

Appeal Decision

Site visit made on 1 November 2016

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 15th December 2016

Appeal Ref: APP/V2723/W/16/3153361

Land east of King William IV Public House, Barton, Richmondshire, DL10 6LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mandale Homes North Limited against the decision of Richmondshire District Council.
 - The application Ref 16/00148/FULL, dated 29 February 2016, was refused by notice dated 2 June 2016.
 - The development proposed is a residential development of 10 dwellings.
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Decision

1. The appeal is dismissed.

Costs Application

2. An application for costs was made by Mandale Homes North Limited against Richmondshire District Council. This application is the subject of a separate Decision.

Main Issue

3. Whether the proposal would provide acceptable living conditions for future occupiers with regard to odour and noise and disturbance associated with adjacent Rose Villa Farm.

Reasons

4. The appeal site is a field to the east of the King William IV pub and there is open agricultural land further to the east. To the south, the site is immediately adjacent to Rose Villa Farm a substantial dairy farm. There are a range of agricultural buildings on the northern boundary of Rose Villa Farm with other farm buildings beyond to the south.
 5. The proposed dwellings on the south side of the site would be close to the boundary with adjoining Rose Villa Farm. Around 150 cattle are housed all year round on a straw based system in a large open sided agricultural building on the northern boundary of the farm. Directly to the east of this is another building which houses around 100 calves. Beyond is an open silage store/clamp which is used daily to feed the cattle, and there is a large open slurry tank further to the east.
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6. The appellant submitted an Odour Report Survey (January 2016) with the planning application which identified very strong and unpleasant odours originating from Rose Villa Farm within the appeal site. This was subsequently revised with further survey work to determine whether the initial results were a consequence of a one-off event or periodic activity at the farm. The revised report (April 2016) found no farmyard odours within the appeal site, but detected persistent odours off Wells Lane and Wells Green.
7. The odours detected in the original report consisted of farmyard smells, urine/ammonia and sawdust. The urine smells were thought to originate from the uncovered slurry tank. I accept that the survey could have coincided with the periodic movement of slurry at Rose Villa Farm and could therefore be a worse case scenario. However, since the farming activity during the survey period is unknown, that this was not the case cannot be ruled out.
8. There is general agreement between the parties that periodic activities (such as slurry movement, cattle movements and shed cleaning) may well give rise to stronger odours than at other times. The owners of Rose Villa Farm confirm that contractors clean out the barns once a month and empty/clean the slurry tank 3-4 times a year. However, other activities at the farm are much more frequent and regular. Milking takes place twice a day (over a number of hours) and involves the constant movement of cattle back and forth to the sheds. The cows are fed and bedded down every day over a period of around three hours. This involves the use of silage from the adjacent open store along with the moving around of hay and necessitates the use of machinery. Machinery is also used to scrape out the hard standing twice a day. These regular and frequent daily activities all have the potential to generate significant odour.
9. The owners of Rose Villa Farm confirm that whilst the whisking of the slurry generates a significant odour, the main contributing factor to odours generated by the farm arises from the silage stored in the open clamps (including the effluent) and the open agricultural buildings in which the cows are housed. This accords with my own observations when I visited the farm as part of my site visit.
10. Weather conditions, and in particular wind direction, also contribute to the effects of odour from the farm. At the time of the second survey the wind was blowing from the north east across the site towards the farm and overall the odours detected on the appeal site were less strong and unpleasant. At the time of the original report the wind was blowing from the south west across the farm towards the appeal site. Although I appreciate that changes will occur, I am conscious that prevailing winds in Britain are from the south west and that these would blow odours from the farm directly towards the appeal site which is only a short distance away.
11. The Council refers to a history of odour complaints relating to the farm from existing residential properties in the village. These have been over the course of several years, and include a relatively recent complaint from a property to the north of the farm. The owners of Rose Villa Farm also refer to complaints from the landlord of the adjacent pub. Although no statutory nuisance has been proven, this context supports the Council's view that odour issues associated with Rose Villa Farm are frequent and persistent.

12. I have had regard to the unimplemented planning permission for an anaerobic digester at Rose Villa Farm which the Council accepts would be likely to result in some odour reduction from the slurry tank. However, there is no guarantee that it will necessarily be built and its provision is not within the appellant's control. In any event, it would not address odour from the other farmyard activities described.
13. Overall, even taking into account the likelihood of fluctuations in wind direction and activity levels on the farm, given the close relationship between it and the appeal site, in my view the effects on the occupiers of the proposed houses would be significant.
14. A Noise Assessment was also submitted with the application. Day time, evening and night time measurements were taken over two days at two locations within the appeal site. It assesses the ambient noise levels at the site against the guideline noise levels (BS8233:014) and finds that these are achievable with double glazing, alternative means of ventilation, and an acoustic fence on the boundaries of the site. The Council's Environmental Health Officer (EHO) confirms that satisfactory internal and external noise levels could be achievable on this basis.
15. Nevertheless, despite this general initial statement, the EHO remains concerned about the potential for sleep disturbance for the occupiers of the houses closest to Rose Villa Farm. Additionally, the owners of Rose Villa Farm consider that the assessment fails to consider the full extent and impact of the operation of the farm.
16. Monitoring in location 1 adjacent to the farm took place in contiguous 15 minute sample periods between around 13.30 hours and on the first day, up until around 06.00 hours on the second. The appellant confirms that the monitoring included the noise of cattle and incorporated a period of milking. The owners of the farm indicate that milking takes place twice a day. The start of the milking of the first group of cows at 04.00 hours and the second at 14.00 hours fall within the survey period. As such I see no reason why noise from milking was not captured in the assessment.
17. That said, in outlining the daily activities at the farm, the owners also advise that the milking at 04.00 hours lasts for around 4.5 hours and requires an extra worker on site from 06.00 hours. Feeding and bedding down takes place at around 10.00 hours and lasts for about 3 hours and the hardstanding is scraped twice a day. The survey period for location 1 does not necessarily cover these elements, some of which involve the use of machinery. On this basis, I share the concern of the owners of Rose Villa Farm that these activities have not been captured in the readings.
18. I am also aware of their view that the survey took place at a quiet time for the farm. The farm owners indicate that activities at the farm can be noisier some days than others, such as during harvesting, when the slurry tank is being emptied, when the cattle sheds are cleaned, and during calving (which happens all year round). It is not clear whether the survey took place when any of these more periodic activities were taking place or not.
19. Moreover, the recorded noise levels were taken over a relatively limited period of 16 hours and have been averaged over considerable periods of time (8 hours). This being so, they have the potential to mask a greater noise impact

at certain times, including spikes in noise early in the morning and during the night. I agree with the EHO that these long term averages do not necessarily assess the impact of noise from non-continuous sources or reflect the actual disturbance which the occupiers of the proposed houses near to the farm would experience.

20. A 1.8 metre high acoustic fence would be provided on the south and south west boundaries of the site. The appellant's noise consultant considers that this (along with proposed planting) would offer an acceptable reduction in noise levels that would mitigate against noise associated with the cattle. However, I have seen no evidence to demonstrate that the fence would be sufficient to screen the cattle sheds from the upper floor bedroom windows of the proposed houses on the south side of the appeal site. I am also conscious that the reductions in noise anticipated are assessed against the average levels discussed above.
21. The purpose of the noise assessment is to determine the effect of the expected change in the acoustic environment that would arise from the proposed development. In this instance, I consider that the means of collecting, analysing and extrapolating the noise data has not adequately identified and addressed all sources of noise and disturbance from the farm. This being so, and given the close and direct relationship between the Rose Villa Farm and the appeal site along with the nature of the operations and type of buildings on the farm, I cannot be satisfied that adequate living conditions would be provided for the future occupiers of the houses in terms of noise and disturbance.
22. In this context, whilst the Council has asked for noise information which may well go above and beyond that which would normally be expected to support a planning application, I do not regard these requests to have been unreasonable. I also note the appellant's suggestion that a further noise survey could be made a condition of any planning permission, however on the basis of the information before me, I cannot be content that the scheme is capable of being made acceptable in this regard.
23. Bringing matters together, I accept that farmyard odours and noises are consistent with the rural setting of Barton. There are existing residential properties nearby and I am aware of the appellant's views that potential occupiers would be aware of the rural location and adjacent farm, and that local residents should be accustomed to farmyard smells and noises. Be that as it may, for the reasons given, to my mind the odours and noise likely to be experienced by future occupiers of the appeal site would exceed what would reasonably expected, even in a rural location. In any event, that is not a reason to allow development that would fail to provide adequate living conditions.
24. I have some sympathy with the view that the introduction of housing to the appeal site could impact on the operation of the business at Rose Villa Farm including its future expansion. Both the National Planning Policy Framework (the Framework) and the Richmondshire Local Plan Core Strategy (Local Plan) support the retention and expansion of rural businesses. In relation to noise, paragraph 123 of the Framework indicates 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.

25. I therefore conclude that the proposal would fail to provide acceptable living conditions for future occupiers with regard to odour and noise and disturbance associated with adjacent Rose Villa Farm. This would be contrary to Local Plan Policy CP3 which promotes health and amenity as requirements of sustainable development. It would also be at odds with the core planning principle of the Framework to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other matters

26. The appellant refers to the presumption in favour of sustainable development. I have seen nothing to demonstrate that the Local Plan is absent, silent or that relevant policies are out of date, and I consider Local Plan Policy CP3 to be in general compliance with the Framework. Since I have found the proposal to be contrary to the development plan, paragraph 14 of the Framework does not apply. Nevertheless, I have considered the scheme against the three strands of sustainable development. In terms of the economic dimension, as well as the role of the construction phase the future occupiers of the houses would spend money in the locality. However, these benefits would be tempered by both the relatively limited scale of the scheme and its potential negative effect on the operation of the rural enterprise at Rose Villa Farm.
27. With regard to the social dimension, the site is identified in the Council's Strategic Housing Land Availability Assessment and the proposal would provide family dwellings, including three affordable units, to support the Council's housing delivery. These are benefits of the scheme. A contribution to open space improvements would be provided and the proposal would bring more people to the village to use its accessible local services and facilities and would support the vibrancy of the community.
28. That said, since it would fail to provide adequate living conditions for future occupiers, the proposal would not meet the needs of the present or future generations, or create a high quality built environment. Nor would it support the health and well being of the community. As such it would not meet the social role of sustainable development.
29. In respect of the environmental dimension, the appeal site is adjacent to the settlement and in walking distance of its services and facilities and so future occupiers would not be reliant on the private car. This would support the move to a low carbon economy. Whilst the future occupiers of the houses would benefit from a countryside setting which draws people to the area, I am mindful that this could be equally achieved by the development of an alternative site where adequate living conditions could be provided.
30. The Council raises no objections to the proposal in relation to the principle of the development, character and appearance (including landscape and heritage asset impacts), the design of the houses, the living conditions of nearby residents, access and highway safety or flood risk. The site is not in any particular designated or protected area including the Green Belt. The absence of harm in these regards counts neither for, nor against the proposal. Overall, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, and I do not regard the proposal to be sustainable development.

31. The appellant has submitted a planning obligation to provide affordable housing and an open space contribution. Since I am dismissing the appeal on its substantive merits, it is not necessary for me to consider this in the light of the tests set out at paragraph 204 of the Framework.

Conclusion

32. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR