

Appeal Decision

Site visit made on 16 January 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 02 February 2017

Appeal Ref: APP/P0119/W/16/3160314

Land at Station Road, Little Stoke, South Gloucestershire BS34 6HW

- 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 Estrans Developments (Little Stoke) Ltd against the decision of South Gloucestershire Council.
 - The application Ref PT15/4049/O, dated 16 September 2015, was refused by notice dated 27 June 2016.
 - The development proposed is erection of 6 no flats and 18 no three storey dwellings (Outline) with access, appearance, layout and scale to be determined. All other matters reserved.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application is in outline with access, appearance, layout and scale to be determined at this stage. I have dealt with the appeal on that basis.
3. The description of development given on the application form describes the proposal as being for the erection of 24 flats. This differs significantly from that on the appeal form and the Council's decision notice. Having had regard to the appeal documents, I am satisfied that the correct description is the one in the above heading and it is on this basis that I have determined the appeal.
4. Two of the Council's reasons for refusal were based on the absence of planning obligations in respect of the provision of affordable housing and off-site open space. However, the Council has stated that the only outstanding matter in relation to this is that the submitted Section 106 Agreement was not signed. As an executed planning obligation covering both matters has now been provided, I am satisfied on the basis of the Council's representations that this addresses its concerns and I have had regard to the Section 106 Agreement in my decision.

Main Issues

5. The main issues in this appeal are (i) the effect of the proposal on the living conditions of future occupiers with regard to noise, vibration and private amenity space; (ii) the effects on Rolls Royce with regard to the future development of its business, and (iii) whether the proposal makes adequate provision for affordable housing and open space having regard to the relevant tests in statutory legislation and national policy.
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Reasons

Living conditions

6. The appeal site is of a rectilinear form and sits between Station Road to the east and the railway line that borders its western edge. Patchway station is located immediately to the south. The extensive Rolls Royce factory site is located on the other side of the railway line and there are industrial premises to the north. There is also a large area of playing fields to the east of Station Road.
7. Although there is a substantial residential area a short distance to the south east, the vegetation along the western edge of the playing fields, serves to maintain physical and visual separation between this area and the site. The site is currently occupied by a number of businesses, some of which would be retained and because of the proximity of the Rolls Royce site and the other nearby industrial land uses its surroundings are therefore greatly influenced by the character of industrial development, including potential noise sources.
8. Saved Policy EP4 of the South Gloucestershire Local Plan (2006) (the LP) seeks to prevent noise sensitive development from being located where it would be subject to disturbance arising from noise and vibration generated by nearby uses. Policy CS1 of the South Gloucestershire Local Plan Core Strategy (2013) (the CS) sets out a requirement for development to achieve the highest possible standards of design and site planning.
9. One of the Government's core planning principles is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupiers of land and buildings.
10. Paragraph 120 of the National Planning Policy Framework (the Framework) states that, to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. Framework Paragraph 123 says, amongst other things, that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. CS Policy CS1 and saved LP Policy EP4, therefore closely align with national policy.
11. The proposed development would be sited in very close proximity to the railway line, which is a main line with trains running regularly throughout the day and night. During my site visit I observed a number of passing trains, vehicle movement in and out of the station car park and the general activity associated with the nearby industrial developments. It was evident that the totality of these factors generates a significant amount of noise and the perception is of a very busy industrial area.
12. However, I note that although it is yet to take place, the railway line is to be electrified, which would reduce the current noise levels of some, but not all, passing trains. The Council has put to me that the electrification programme is running behind schedule and could be up to 4 years late. However, this claim is not backed up by any empirical evidence so there is no clear indication that train noise will endure at the current levels into the near future. Nevertheless, passing trains are only one contributory factor to the overall sense that the area has a strong industrial character.

13. The appellant has submitted extensive technical information related to noise and vibration both at application¹ and appeal² stage. This concludes that with the use of suitable construction techniques such as façade sound insulation, acoustic fencing and anti-vibration foundations, the current levels of noise from the surrounding land uses would be acceptable and meet the relevant British Standards. However, from within the proposed dwellings and their gardens, future occupiers would still experience the omnipresence of passing trains and the general activity of the surrounding industrial land uses. The perception of future occupiers that they would be living within a predominantly industrial area would therefore remain and I do not consider that this would be compatible with securing their acceptable living conditions. Furthermore, the need to provide mechanical ventilation as opposed to opening windows would add to the sense of such incompatibility by being overly restrictive to the normal way in which people live.
14. Notwithstanding the above, there is nothing before me to indicate that the dwelling's rear gardens would not suffer from vibration from passing trains, particularly given that the highest vibration levels are experienced on the western side of the appeal site.
15. Moreover, the proposed rear gardens would be of very modest size although some would be slightly larger than others. Given that the proposed semi-detached dwellings would provide family accommodation, the rear gardens should provide adequate space for sitting out, drying washing and secure areas for children's play.
16. Further, the appellant's evidence sets out a requirement for acoustic fencing along rear garden boundaries that would be about 2.6 m high. Taking this into account with the height of the proposed dwellings, the rear gardens would feel very hemmed in. Whilst I agree with the appellant that some occupiers may wish to purchase a property with a small garden, this does not mean that gardens should not provide a usable and comfortable space. Although I recognise that occupiers of the proposed flats would be likely to place less emphasis on the use of private outdoor space, overall the proposal would be unacceptable.
17. Although the actual amount of noise and vibration ingress into the dwellings would meet the relevant standards, for the reasons given above, future occupiers would still experience unacceptable living conditions. Accordingly, the proposal would conflict with saved LP Policy EP4, CS Policy CS1 and with paragraph 120 of the Framework.

Rolls Royce

18. The Rolls Royce site is located on the other side of the railway line and is therefore in close proximity to the appeal site. It is also relatively close to the existing areas of residential development.
19. Framework paragraph 123 says that there should be recognition that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable

¹ Noise and Vibration Assessment Acoustics Report M1411/R02 dated 14 July 2015 and Acoustic Note N06a dated 19 May 2016 by Matrix Acoustic Design Consultants

² Comment on Planning Refusal Reasons 1 & 2 (Ref: PT15/4049/) Acoustics Report M1411/R03 dated 27 September 2016 by Matrix Acoustic Consultants

restrictions put on them because of changes in nearby land uses since they were established.

20. The evidence indicates a difference of 2dB between the engine test noise reaching the current nearest dwellings and those that would be built on the appeal site. Such a difference would be imperceptible and the existing conditions relating to the Rolls Royce site restrict any increase in generated noise. Moreover, the existing dwellings do not benefit from the same level of proposed sound insulation as proposed in the appeal scheme. Accordingly, it is logical to conclude that noise ingress from the Rolls Royce site into the proposed dwellings would be less than that experienced by the occupiers in the existing residential areas.
21. Moreover, there is no empirical evidence to indicate that the noise generated from the use of the test beds within the site cannot be successfully mitigated by the proposed measures outlined in the appellant's evidence such as through the use of façade sound insulation and acoustic fencing to the rear gardens. Notwithstanding this, there is nothing before me to suggest that the noise from the test beds would be harmful to the proposed dwellings' occupiers.
22. Given the available evidence on this specific main issue, the proposal would not constrain the ability of Rolls Royce to develop its business and the proposal would therefore accord with paragraph 123 of the Framework.

Planning obligations

23. CS Policy CS18 requires new development to achieve 35% on-site affordable housing. The threshold for this provision in urban areas is 10 dwellings or 0.33 hectares. The Policy also provides for off-site contributions in exceptional circumstances and where robustly justified. The appellant has accepted the requirement and proposes that it would be met on site. In the absence of anything to the contrary and given the estimated average annual need for 903 new affordable housing units up to 2021, I have no reason to doubt the need for affordable housing in South Gloucestershire. The requirement therefore meets the tests in paragraph 204 of the Framework. Thus, it accords with the requirements of CS Policy CS18 and I am satisfied that the submitted executed planning obligation would make adequate provision for affordable housing.
24. However, whilst the proposal would provide for meeting some affordable housing need, its contribution would not be so significant to outweigh the clear identified harm to the living conditions of future occupiers.
25. The Council has also set out a requirement for a financial contribution towards the provision, enhancement and maintenance of off-site public open space of £123, 509.22. The adopted Community Infrastructure Levy (CIL) and Section 106 Planning Obligations Guide Supplementary Planning Document (2015) (SPD), advises that this type of infrastructure is not included in the Council's CIL charging list. Accordingly, the contribution is sought under the provisions of a section 106 planning obligation. Nevertheless, as I am dismissing the appeal for other substantive reasons, I do not consider this particular matter further.

Other matter

Housing land supply (HLS)

26. Framework paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development. It goes on to say that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Council accepts that it cannot currently demonstrate a 5 year HLS.
27. I therefore turn to the presumption in favour of sustainable development set out in Framework paragraph 14. It says that, for decision taking this means where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole; or specific Framework policies indicate development should be restricted.
28. Paragraph 120 of the Framework is clear that the effects of pollution on health, the natural environment or general amenity and the potential sensitivity of the area or proposed development to adverse effects from pollution should be taken into account. To my mind, this does not place an absolute barrier in the way of the proposal such that it constitutes a specific restrictive policy for the purposes of Framework paragraph 14. However, I have already found that the proposal would run counter to the development plan and other relevant Framework policies. The totality of the identified harm to the living conditions of future occupiers is sufficient to weigh heavily against the scheme even in the absence of a 5 year HLS.
29. I have also considered the actual level of the HLS shortfall in the overall planning balance. The available evidence states that the Council can demonstrate a 4.64 years HLS, which is not significantly below the 5 year threshold, although I acknowledge that the calculation includes windfall sites. Therefore, any support that the absence of a 5 year HLS may otherwise lend to the proposal is tempered by the modest degree of the shortfall.
30. I have also taken into account that the proposal would provide 24 new homes close to regularly available public transport. However, in my view, none of this gives credence to a development that would result in its occupiers suffering unacceptable living conditions.

Conclusion

31. For the above reasons and having had regard to all other matters raised, including those by interested parties, the appeal does not succeed.

Hayden Baugh-Jones

Inspector