

ADDENDUM 14.03.17

Item No: 5.2

Application No: 16/01889/FUL Author: Aidan Dobinson Booth

Date valid: 25 November 2016 ☎: 0191 643 6333

Target decision date: 24 February 2017 Ward: Weetslade

Application type: full planning application

Location: Land East Of Salters Lane Longbenton NEWCASTLE UPON TYNE

Proposal: Residential development of 200 new homes (including 50 new affordable homes, access, gardens, car parking, landscaping and amenity space and associated infrastructure)

Applicant: Avant Homes and Mr G Oliver, Avant Homes (North East) Investor Colima Avenue Sunderland Enterprise Park Sunderland SR5 3XB

Agent: George F White LLP, FAO Miss Stephanie Linnell 4-6 Market Street Alnwick NE66 1TL

RECOMMENDATION: Minded to grant legal agreement req.

1. Manager of Environmental Health (Pollution)

1.1 The site is located between the A189 and the East Coast Mainline, with Camperdown Industrial Estate located immediately beyond the rail line at a distance of approximately 75 metres. Historically complaints have been received regarding tonal noises from Entek, a large 24 hour operating Part A factory. The housing will be adjacent to the rear yard containing a large amount of external plant including 2 large silos approximately 100 metres from housing.

1.2 I have viewed the additional noise report submitted by the applicant that has considered noise monitoring data between the 13th and 20th January 2017. Twenty four hour noise monitoring for a week was carried out at monitoring location 4 to the north eastern boundary of the site adjacent to Entek. This was unattended noise monitoring that was unable to determine the identification of Entek noise activities and there was no discernible change to noise between the traffic and plant noise. The noise report does not also

identify any tonal noise issues from Entek noise activities. A visit by environmental health on the 10th January 2017 observed distinctive hissing and tonal noise during a delivery of material to the silos at Entek. I therefore consider the industrial noise was distinctive although not observed by general noise monitoring by applicant.

1.3 The objector Entek have provided their own noise report to identify the noise levels from activities carried out on their industrial site. Noise monitoring was carried out for a period of just less than 48 hours at two unattended monitoring locations. Attended noise monitoring was also carried out to categorise the noise from specific activities and plant. This report concludes that the hammer mill is intermittent in its use and the compressors have associated tonal noise in the 40 hertz frequency range. I also note that the tank of the HGV is hammered with a mallet to remove the last of the load. I would be concerned about maximum noise levels from such impact noise affecting sleep if occurring at night. Noise monitoring at the boundary close to silos indicated levels of 60-65 dB(A). If character corrections are applied noise levels would be greater than +10 dB above the background. The applicant has indicated for location 5 the night time background was assessed as in the region of 38 dB(A), which I consider would be representative of the background for the proposed residential area adjacent to Entek if the residential development proceeded.

1.4 The applicants noise report does not suggest that there is any tonality arising from Entek and have concluded that noise levels can be mitigated with appropriate glazing and passive ventilation. The applicant has considered this and has re-orientated residential properties of plots 42 to 47, 76 to 81, 91 to 96 and 100 to 106 so that habitable living is on the screened side of the property. This will afford mitigation against industrial noise for those housing plots. Other housing plots within the proposed site will then be partially screened from Entek.

1.5 The Entek report identifies increased annoyance to its noise sources by its intermittency and tonal nature particularly during deliveries. The orientation of those properties closest to Entek will remove amenity noise issues with regard to enjoyment of garden and habitable rooms to those properties only, it does not however deal with those properties further into the site which will be afforded partial screening by the houses. Environmental Health are not in a position to predict the background noise levels that will be established following the building of the houses. The houses will give screening to road noise and therefore will lead to residents experiencing lower background noise levels closer towards Entek which will make the dominance of the industrial noise more pronounced.

1.6 I have reviewed the comments from the objector with regard to the re-orientation of plots 42 to 46 and 76 and 81 these properties are closest to the

delivery area for the silos and there is concern that if the development was to proceed, habitable rooms facing onto Entek will be subject to industrial noise levels, whereby if residents choose to have open windows their amenity will be affected. The orientation of the housing so that the habitable rooms are screened from industrial noise will address the residential amenity. However, other housing plots with only partial screen may still be subject to industrial noise levels that may give rise to complaints and potential statutory nuisance.

1.7 The applicants consultant has shown that provided residential windows are closed, the internal noise levels caused by industrial noise from Entek can meet BS8233. Passive acoustic ventilators for properties with only partial screening would not be considered appropriate for those properties located adjacent to Entek due to the continuous industrial noise and mechanical ventilation will be required to enable residents to have reasonable amenity during the night period, without recourse to open windows.

1.8 BS8233 specifies standards for good habitable living. This is based on road traffic noise rather than industrial noises and the internal noise levels for habitable rooms can be achieved with the appropriate standard of glazing. Residents opening windows where the noise is considered anonymous in nature such as road traffic noise may not give rise to sleep disturbance. I consider that where properties are exposed to industrial noise then residents' sleep may be affected if windows are open. The noise report outlines that the internal noise levels for the habitable rooms will comply with the requirements of BS8233. However, BS4142:2014 also indicates that the determination of noise amounting to a nuisance is beyond its scope. Therefore if residents choose to open windows at night for those with only partial screening from Entek, then residents may potentially complain due to the industrial noise arising from Entek. If the noise levels are investigated and determined to amount to a statutory nuisance, then action would be taken against the business. The applicant in letter dated 13th February 2017 defines statutory nuisance and refers to the World Health Organisation guidance noise levels for dwellings. The noise levels referred to within the letter are based on anonymous noise and the daytime noise level for external gardens of 55 dB LAeq is the level considered to be the onset of serious annoyance. Industrial noise arising from Entek would not be considered to be anonymous noise and if complaints were received regarding the industrial noise, statutory action may be taken. Entek operations would currently not be considered to meet best practice and the business operations could potentially be constrained via statutory nuisance action, such as restrictions could include restrictions on permitting night time deliveries, measures implemented to mitigate plant noise etc. The National Planning Policy Framework indicates that new development should be protected against a significant adverse impact and that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses.

The external and internal noise levels as specified in BS8233 is based on steady noise e.g. traffic and not industrial noise. Although the external noise levels for gardens can be mitigated through the provision of screening and orientation of the housing to achieve external noise levels to meet the requirements of the World Health Organisation guidelines for community noise, residents amenity will be affected by the low frequency tonal noise from Entek.

1.9 If minded to approve I would suggest the following conditions:

1.10 Prior to occupation, the details of the acoustic glazing and ventilation system must be submitted to the Local Planning Authority for approval and agreed and thereby implemented, to ensure the minimum glazing system, as stipulated in Appendix 7 of noise report number NT12341/002b are provided to habitable rooms to ensure bedrooms meet the good internal standard of 30 dB LAeq,T at night and prevent the exceedance of Lmax of 45 dB(A) and living rooms meet an internal equivalent noise level of 35 dB LAeq,T in accordance to BS8233:2014.

1.11 Prior to occupation, the ventilation scheme for habitable rooms must be submitted for approval in writing and thereafter implemented to ensure an appropriate standard of ventilation that meets as a minimum System 3 of Table 5.2 of Approved Document F.

Mechanical ventilation, with an extract vent in each habitable room, must be provided as a minimum for properties with habitable rooms located to the North East boundary of the site with line of sight of Entek. For other properties an alternative passive acoustic ventilation will be considered adequate. The ventilation to meet the requirements of Building Regulations with windows closed.

HOU04
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1.12 Piling activities if required at the site to be restricted to the hours 10:00 - 14:00 hours Monday to Saturday only.

1.13 Details of the acoustic screening to be provided to all garden areas must be implemented in accordance to the boundary treatment plan drawing no 793-AVA SD-10.04 E and thereafter retained to ensure reduction of external noise levels to 55dB LAeq.

1.14 Planning Officer Comments

1.15 Specifically Environmental Health have stated that with regard to the re-orientation of plots 42-47 and 76-81 these housetypes have been substituted,

so that no habitable rooms now face towards Entek. Environmental Health no longer recommends that this application should be refused.

2. Agent

2.1 The Planning Agent on behalf of the applicant has made further comments on the policy position and this is set out below;

2.2 Local plan policies and the five year supply of housing land

2.3 The Planning and Compulsory Purchase Act 2004 (Section 38 (6)) requires the determination of planning applications to be in accordance with the Development Plan unless material considerations indicate otherwise.

2.4 The Development Plan is the North Tyneside UDP. UDP policy ED21 and ED21/1 identifies the application site as safeguarded land for development beyond the plan period. It is now well beyond the plan period which expired 11 years ago in 2006. Therefore whilst the application would be in conflict with policy ED21 and ED21/1, little weight should be attributed to this. The determination of the application falls to the National Planning Policy Framework and consideration of significant material considerations.

2.5 The NPPF indicates where the development plan is absent, silent or out of date permission should be granted for sustainable development unless any adverse impact would significantly and demonstrably outweigh the benefits when considered against the NNPF as a whole.

2.6 The application has demonstrated that the three strands of sustainable development can be met; significant weight should be attached to this in balancing the weight of the various material considerations in making the planning decision.

2.7 The application site has been promoted for residential development through the Council's SHLAA since 2011. It has progressively moved from beyond year 16, to delivery in years 6-10 subject to satisfying constraints associated with noise and highways. It has been demonstrated through the application process that these constraints have been successfully addressed.

2.8 In the meantime, the Council have been preparing their Local Plan. The application site has been rolled forward as safeguarded land in the emerging plan. The Local Plan has been through Examination and as such, weight can be given to the emerging policies, unless other material considerations indicate otherwise - as the outcome of the Examination and the Inspectors report is still awaited these policies cannot be given significant weight.

2.9 Consultation on the main modifications has recently (08/03/2017) ended. Comments on the main modifications need to be considered and reported to

the Inspector before he concludes whether or not various changes are required to make the plan sound. The consultation has raised a number of objections to the housing policies of the emerging plan.

2.10 The Inspector's report has not been released; it is not anticipated to be made publically available until May 2017, with adoption of the plan in July 2017 at the earliest.

2.11 Whilst the site is safeguarded in the emerging plan, the emerging polices also make provision should the Council not deliver the required housing numbers, to review sources of land to meet delivery needs including bringing safeguarded land forward, in advance of releasing sites in the Green Belt.

2.12 The recently released Housing White Paper – 'fixing the broken housing market' also indicates that new measures will be introduced to ensure that Council's meet their housing delivery targets, including action plans and the presumption in favour of sustainable development.

2.13 North Tyneside has persistently under delivered against its housing target over the past 16 years. It has exceeded the proposed annual average delivery rate of 790 dpa on only two occasions requiring the addition of a 20% buffer to the housing delivery targets to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.

2.14 If the proposed main modifications are adopted, and the Liverpool method of calculating the supply of housing land is employed, this sets a lower delivery threshold for the first five year period of the plan 2011/12-2015/16 at 551 dpa, in comparison to an annual average over the plan period of 790 dpa (Sedgefield method). Even with this lower threshold the delivery rate over this first period has not been met, generating an under delivery of 585 homes which has to be made up over the remaining plan period in addition to the increasing housing delivery target.

2.15 Over the second period of the plan (2016-20/21) the delivery threshold increases to 931 dpa, the target of 740 dpa plus the proportion of undersupply (585/16) plus a 20% buffer for persistent under delivery. The Council is reliant during this period on a number of sites with planning consent and a number of sites as yet without consent coming forward to meet this delivery rate. In addition, the plan has a heavy reliance on the two strategic sites of Murton and Killingworth Moor coming forward to meet a significant part of the housing delivery (up to 5,000 over the plan period).

2.16 The main modifications indicate the Council can demonstrate a housing land supply of 5.56 years using the Liverpool Method, a number of comments

/objections have been to these main modifications, which the Inspector will have to consider.

2.17 Even when a five year supply of housing land can be demonstrated, this is not a limit to further sustainable development, the NPPF places considerable emphasis on:

- significantly boosting housing delivery,
- widening opportunities and choice for home ownership,
- providing for affordable housing,

where planning applications meet the three strands of sustainable development (economic, environmental and social) the NPPF indicates proposals should be considered in the context of the presumption in favour of sustainable development.

2.18 Recent planning appeals have allowed planning applications for sustainable development where there has been a five year supply of housing, on the balance that the benefits of the proposals would outweigh the potential harm, examples include;

2.19 APP/L3815/W/15/3138439 (allowed 10 Feb 2016) *10) The Council has a 5 year supply of housing land and there is not, therefore, the same Policy imperative, that would otherwise exist, for permitting new housing development. That said, account should still be taken of the requirement in the Framework to significantly boost the supply of housing. Opportunities for home ownership would be widened and an identified need for affordable housing would be met. As such it would provide for the needs of present and future generations and meet the social and economic roles identified in the Framework as 2 of the 3 dimensions to sustainable development. The provision of new housing is a potentially weighty consideration in favour of the proposal.*

2.20 APP/R3705/W/16/3155070 (allowed 24 Oct 2016) *From the submitted evidence it appears that the Council can demonstrate a 5 year supply of deliverable housing land. However, this is likely to be affected, amongst other things, by the agreement to accommodate some of Coventry City Council's shortfall of capacity. Moreover, the Framework is clear that local planning authorities are required to boost significantly the supply of housing regardless of their housing land supply position and says that housing applications should be considered in the context of the presumption in favour of sustainable development.*

2.21 APP/L3245/W/15/3137161 (Allowed 10 November 2016) *40) What is more, whilst the LPA is able to demonstrate a deliverable five year supply of*

housing sites based upon its requirement set out in Policy CS1, this is not a limit: there is an acute housing shortage in England. It is recognised in national planning policy that the government anticipates a significant boost in the supply of housing. In this respect, the provision of any extra housing to this national shortfall is a benefit in favour of the proposal, including both market and affordable housing.

2.22 The approval of this application will significantly assist the Council in meeting its housing delivery targets, it offers a sustainable form of development, provides for 50 new affordable homes, 150 market homes, has addressed and offered mitigation for potential noise, design, biodiversity and aviation security issues and offers betterment through:

- assisting with existing flooding issues on the east coast mainline,
- provides for significant highways improvements in association with the work currently underway, the development provides for:
 - connectively with development under construction to the south,
 - a 2m wide footpath on the north side of Killingworth Way,
 - safe crossing points including controlled pedestrian crossing points,
 - upgrading of existing public rights of way and the creation of new connections,
 - a new cycle path through the spine of the development,
 - bus stops including bus shelters,
 - a signal controlled site access junction with intelligent vehicle detectors, and
 - the widening of the A1056 to provide 2 lanes on the west bound approach to the A189 Weetslade roundabout.

2.23 Having regard to the above, the consideration of the planning policy and the balance of material considerations, notwithstanding the five year supply of housing land, the application has demonstrated that there are no any adverse impacts which would significantly and demonstrably outweigh the benefits of the proposal and as such the application should be given favourable consideration and consent granted for sustainable development.

2.24 Planning Officer Comments

2.25 It is a fundamental principle of the planning system that each application should be considered on its own merits. However the appeal decisions do provide Members with a clear view as to how Inspectors are dealing with issues surrounding five year housing land supply. Therefore it is not sufficient to say that because the local authority can demonstrate a five year supply that there is no need for further housing.

2.26 Paragraph 49 of NPPF is that 'housing applications should be considered in the presumption in favour of sustainable development.' It then goes on to say that 'policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply.' Five year housing land figures are a minimum and not a maximum and therefore local planning authorities can grant further permissions that add to the choice and range of housing, the issue is whether it is sustainable? This is a housing application and therefore it should be considered in the presumption in favour of sustainable development. It follows therefore that providing the site is sustainable and it is officer advice that it is, that unless the impacts of the development significantly and demonstrably outweigh the benefits that planning permission should be granted.

2.27 The proposal is contrary to saved policies E21 and E21/1 of the UDP and policy S1.7 of the emerging Local Plan; however this does not result in harm. All the granting planning permission would do is provide more choice and range of housing, including much needed affordable housing. It is officer advice that the fact that it is contrary to the UDP policies is not sufficient to sustain a reason for refusal. The plan period expired in 2006 and we are now significantly beyond this, therefore these policies can only be given limited weight. It is also safeguarded in the emerging Local Plan however officers do not consider that there would be harm in allowing it to come forward now. It is safeguarded for development, not safeguarded from development. It is not of a size or scale that would in any way prejudice the ability of the plan to come forward as planned and therefore it is officer advice that it would not be premature.

2.28 Conclusion

2.29 The proposal would be contrary to policies E21 and E21/1 of the Unitary Development Plan. However, we are not significantly beyond the plan period, expired in 2006 and therefore those policies can only be given limited weight. The proposal would also be contrary to policy S1.7 of the emerging North Tyneside Local Plan, which also designates the site as safeguarded land. However, notwithstanding this, the conflict would be clearly outweighed by the significant benefits of the proposal with regard to the provision of market and affordable housing, amongst other benefits. There are no impacts that would significantly and demonstrably outweigh the benefits of the proposal and therefore on balance it is recommended that subject to conditions and a S106 Agreement planning permission should be granted.