

**Planning Committee:** 22 May 2012

**Item Number:** 7

**Application No:** W 10 / 0160

**Town/Parish Council:** Warwick  
**Case Officer:** David Edmonds  
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**Registration Date:** 15/02/10  
**Expiry Date:** 12/04/10

**Cape Road, Lower Cape, Warwick**

Proposed mixed use development for 16 residential properties and 6 employment type units with associated access and parking FOR Mayfair Properties Midlands Ltd

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Planning Committee resolved to grant planning permission for this application on 8th December 2010 subject to a Section 106 Agreement. That Agreement has not been signed by the applicant.

The application is now being reported back to Committee as there has been a material change in circumstances since the resolution which it is considered justifies the change in the recommendation to one of refusal.

The report below is based on that produced for the Committee of the 8th December but highlighting the changes in circumstances and justifying the reasons for refusal.

**SUMMARY OF REPRESENTATIONS**

**Warwick Town Council:** no objection

**Public response:** One letter of objection has been received from a neighbouring company MPS on the grounds that the amended proposed development, incorporating the route of the cycleway joining the development on to Lock Lane will cause an unnecessary danger area at the point where pedestrians and cyclists exit the new developments onto Lock Lane. However, they feel that this can be remedied if the cycleway route is amended slightly.

**British Waterways** - no objection.

**WDC Environmental Health** - object on the following grounds:

- Nuisance to future occupiers from the nearby industry. The proposed site is former industrial land and it is near to existing industry. The construction of housing on this site will bring sensitive receptors closer to the actual sources of current nuisances and other potential sources of nuisance associated with existing activities on the industrial estate. Some of these smell and noise complaints are potentially statutory nuisances and Environmental Health is working with the businesses responsible in an attempt to abate the various nuisances. However it is likely that even after Best Practicable means have been adopted by the businesses causing the nuisance there will still be a significant loss of amenity to existing local residents

- Nuisance from the new development. If the site is used for general employment uses (class B2) rather than light industrial/ offices (class B1) it would contribute to the nuisance suffered by nearby residents
- Potential release of pollutants from contaminated land on the site harming future occupiers of the site and those of the surrounding area. Their records show that the site was only re-mediated to a standard suitable for a commercial end use therefore an updated re-mediation method statement will be required.
- The presence of housing close to the existing industry will constrain the further development of that industry. This is a conflicting land use.

**Warwickshire Police** - no objection

**Inland Waterways** - Comment the soft landscaping provided along the boundary of the canal should be designed to enhance the amenity value of this recreational route. The employment buildings provided should be of a scale so that their mass and height does not overpower the recreational route.

**WCC Ecology** - no objection subject to conditions to protect trees and notes regarding the protection of trees, birds, hedgehogs and watercourses. In particular they seek a buffer zone of at least 8 metres between the site boundary and the Grand Union Canal and its associated Ecosite 30/26 together with an additional 5 metres to the nearest proposed buildings on the site. The no objections are on the proviso that there is no contamination of the watercourse either during or after development.

**WCC Highways** - Comment that the cycleway route and the potential users of the cycleway are protected.

**WCC Countryside Recreation** - General observation - The area immediately adjacent to lock lane should be clear of any obstructions which would reduce visibility northwards to cyclists joining Lock Lane, which is also used by cars and commercial vehicles.

**The Warwick Society** - welcome the provision of open space adjacent to the canal and are keen to ensure that the cycleway and footpath is completed.

**Community Protection Engineering Services** - Concerns have been expressed about the lack of detailed design drawing for their proposals to prove that flood alleviation is possible for this site. The purchase of the Taylor Wimpey land may increase on site possibility to attenuate although there are no details of how this is achievable within the site. However they are satisfied that this can be controlled by planning conditions, assuming that they are valid

**Environment Agency**- The original position was no objections subject to conditions relating to the implementation of the various mitigation measures within the approved Flood Risk Assessment, 2010. However this was based on the proviso that the attenuation tanks on the adjoining site, then owned by Taylor Wimpey, that were envisaged to discharge conditions related to the outline planning permission for the redevelopment of the former Benfords/ Metallic Protectives site had been installed as approved. The EA have been made aware that as a matter of fact they have not been installed as approved and their position has been revised. The EA position now depends on the enforceability of any conditions on land outside both the application site, not

originally within the ownership of the applicant, but having since been acquired by the applicant.

**Housing Strategy** - has no objection subject to a Section 106 Agreement regarding affordable housing. They have supplemented this by commenting that they would be concerned about the provision of on-site affordable housing in a position where there would be unacceptable harm to future occupant's living conditions.

### **RELEVANT POLICIES**

- DP1 - Layout and Design (Warwick District Local Plan 1996 - 2011)
- DP2 - Amenity (Warwick District Local Plan 1996 - 2011)
- UAP1 - Directing New Housing (Warwick District Local Plan 1996 - 2011)
- UAP2 - Directing New Employment Development (Warwick District Local Plan 1996 - 2011)
- DP11 - Drainage (Warwick District Local Plan 1996 - 2011)
- SC2 - Protecting Employment Land and Buildings (Warwick District Local Plan 1996 - 2011)
- DP9 - Pollution Control (Warwick District Local Plan 1996 - 2011)
- National Planning Policy Framework
- Open Space (Supplementary Planning Document - June 2009)
- SC11 - Affordable Housing (Warwick District Local Plan 1996 - 2011)
- SC13 - Open Space and Recreation Improvements (Warwick District Local Plan 1996 - 2011)
- SC2 - Protecting Employment Land and Buildings (Warwick District Local Plan 1996 - 2011)
- SC1 - Securing a Greater Choice of Housing (Warwick District Local Plan 1996 - 2011)

### **PLANNING HISTORY**

- **December 2004:** Outline permission (W/02/1691) for mixed use of primarily residential with some employment use within class B1 and B2 covering the former Benfords and Metallic Protectives sites, either side of Lower Cape. Conditions included, no. 10, relating to the approval and implementation of a flood risk mitigation scheme.
- **March 2006;** Appeal allowed regarding refusal of 'reserved matters' details - siting/ design etc. for 196 dwellings - west of Lower Cape. This started to be implemented, in 2006, by Taylor Wimpey, and is now called Chandley Wharf.
- **2007.** Enforcement investigation - implementation of housing development contrary to conditions on outline permission, including condition 10. The case closed on the basis that the flood mitigation scheme had been approved for a site fronting the canal east of The Cape public house. (the same land that is the subject of proposals associated with the current application, for open space and underground tanks).
- **June 2007:** Dismissal of an appeal regarding non determination of application (W/07/1894) for approval of details pursuant of condition 1 of planning permission W02/1691 for employment development class B1 and B2. The reasons for dismissal related to insufficient information regarding a comprehensive flood risk assessment and mitigation scheme. Only a broad area for flood mitigation measures had been submitted. It was concluded that

the precise form of development cannot be validly secured by a condition at the reserved matters stage.

- **August 2011.** Opening of enforcement investigation (ENF/255/35/100 - non implementation of flood mitigation scheme discussed for the site east of The Cape public house contrary to condition 10 of W/02/1691). This was envisaged to be underground tanks on the line of a culvert on a strip of land between the northern boundary of the site and the Grand Union Canal.

### **KEY ISSUES**

Planning Committee resolved to grant planning permission for the proposed development, subject to a Section 106 Agreement, in December 2010. The Section 106 Agreement has not been signed by the applicant. Since December 2010, there has been a material changes in circumstances as follows:

- Taking account of new evidence of concerns raised by owners/managers of employment uses on the existing employment land to the south-east of the site, Environmental Health has reviewed their stance towards the development. Their representations are now to the effect that residential development on the site would be incompatible with existing employment uses and vice versa.
- More recent research undertaken by Environmental Health has also revealed that, it is likely, this part of the overall site has been remediated to the lower standard of remediation commensurate with employment use, rather than the higher standard appropriate for residential use. There is insufficient information with the application to assess whether the site can be remediated to the higher residential standard that would be required.
- The applicant now argues that the mixed use development is no longer viable and has been informally discussing an alternative development involving a different flood risk attenuation scheme, a lagoon, which is said to be more cost effective but is less space efficient.

### **The Site and its Location**

The application site which was cleared a number of years ago, lies to the rear (east) of the original terraced houses on Lower Cape, the rear gardens of which would form the western boundary, There is existing industrial development fronting onto Millers Road and Lock Lane forming the south east boundary which includes Aluminium Services Co (Warwick) Ltd, Sita recycling and various small units many of which are occupied by repairs, sprayers and motor related uses. There also an employment site fronting the Grand Union Canal forming broadly half of the northern boundary - MPS builders yard. The rest of the strip between the northern boundary and the canal is vacant but is the subject of potential off site works described below.

### **Details of the Development**

This is an outline application for a mixed use development of 16 residential properties and 6 employment type units with associated access and parking. The application does not explicitly state that the flood mitigation works are part of the development, but the indicative plan has the annotation 'Open space (u/g flood mitigation tanks)' for a strip of land outside the application site boundary.

Since the application was submitted the applicant has purchased this strip of land.

## **ASSESSMENT**

### Issue 1: Loss of employment land and viability of an employment use

This site was meant to be a key employment component of the redevelopment of a former employment site for a mixed use of predominantly residential (developed by Taylor Wimpey) with a smaller employment use.

Policy SC2 seeks to protect existing and committed employment land and buildings. The criteria whereby permission could potentially be granted for the loss of employment land relate to circumstances where:

- the site is not economically viable for an employment use; or
- the site is unsuitable for employment due to adverse impacts on adjoining residential areas; or
- the proposal is for affordable housing; or
- the proposal is for a non-housing use and would not impact upon the level or quality of the employment land supply.

It is stated by the applicant that hydraulic modelling has been carried out on the neighbouring watercourse which has shown that a large part of the site could be at risk of flooding during a major flood event. Therefore before any development at this site can be commenced, flood mitigation works need to be carried out. The applicant maintains that the scale of these works required to mitigate the flood risk are economically onerous and that the site cannot be successfully developed for employment purposes only.

The applicant has submitted independent financial information to demonstrate that the development of the site for employment use would not be viable but that the scheme could be made to work with a large proportion of the site in a residential use. The figures presented below do not include the land purchase price. The values have been checked by the Council's Estates Manager.

#### Summary of Financial Viability

	Approved Scheme: Employment	Proposed Scheme: Housing & Employment
Build Costs	£755,000	£1,717,000
Flood Mitigation Works	£563,000	£563,000
Total Costs	£1,318,000	£2,280,000
Sales Value	£498,064	£2,776,892

It was concluded at the time of preparing the original report in December 2010, that the financial information shows that, even without the cost of the mitigation works, the employment development option would not be viable at 2010 values. The appraisers have indicated that, if the purchase price of the land is added to the costs of the mixed use option, even that would only be marginally viable. In these circumstances, it is concluded that the proposed development complies with Policy SC2 in terms of loss of employment land within the application site.

## Issue 2: Principle of a mixed use development involving residential and the compatibility with surrounding land uses

There have been a significant increase in complaints to Environmental Health from existing residential properties including the new ones to the west of Lower Cape regarding noises and smells from the various employment users. Environmental Health consider that generally these employment users are not breaching the legislation that they enforce and are using their best endeavours to minimise problems. This calls into question the principle of having residential development so close to surrounding employment uses. Environmental Health now object to the development in principle for the reasons set out in representations section above.

It is clear from their reasoning that there is likely to be significant harm to future residential occupants. The indicative layout of the proposed housing indicates that many units are likely, not just to be in the vicinity of, but actually to abut existing unrestricted employment sites. They would also abut the employment uses proposed for the site

It is considered that these problems cannot be adequately mitigated by planning conditions or other legislation. For example high standards of insulation and additional glazing to windows and/or wholly mechanical ventilation is unrealistic in dwellings. This is because it is considered that the ability to open a window for rapid ventilation of stale air and release of excessive heat is inherent in the quality of the living conditions of future occupants. Moreover, since the property would be designed with a garden its use particularly in the summer months would be unacceptably affected by noise. In light of this new evidence, it is concluded that the proposed development would be contrary to policy DP2 of the Local Plan in that it would not provide acceptable standards of amenity for future occupiers of the development.

It is also considered that the proposed development would have an unacceptable impact on the operations of the existing adjoining employment uses as a result of having substantially more noise and odour sensitive residential properties in close proximity, potentially resulting in the loss of employment land contrary to policy SC2 of the Local Plan.

## Issue 3: Affordable Housing and Open Space Contributions

The applicant is willing to provide 40% affordable housing and the quantum of off site contributions towards open space in accordance with policies SC11 and SC13 of the Local Plan.

## Issue 4: Flood risk and decontamination

It is considered that the Inspectors reasons for dismissing the appeal against refusal of the previous reserved matters application should be the starting point for assessing this issue. The Inspector said in paragraph 9 "*This is not the case where the precise form of development could have been the subject of a suitably worded condition at the outline application stage.*" It is considered that this application raises similar issues of whether there is sufficient information. Whilst in that case the issue was the absence of a Flood Risk Assessment (FRA), and this has been addressed by the FRA submitted with this application, the method of attenuation has been the focus of discussion over many years, but with still no prospect of an acceptable method being implemented. The attenuation tanks

that were originally envisaged as associated off site development to make the site developable have not been installed, and moreover, it is unclear whether this can be secured by condition given it is significant works off site. The applicant has also now suggested alternative proposals, namely a lagoon, however this raises concerns in terms of the ability to adequately accommodate the proposed development and the flood mitigation works, the compatibility with surrounding land uses, and how the lagoon will be addressed in terms of the contaminated land issue. In this context, there are clear concerns about allowing development to proceed with this matter being dealt with by condition and the flood risks not being adequately addressed at this stage.

No details of decontamination methods have been submitted with the application, and in light of the uncertainty as to the extent of remediation on this site now raised by Environmental Health, there is doubt as to whether the development could be accommodated in the form indicated. In the absence of further information, it is not accepted that this matter could also be adequately dealt with by condition.

It is concluded that this lack of information on flood risk mitigation conflicts with national guidance set out in the National Planning Policy Framework. It is considered that a mixed use with a large residential component is an inappropriate development in terms of the sequential test set out paragraph 100, and as such needs to be informed by a site specific flood risk assessment in accordance with paragraph 103. It is considered that inherent to being 'informed' is the need for detailed information of flood risk mitigation to judge whether the flood risks can be made acceptable.

## **RECOMMENDATION**

REFUSE, for the following reasons:

## **REFUSAL REASONS**

- 1 The Warwick District Local Plan (WDLP) Policy SC2 seeks to protect existing and committed employment land and buildings.

In the opinion of the Local Planning Authority, it is considered that there would be the potential loss of existing employment uses as a result of having substantially more noise and odour sensitive residential properties in close proximity of existing employment uses. Therefore the proposed development would be contrary to the aforementioned policy.

- 2 The Warwick District Local Plan (WDLP), policy DP2, states that development will not be permitted which does not provide acceptable standards of amenity for future users/occupants.

It is considered that the site is not suitable for residential uses which are inherently noise and odour sensitive in close proximity to an existing noisy and potentially odorous employment site. It is considered that these problems cannot be adequately mitigated by planning conditions requiring noise insulation and enhanced glazing because the need to open windows and use gardens is integral to the living conditions of the future the occupants of dwellings. It would thereby conflict with the aforementioned policy.

- 3 It is considered that the lack of information on flood risk mitigation conflicts with national guidance set out in the National Planning Policy Framework. It is considered that a mixed use, with a large residential component, is an inappropriate development in terms of the sequential test set out in paragraph 100. As such, the development of it needs to be informed by a site specific flood risk assessment in accordance with paragraph 103. It is considered that inherent to being 'informed' is the need for detailed information of flood risk mitigation to judge whether the flood risks can be made acceptable. In this context it is considered that it is likely that there is insufficient space for the proposed residential and employment development together with a flood risk mitigation scheme on the site. Therefore, it is not considered that the precise form of development can be the subject of suitable worded condition.
  
- 4 Warwick District Local Plan Policy DP9 requires that where there is evidence of existing land contamination it will be necessary to ensure that it is made fit for the intended purpose

It is considered that there is insufficient evidence to demonstrate that the land is or is reasonably capable of being made fit for the intended purposes which includes a large component of residential use.

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