The Planning Inspectorate

Appeal Decision

Hearing held on 2 February 2017

Site visits made on 1 and 2 February 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 14 March 2017

Appeal Ref: APP/Y2736/W/16/3158779
Land off High Street, Sherburn, North Yorkshire YO17 8QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Gladman Developments Limited against the decision of Ryedale District Council.
- The application Ref 16/00081/73AM, dated 18 January 2016, was approved on 21 March 2016 and planning permission was granted subject to conditions.
- The development permitted is *'Variation of Conditions 03, 21 and 31 and Removal of Conditions 06, 07, 08 and 23 of approval 14/01207/MOUT, dated 03.11.2015.'*
- The condition in dispute is No 03 which states that: *'The Reserved Matters application(s) relating to the siting, scale and appearance of the dwellings hereby permitted shall include a detailed scheme for the mitigation of noise that shall be approved in writing to the Local Planning Authority prior to commencement of the development hereby approved. The scheme of mitigation shall protect the proposed development from traffic noise from the adjoining roads and from industrial noise for the nearby allocated employment site to the north. The scheme of mitigation shall include the following: 1) In relation to steady, continuous noise, the scheme shall be designed to achieve the following noise levels: i) Living rooms – 35dBLAeq (0700–2300); ii) Bedrooms – 30dBLAeq 2300-0700, and 45dBLAmax 2300-0700. (This shall be predicted for at least partially open windows allowing for a sound reduction of 15dBA free field unless the developer has a good reason why a higher reduction is acceptable); iii) Private gardens areas – 50dBLAeq 0700-2300. 2) In relation to industrial noise the scheme shall demonstrate through measurement and modelling that industrial noise has been suitably mitigated. The scheme shall specify construction details for measures designed to protect the whole development. This shall include details of perimeter bunding, acoustic fencing and walls. The scheme shall identify those individual properties that require noise mitigation measures (window specifications and ventilation) to the fabric of the buildings to achieve the required internal noise levels and those individual properties that require the provision of acoustic fencing or walls on one or more of the boundaries to create the appropriate external noise environment for the amenity areas. No residential property shall be occupied until the acoustic mitigation measures for the perimeter of the site to mitigate traffic and industrial noise to protect the whole development, as identified in the approved scheme, have been implemented.'*
- The reason given for the condition is: *'This condition is required to ensure the proposed dwellings have a satisfactory level of residential amenity, and to satisfy the requirements of Policy SP20 of the Local Plan Strategy.'*

Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. Different versions of the site address are entered in the application form, appeal forms and other documents. Following discussion and agreement with the parties at the Hearing, I have used the address given in the planning application form.

3. An agreed, signed and dated Deed of Variation relating to the s106 planning agreement was submitted at the Hearing which would enable any relevant matters resulting from this appeal, were it to be allowed, to be incorporated.

4. This appeal results from the decision of Ryedale District Council to grant outline planning permission for a proposal, application Ref: 14/01207/MOUT, dated 3 November 2015 and relates to the subsequent application to vary or remove attached conditions to the approved proposal, including Condition 03, which relates to noise levels and mitigation. Whilst the Council granted permission to remove Conditions 06, 07, 08 and 23 sought under application Ref: 16/00081/73AM, the variations to Conditions 03, 21 and 23 were not granted. These conditions remain as imposed in relation to the approved outline application Ref: 14/01207/MOUT. An appeal was lodged against that part of the decision which relates specifically to Condition 03. The appeal therefore seeks to remove the reference to open windows in Section 1 ii) and to vary the noise level from 50dBLAeq to 55dBLAeq in garden areas in Section 1 iii) of Condition 03, as imposed. It is against this background that I have determined the appeal.

Main Issues

5. The main issues are:

   - whether Policy SP20 of the Ryedale Local Plan Strategy (LPS) is consistent with the National Planning Policy Framework (the Framework) and guidance;
   - whether the relevant parts of Condition 03, as imposed, are necessary, appropriate and reasonable and consistent with guidance; and
   - the effect of the proposed variation to Condition 03 on the living conditions of future occupiers, with particular regard to noise and disturbance.

Reasons

6. The appeal site is in a predominantly rural setting and comprises a large field situated to the south of the A64 and is on the south east edge of Sherburn. At the time of my visits, the site was in use for grazing and agriculture. To the north of the site, and on the northern side of the A64, is a significant area of industrial development. The site is located at the foot of the Yorkshire Wolds northern escarpment and has open countryside to the south and east.

Policy SP20: consistency with national policy and guidance

7. Policy SP20 of the LPS states that new development will not have a material adverse impact on the amenity of present or future occupants, including with regard to noise. It goes on to state that developers will be expected to apply

the highest standards outlined in the World Health Organisation (WHO)[1], British Standards (BS)[2] and wider international and national standards relating to noise.

8. The appellant states that Policy SP20 is not consistent with, and goes beyond the requirements of, the National Planning Policy Framework (the Framework) and relevant guidance. As a result, it is argued that Policy SP20 is too onerous in its requirements and is not supported by national policy and guidance and should be given only limited weight, in accordance with Paragraph 215 of the Framework.

9. Paragraph 215 relates to the implementation of the Framework at the time of its introduction and applies specifically where existing plans and strategies were not in conformity with it. The LPS was examined and adopted after the introduction of the Framework. Therefore, as an adopted development plan document, I find that the LPS, and therefore Policy SP20, to be in conformity with the Framework and that Paragraph 215 is not applicable in this case. As such, Policy SP20 should be afforded significant weight in the determination of this appeal.

10. With regard to consistency with guidance, Policy SP20 seeks to ensure that the living conditions of any occupiers are not adversely affected by development. The WHO guidelines state that noise impacts should not be at a level which would cause serious or moderate annoyance to occupiers. In this regard, the policy requirement to meet the highest standards of the relevant noise guidance, such as those set by the WHO and BS, demonstrates a reasonable and necessary approach to effectively mitigate adverse noise and disturbance impacts on future occupiers so as not to cause serious or moderate annoyance.

11. Accordingly, for the above reasons, I conclude that Policy SP20 is consistent with the Framework and that the requirement to meet the highest standards of noise guidance is consistent with the aims of that guidance.

Condition 03) 1) ii) Bedrooms

12. The appellant states that whilst the requirement for a noise level of 30dB within a bedroom is reasonable and reflects guidance, it is argued that the noise level requirement should be met with windows open is not supported by guidance.

13. Paragraph 2.22 of the Noise Policy Statement for England 2010 (NPSE) states that development should avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise. Furthermore, the Planning Practice Guidance (PPG) on Noise refers to levels of noise exposure above the significant observed adverse effect level where windows have to be kept closed most of the time due to outside noise. The appellant draws out the point that if the noise exposure is above this level then the planning process should seek to avoid this effect from happening through appropriate mitigation. The appellant identifies that such mitigation includes the optimisation of sound insulation provided by buildings, including the ability to close windows while maintaining adequate alternative ventilation.

[1] World Health Organisation 'Guidelines for Community Noise' 1999
[2] British Standard 8233:2014: 'Guidance on sound insulation and noise reduction for buildings' and British Standard 4142:2014: 'Methods for rating and assessing industrial and commercial sound'.

14. However, the PPG also states that mitigation includes optimising the distance between the noise source and the noise sensitive receptors and incorporating good design to minimise noise transmission through the use of screening by natural or purpose-built barriers or other buildings. Effective mitigation can also be achieved through the layout and positioning of buildings, landscaping and the use of planning conditions specifying permissible noise levels and differentiating between these at different times of the day and night.

15. I note the reference in the WHO guidelines relating to noise levels not exceeding 45dBLAeq and 60dBLAmax, so that people may sleep with windows open. The appellant argues that this does not suggest that people should be able to sleep with windows open, only that external noise levels would be an important consideration if they do. Despite this, I note that in Chapter 3.4 of the WHO guidelines which considers sleep disturbance, it states that it should be possible to sleep with a bedroom window slightly open, with a reduction in noise level from outside to inside of 15dB.

16. Due to the proximity of the appeal site to the A64, traffic noise would not be heard by occupiers as a continuous noise but rather as shorter, louder events as vehicles pass along the road. Given the likely frequency of such events throughout the night, this would be liable to cause significant disturbance for future occupiers. In these circumstances, the WHO recommends lower guideline noise levels. Furthermore, the WHO Guidelines state that noise levels above 30dB during the night are capable of causing serious annoyance to occupiers. Therefore, the Council has identified 30dBLAeq as the appropriate lower noise level in order to avoid such serious annoyance. This is reflected in Condition 03, as imposed.

17. Whilst noise guidance indicates that the level of 30dBLAeq would be desirable rather than necessary, the Council is entitled to reasonably interpret the guidance in a way that is also consistent with national policy and in a context which meets the aims and objectives of its local development plan and relevant guidance as a whole. Furthermore, it is reasonable and appropriate to apply the guidance to the local context.

18. The Council has sought to mitigate noise and disturbance impacts by imposing a condition specifying that permissible noise levels are to be achieved with partially open windows. The Council's approach takes account of the situation where occupiers would have to make a choice between having open windows or acceptable noise levels, particularly at night. Given the rural location and context of the site, the Council has taken the view that future occupiers should reasonably expect to open windows at night and experience an acceptable noise level within bedrooms, as supported in Chapter 3.4 of the WHO guidelines.

19. Having regard to the above, the Council has reasonably sought to balance the effective mitigation of noise and disturbance against the potential impact on the quality of life, health and well-being of future residents. Whilst achieving the permissible noise levels with open windows is not specifically reflected in guidance, the Council's approach has regard to it. Furthermore, the Council appears to have applied this approach consistently to other proposals and refers to cases where the requirements of Condition 03, as imposed, have been discussed, negotiated and addressed. However, I note that there is no substantive evidence before me to indicate that this has occurred in this case.

Condition 03) 1) iii) Garden areas

20. The appellant states that the WHO guidance allows for gardens in urban areas and close to strategic roads to experience noise levels of up to 55dB. Furthermore, it is the appellant's view that the noise level of 50dBLAeq to be achieved in private gardens as set out in Condition 03 is aspirational and not appropriate for the proposed development, given the results of the noise surveys and its proximity to the A64 traffic noise.

21. The appellant has produced an indicative layout of the development site and an assessment of the effect of various noise impact levels on garden areas. Whilst all properties on the indicative layout would meet the 55dBLAeq noise level with mitigation measures as proposed, when applying the 50dBLAeq noise level, properties in the central and southern parts of the site would achieve the lower noise level in garden areas. However, properties located along the northern, western and eastern boundaries would not without significant mitigation measures in place, including closed windows and mechanical ventilation units, as proposed.

22. The NPSE states that it is not possible to have a single objective noise-based measure that is applicable to all sources of noise in all situations. As such, this provides the necessary policy flexibility until suitable guidance is available. From what I have seen and read, the site is a predominantly Greenfield, unallocated area on the edge of a small settlement. Notwithstanding its location adjacent to the A64 and proximity to an industrial use, it is not a noisy urban area which would justify an exceptional circumstances approach resulting in higher permissive noise levels (55dBLAeq).

23. As there are no specific levels set out in guidance for noise levels in gardens, the PPG states that if external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended. Therefore, a judgement is to be made taking into account the context and nature of the appeal site and its surrounding area. In my judgement, considering the overall setting of the appeal site, the higher noise impact level of 55dBLAeq in garden areas would not be appropriate. Furthermore, Paragraph 4.3.1 of the WHO guidelines states that the lower value of 50dBLAeq should be considered as the maximum allowable sound pressure level for all new development, where feasible.

24. At the Hearing, the Council submitted a noise addendum report relating to a nearby residential development proposal in Sherburn[3]. This report concluded that the proposed development would comply with the permissible noise levels set out in Condition 03, as imposed, as a result of the layout, positioning and orientation of the buildings on the site and the installation of a 2 metre high acoustic barrier. I appreciate that there are differences between that development site and the appeal site and that each proposal must be considered on its merits. However, the proposal in that application would be significantly closer to the traffic noise of the A64 and would be a similar distance from the industrial use as the appeal site.

25. The appellant stated at the Hearing that the measures undertaken with regard to the other development in Sherburn did represent a solution to meeting the requirements of Condition 03. However, the appellant questioned whether

[3] Application Ref:16/01088/FUL: Land at Blue Chip House, High Street, Sherburn

such an approach would result in an efficient use of land and allow for the delivery of an appropriate housing mix on the site. Notwithstanding this, the Council has demonstrated that the noise level requirements set out in Condition 03, as imposed, are feasible and achievable without any significant adverse impact on other elements of the proposal such as design, landscaping and layout.

26. I appreciate that the appellant's chosen method of noise mitigation would not meet the requirements for garden areas set out in Condition 03, as imposed. However, a thorough assessment of the alternative measures against a detailed layout of the proposed development would be necessary to determine what would be feasible and achievable in this particular case. In its absence, and in any event, this is best dealt with at the reserved matters stage.

27. With no substantive evidence to the contrary, I am satisfied that the Council's approach and the requirements of Condition 03, as imposed, are necessary, reasonable and justified in seeking to minimise adverse effects with regard to noise and disturbance of future occupiers. Furthermore, I find that the noise level requirements of Condition 03, as imposed, are capable of being achieved and are consistent with relevant noise guidance. As a result, I find that this does not represent an overly restrictive approach by the Council.

28. Consequently, I conclude that Condition 03, as imposed, is appropriate, necessary and reasonable in applying the highest standards in relevant noise guidance in order to minimise any adverse impacts relating to noise and disturbance. It would therefore comply with Policy SP20 of the LPS and the aims of the relevant guidance. Amongst other matters, this policy and guidance seeks to ensure that development has no significant adverse impact on the living conditions of occupiers with regard to noise and disturbance.

Living conditions: noise and disturbance

29. The appellant argues that given the development's location adjacent to the A64, the proposed variation to Condition 03 would provide acceptable noise levels, in accordance with Paragraph 123 of the Framework. The appellant also points to the relatively unobtrusive operation and impact of the ventilation units and the perceived benefits. Furthermore, it is claimed that potential occupiers would be aware of the noise impacts prior to buying a property and would therefore make a conscious choice whether or not to buy the property.

30. Nonetheless, in my view, this reasoning would not justify the acceptability of higher permissible noise levels. Whilst in some cases a number of future residents may accept such circumstances, I find that it is usually only when occupiers are living in dwellings that the extent of certain issues, including noise and disturbance, become apparent.

31. The proposed variations to Condition 03, particularly with regard to noise levels being achieved with closed windows, would have an adverse effect on the living conditions of future occupiers. The higher permissible noise levels would have a significant detrimental effect in terms of allowing greater noise and disturbance levels. Furthermore, the quality of life and, potentially, the health and well-being of future occupiers would be harmed as a result of them being unable, or potentially unwilling, to open windows as a result of experiencing relatively high levels of noise and disturbance, particularly during the night. Moreover, I find that the reliance on mechanical ventilation to gain fresh air

rather than opening a window would not represent an acceptable or reasonable choice for future occupiers.

32. I have had regard to the appellant's points in support of the proposal. However, in my assessment, these would be outweighed by the harmful effects of the proposed variations to Condition 03 which I have identified.

33. Consequently, I conclude that the proposed variations to Condition 03 would have a significant detrimental effect on the living conditions of future occupiers with regard to noise and disturbance. Therefore, for the reasons given, the proposed variations to Condition 03 would be contrary to Policy SP20 of the LPS.

Conclusion

34. For all of the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Dawson	Wardell Armstrong
Diana Richardson	Planning Manager - Gladman Developments Limited

FOR THE LOCAL PLANNING AUTHORITY:

Alan Hunter	Planning Officer – Ryedale District Council
Steven Richmond	Health & Environment Manager – Ryedale District Council

INTERESTED PERSONS:

Chris Miles	Sherburn Parish Council
Pauline Adamson	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1 *Deed of Variation – Section 106 Agreement dated 28 October 2013*. Submitted on behalf of the appellant with the agreement of the Local Planning Authority.

2 *Comments on Appellants' Rebuttal of the LPA's Appeal Statement*. Submitted on behalf of the Local Planning Authority.

3 *Noise Addendum Report relating to Land Adjacent Blue Chip House, High Street, Sherburn, Malton, North Yorkshire (December 2016) by BWB Consulting Ltd.* Submitted on behalf of the Local Planning Authority.