to the Inspector in relation to this matter, it having been dealt with by the written representation procedure.

59. In the Clophill appeal decision¹² referred to by the Council I note that, unlike in the later Potton decision, and my findings above, the Inspector in that case considered policy DM4 of the Core Strategy to be consistent with the Framework. I also note that he went on to conclude that providing it was not preventing the delivery of a supply of housing, which he found it was not due to the proven existence of a 5YHLS, then the relevant policies, including policy DM4, and the relevant policies for the supply of housing, were not out of date. However, it seems to me that relevant policies can be out of date even where there is a 5YHLS, a position which the Council accepts in the current case.
60. The Council also refer to the Potton decision in relation to this matter. I have referred to the Potton case in some detail above in my consideration of policy DM4 of the Core Strategy, and its consistency or otherwise with the Framework. I note the footnote in that decision which states that the tilted balance is not engaged as the LPA can demonstrate a 5 year supply of deliverable housing supply sites and thus paragraph 49 of the Framework does not engage paragraph 14 of the Framework. However, again as indicated above and as accepted by the Council, relevant policies can be out of date even where there is a 5YHLS. Whilst the Inspector in the Potton decision found policy CS5 of the Core Strategy to be out of date he did not express a view on policy DM4 in relation to this matter as it was not necessary to do so having previously found that the proposal would accord with the development plan as a whole.
61. Turning to the current appeal at the Inquiry the Council's witness accepted that relevant policies can be out of date even where there is a 5YHLS. The Council also accepts that in the light of the Potton appeal decision, policy DM4 of the Core Strategy should not be afforded full weight. The Inspector's conclusion in that case, as to the weight to be afforded to policy DM4, came after his finding that when read plainly, the policy is at odds with the Framework and that it is applied by the Council in a manner that involves reading in a major modification. At the Inquiry into this appeal the Council's witness accepted that these could be considered to be features of a policy that was out of date. I appreciate that this was not the finding of the Inspector in the Potton case. However, as detailed above, he did not express a view at all on policy DM4 in relation to this matter.
62. I am mindful that the link between paragraphs 215 and 14 of the Framework has been examined by the Courts and that they have found that any inconsistency between those policies in the development plan and the Framework would render them out of date and cause the approach set out in paragraph 14 of the Framework to be engaged. Accordingly, it seems to me that in this case the inconsistency between policy DM4 and the Framework is such that paragraph 14 of the Framework and 'the tilted balance' set out in it is engaged. Having regard to this finding, it is not necessary for me to go on to consider further whether policy CS5 of the Core Strategy which, although not

¹¹ APP/P0240/W/16/3154220 Land off Greenfield Road, Flitton (Core Document 9.01)

¹² APP/P0240/W/17/3152707 Former Readshill Quarry, Back Street, Clophill, Central Bedfordshire (Core Document 9.07)

one of the policies referred to on the decision notice, is referred to in the SoCG as relevant to this appeal, is also out of date.

63. In respect of the main issues in this appeal there would be significant environmental harm arising from the damage that would be caused to the character and appearance of the area and to the living conditions for future occupants of the proposed dwellings through noise and disturbance. The impact of the harm in respect of the living conditions of the future occupiers of the proposed dwellings would have potentially serious and enduring consequences.
64. In relation to the environmental harm the proposal would conflict with the development plan, being contrary to policies CS14, DM3 and DM4 of the Core Strategy, albeit the conflict with policy DM4 is afforded only moderate rather than full weight in this appeal. It would also be contrary to the core planning principles of the Framework that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, and take account of the different roles and character of different areas. It would fail to comply with the advice at paragraphs 109 and 120 of the Framework which respectively indicate that the planning system should prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution, and that to prevent unacceptable risks from pollution planning decisions should ensure that new development is appropriate for its location.
65. In addition to the environmental harm caused by reason of the poor living conditions for future occupiers of the proposed dwellings with regard to the noise and disturbance associated with the activities at Bury Farm the viability of this existing long established rural business risks being compromised by complaints or the threat of complaints from the future occupants of the proposed dwellings. This would be contrary to the principle of the Framework of supporting a prosperous rural economy and the advice at paragraph 123 of the Framework which indicates that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. I consider that the harm identified in relation to this matter should also be afforded significant weight.
66. The identified harm needs to be balanced against the benefits of the proposed development. Notwithstanding that the Council can demonstrate a 5YHLS the parties agree that the development of up to 38 dwellings, both market and affordable housing, would serve to address the needs of the District and the wider Housing Market Area, especially Luton's unmet needs and that this is a matter that carries significant weight. I see no reason to disagree. However, the proportion of affordable housing proposed is, at 35%, no more than that required by the development plan and whilst I appreciate that the emerging Local Plan indicates a lesser requirement of affordable housing (30%) this plan is at an early stage of preparation. The scale of the proposed development would be appropriate to the scale of Meppershall and would be in an accessible location. Taken together I afford significant weight to the social benefits of the proposal.
67. The proposal would deliver economic benefits including the creation of employment opportunities estimated at 85 full time equivalent jobs during the construction period, construction spend of around £4.5m-£5m and increased

household expenditure assessed at around £849,000 pa some of which would provide support to the local economy and for local facilities. However, the contributions made by way of the UU to education provision are required to mitigate against negative impacts of the proposal. Therefore, they are neutral factors and do not carry weight in favour. Overall I attach considerable weight to the economic benefits.

68. In so far as the proposal is in outline form there may be the potential for the layout of the proposed dwellings to serve as a screen that would attenuate the level of noise experienced in the gardens of the existing dwellings at Nos 82 to 98 High Street from the noise sources at Bury Farm. However, this cannot be known at this stage. Accordingly, I do not afford weight to this matter in the overall balance.
69. The development would result in the re-use of a site within the countryside which has previously been used for horticultural purposes. However, although it does have some areas of hardstandings and the remains of buildings it is primarily given over to grassland. Accordingly, I afford little weight to this as a benefit in the overall balance. The removal of the existing structures on the site, some of which are potentially dangerous does not constitute a benefit of the appeal proposal given that, if their safety is of genuine concern, the landowner would be obliged to address this matter irrespective of whether or not the appeal proposal were to succeed.
70. Taking account of all of the above, I conclude that the adverse impacts identified would significantly and demonstrably outweigh the benefits of the proposed development and therefore, the proposal would not benefit from the presumption in favour of sustainable development. The conflict with the development plan is not outweighed by other material considerations.

Other matters

71. Interested parties including Meppershall Parish Council raised concerns regarding highway safety particularly in relation to the removal of the existing parking spaces on High Street in order to facilitate the provision of the necessary visibility splays from the proposed access to the site, the proximity of the site to the primary school and the width of High Street. However, there is no substantive technical evidence to lead me to conclude differently to the position indicated in the SoCG which is that with appropriate conditions the proposed development would be acceptable in terms of highway safety.
72. As indicated above a completed UU was submitted at the Inquiry. The UU includes obligations relating to the on-site provision of 35% affordable housing and financial contributions in respect of education provision (early years, lower school, middle school and upper school). I have considered these in the light of the Framework, the PPG and the Community Infrastructure Regulations 2010 (CIL Regs). I am satisfied that the obligations meet the statutory tests and comply with the CIL Regs and paragraph 204 of the Framework.

Overall conclusion

73. For the reasons given above I conclude that the appeal should be dismissed.

Beverley Doward INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Alexander Booth	Of Queen's Counsel, instructed by Central Bedfordshire Council
He called:	
Phillip E Hughes BA (Hons) MRTPI Dip Man MCIM	Principal, PHD Chartered Town Planners
Daniel Baker BSC (Hons) IOADip MSC MCIEH CEnvH MIOA	Senior Environmental Health Practitioner, MAS Environmental

FOR THE APPELLANT:

Andrew Tabachnik	Of Queen's Counsel, instructed by Russel Gray of Woods Hardwick Planning Ltd
He called:	
Patrick Allen BSc (Hons) CEng FIOA MEWI	Director, Cass Allen Associates Ltd
John-Paul Friend HND BA (Hons) Dip LA CMLI	Environmental Planning Director, ACD Environmental Ltd
John Freeman MEng CEng MICE MCIHT	Partner, Woods Hardwick Infrastructure LLP
Russel Gray BA (Hons) Dip UP MRTPI	Director, Woods Hardwick Planning Ltd

INTERESTED PERSONS:

Mark Brinkley	Bury Farm, Meppershall
Stuart Travers	On behalf of Mr Gilbert (Local Resident)
Dr Susan Chappell	Local Resident
Roger Martin Smith	Meppershall Parish Council
Alessandra Marabese	Clerk to Meppershall Parish Council

DOCUMENTS SUBMITTED AT THE INQUIRY

1. List of appearances for the appellant Landcrest Developments Ltd
2. List of proposed conditions submitted on 9 January 2018
3. Folder CD13 (core documents) comprising:
 - CD 13.01 64 Biggleswade Road, Potton Appeal Decision Letter (APP/P0240/W/17/3176444).
 - CD13.02 64 Biggleswade Road, Potton Appeal (APP/P0240/W/17/3176444) – Appellant’s Closing Submissions.
 - CD13.03 Land to the east of Aspenden Road, Buntingford, Hertfordshire SoS Appeal Decision Letter (APP/J1915/A/14/2224660).
 - CD13.04 Land Registry Titles for nos. 102, 106, 108, 110 and 112 High Street, Meppershall.
 - CD13.05 Pusey&Anor v Somerset County Council [2012] EWCA Civ 988 (19 July 2012).
 - CD13.06 Central Bedfordshire Pre-Submission Local Plan 2015-2035 January 2018.
 - CD 13.07 Report to CBC Executive on Central Bedfordshire Pre-Submission Local Plan.
 - CD13.08 Extracts of proposed criteria for the assessment of low frequency noise disturbance Revision 1 December 2011 prepared for DEFRA.
 - CD13.09 A Review of Published Research on Low Frequency Noise and its Effects Report for DEFRA May 2003.
 - CD13.10 Correspondence on the non-designated heritage assets issue.
 - CD13.11 Valley Lane, Long Bennington, Grantham, Lincolnshire, NG23 5DY Appeal Decision Letter (APP/E2530/A/10/2136247).
4. Opening submissions on behalf of Central Bedfordshire Council
5. Statement read by Stuart Travers on behalf of Philip Gilbert of 94 High Street, Meppershall
6. A3 copies of noise modelling printouts titled Inquiry Document 1
7. Revised list of proposed conditions submitted on 12 January 2018
8. Signed Unilateral Undertaking dated 11 January 2018
9. Closing submissions on behalf of Central Bedfordshire Council
10. Closing submissions on behalf of the appellant



Appeal Decision

Inquiry Held on 1 and 2 August 2017

Accompanied site visit made on 2 August 2017

Unaccompanied site visit made 17 July 2017

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

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

Decision date: 31st August 2017

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

Land off St Helen's Avenue, Benson

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

Decision

1. The appeal is dismissed.

Preliminary matter

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

Main Issues

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

Reasons

Noise and disturbance

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

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

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

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

³ CD 8.6

⁴ NSOCG Para 3.1.3

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

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

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

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

Local infrastructure

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

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

⁶ See APP7 for documents submitted at Inquiry

⁷ APP6

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

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

Overall Conclusion

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

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

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

Cullum J A Parker

INSPECTOR

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

⁹ Ibid, Para 4.3.5

¹⁰ Ibid, Paras 4.6.1 to 4.6.4

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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

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

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

FOR THE APPELLANT:

Mr A Evans of Counsel, instructed by

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

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

INTERESTED PERSONS:

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

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

DOCUMENTS SUBMITTED AT INQUIRY

From LPA:

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

From Appellant:

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

From Interested Parties:

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