

Appeal Decision

Site visit made on 15 March 2017

by Grahame Gould BA MPhil MRTPI

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

Decision date: 4th April 2017

Appeal Ref: APP/T2215/W/16/3165435
8 Brentfield Road, Dartford DA1 1YJ

- 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 Mr Phil Knight against the decision of Dartford Borough Council.
 - The application Ref DA/16/00781/OUT, dated 17 May 2016, was refused by notice dated 14 November 2016.
 - The development proposed is demolition of dwelling and associated outbuildings to erect 10 number family dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application seeks outline planning permission for the demolition of 8 Brentfield Road (No 8), a much extended house, and the construction of replacement dwellings, with matters concerning access, appearance, landscaping, layout and scale having been reserved for future consideration. The application as originally submitted was for eleven dwellings, however, that number was reduced to ten by the appellant prior to the application's determination by the Council. I have therefore described the development as being for ten dwellings in the banner heading above.
3. While all matters have been reserved for future consideration the application is supported by drawings showing the possible layout and designs for ten, two storey houses. I have therefore treated the application drawings as providing an indication of the likely development.

Main Issues

4. The main issues are: the effect of the development on the living conditions for its occupiers, with particular regard to noise, air quality and garden space; and whether the site would be a suitable location for a residential development.

Reasons

Living Conditions

5. No 8's plot is comparatively very wide relative to its depth and it runs immediately parallel to the A282/Dartford Tunnel Approach Road. The indicative block plan shows a row of houses that would, for the most part, back onto the A282. Each house would have a quite small garden space.
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6. The A282 is undoubtedly a heavily trafficked road, with the data published by the Department for Transport indicating that for 2015 the average daily traffic flow for this road was '... over 132,000 car journeys per day'¹. That volume of traffic is capable of generating high levels of road traffic noise, while it also has implications for local air quality. With respect to air quality, No 8 is within the A282 Tunnel Approach Road Air Quality Management Area (AQMA), which was declared by the Council in 2001 because of the level of nitrogen dioxide (NO₂) being emitted by vehicles in the area.
7. With respect to road traffic noise, the appellant's acoustic consultant undertook on-site monitoring on 10 and 11 March 2016. That monitoring has established that the site's L_{Aeq,T} levels for the day time (0700 to 2300) and night time (2300 to 0700) periods were measured respectively at 71.5 dB and 69.0 dB². The measured L_{Aeq,T} levels are considerably higher than the interior guideline levels referred to in the relevant British Standard, BS 8233: 2014³ (BS8233) and the World Health Organisation's 'Guidelines for Community Noise', as shown in Tables 2.4 and 2.5 of the appellant's March 2016 Noise Assessment report. The monitoring results have been used to calculate front and rear facade day and night time noise levels for the development. For the rear facades the calculated levels are 68.5 and 66.0 L_{Aeq} dB. The calculated front facade levels for both the day and night time periods indicate that the houses would provide some barrier block attenuation.
8. The Noise Policy Statement for England (NPSE) elaborates on the noise policy set out in the National Planning Policy Framework (the Framework), most particularly at paragraph 123. Paragraph 123, amongst other things, indicates that planning 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; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development ...'.
9. To assist with establishing whether the occupiers of a new development would be subject to acceptable or unacceptable levels of noise the NPSE refers to three noise levels. Those levels being: the No Observed Effect Level, the level of noise below which no effect can be detected; the Lowest Observed Adverse Effect Level (LOAEL), ie the level of noise above which adverse effects on health and the quality of life can be detected; and the Significant Observed Adverse Effect Level, ie the level above which significant adverse effects on health and quality of life occur. The above mentioned calculated rear facade L_{Aeq} dB values are at the upper ends of the range of the levels that the appellant's acoustic consultant considers should be attributed to the LOAEL. The calculated facade levels indicate that attenuation measures would need to be incorporated into the design of the houses in order to provide an acceptable internal noise environment for the occupiers of the development.
10. Having regard to the measured and the calculated facade noise levels and the guidance relating to acceptable and unacceptable noise levels, I consider this would be a noisy location for the development. That said the noise attenuation measures that have been installed at No 8, namely double glazing and/or single glazing with secondary glazing and mechanical ventilators, which I observed at No 8, are effective in reducing the amount of noise being

¹ Paragraph 2.2 of the Council's appeal statement

² Table 3.2 in the Noise Assessment report of 24 March 2016

³ BS 8233: 2014 'Guidance on sound insulation and noise reduction for buildings'

received inside No 8 when its windows and doors are closed. I therefore consider that the installation of noise attenuation measures would be capable of creating an acceptable internal noise environment for the occupiers of the development, so long as windows and doors serving living rooms and bedrooms were kept closed. However, I found the background traffic noise to be disturbing when the existing property's doors and windows were open. That is a situation that I am in no doubt would be replicated within the development were there to be doors and windows in the facades facing directly towards the A282.

11. During the course of my site visit I heard that No 8's back garden is subject to very high levels of traffic noise, notwithstanding the presence of the 3.0 metre or so high rear acoustic fence. The high level of garden noise that I heard is borne out by the estimate for that noise made by appellant's acoustic consultant, with the estimated level having an $L_{Aeq,16hours}$ of 67dB(A). It is stated for the appellant that BS8233 indicates that it is 'desirable' for the level of noise within gardens not to exceed 50 dBL_{Aeq,T}, with BS8233 going onto identify an upper guideline level of 55 dBL_{Aeq,T} in noisier environments. BS8233 goes onto advise that the guideline levels may not always be achievable and in some locations, such as those adjoining the strategic transport network, a compromise might need to be made between elevated noise levels and other factors, such the convenience of living in such areas or making the efficient use of land⁴.
12. I am in no doubt that the back gardens of the new houses would be exposed to high levels of road traffic noise and that the existing acoustic fence would provide limited attenuation against that noise. I therefore consider that the noise levels with the gardens would mean that those areas would be of very limited utility to the occupiers of the development. Even if it were possible to install a much taller acoustic fence, I consider that such a structure could create its own living conditions' harm. That is because the resulting barrier, given its height, would be an imposing structure that could well be overbearing in what would be quite confined garden areas. I shall return to the issue as to whether a compromise should be made about accepting a noisy garden environment later in my reasoning.
13. Within Brentfield Road the Council has an air quality monitoring station. Using that station's data the appellant's air quality consultant has calculated that the current ground level annual mean NO₂ concentrations are 42.28 µg/m³ and 49.31 µg/m³ respectively for the front and rear facades of the new houses⁵. The mean annual national air quality objective (NAQO) for NO₂ is 40 µg/m³ and the occupiers of the development would potentially be exposed to NO₂ concentrations in excess of the NAQO. The appellant's air quality consultant at paragraph 7.1 of its report accepts that pollution levels within the vicinity of the A282 are not expected to decrease. The calculated NO₂ concentration levels have therefore been used by the appellant as a worst case scenario as the basis of identifying mitigation measures.
14. In order to provide internal mitigation against both the high levels of road traffic noise and NO₂ emissions, and to thus safeguard the health and wellbeing of the occupiers of the development, it is intended that the mitigation in each of the houses would take the form of the installation of

⁴ Section 5 of the appellant's Noise Assessment report of 24 March 2016

⁵ Table 6.2 of the appellant's Air Quality Assessment of 17 October 2016

acoustic glazing and mechanical ventilation and/or filtration systems. For those mitigation measures to be effective it would be necessary for doors and windows to be kept closed and that would mean that each house, in effect, would need to be a hermetically sealed unit.

15. I consider that needing to keep doors and windows closed in order to avoid exposure to unacceptable levels of noise and/or NO₂ emissions would create an oppressive internal environment for the occupiers of the houses, which would be unacceptably harmful to their living conditions. If NO₂ filtration equipment was installed, then the appellant's evidence suggests that there would be a requirement for the filters to be changed bi-annually, which would create a maintenance liability that could call into question the effectiveness of this equipment in the longer term.
16. Given that the internal living environment would be likely to be an oppressive one, I consider the provision of suitably sized and pollutant free external space takes on a greater significance than might otherwise be the case. While the submitted block plan is only indicative, it suggests that many of the houses would have small back gardens. Not only would the gardens for many of the houses in all probability be very small, but they would be in receipt of high levels of road traffic noise. I consider that the exposure to traffic noise would minimise the utility of the gardens for the occupiers of these houses, irrespective of the actual amount of space within them. There is then the issue of the exposure to NO₂ emissions in the gardens, given they would be in the AQMA. However, the exposure to NO₂ in the gardens does not appear to have been addressed by the appellant, but could well have adverse implications for the health of the users of those spaces.
17. I consider, taking account of the factors I have referred to above, that the gardens would provide very poor external living environments for the occupiers of this development. As these dwellings would be of a size suitable for occupation by families, I consider that the availability of public open space 400 metres or so away would not provide adequate mitigation for the poor garden environments that would be afforded to the development's occupiers. I am also of the opinion that this is an instance when a noise level in excess of BS8233's upper guideline for gardens would be inappropriate. That is because peaceful gardens as mitigation against what would be an oppressive internal living environment would be unavailable.
18. For the reasons given above I conclude that this development would provide unacceptable living conditions for its occupiers. There would therefore be conflict with Policy CS17 of the Dartford Core Strategy of 2011 (the Core Strategy) because the development's internal living environment would not be fit for its purpose and the garden areas would be of limited utility. There would also be some conflict with Policy DP8 of the Council's emerging Development Policies Plan of 2015 because the development would not meet the principles of good quality design for dwellings. However, as the emerging Development Policies Plan remains to be adopted the conflict with Policy DP8 is not determinative.
19. While the first reason for refusal cites conflict with saved Policy B1 of the Dartford Local Plan of 1995, I consider that not to be the case. That is because Policy B1 does not address the safeguarding of the living conditions for the occupiers of new development.

Suitability of site for residential development

20. While this windfall development would be accessible to employment opportunities and other local services and facilities, for the reasons I have given above this scheme would provide it occupiers with poor living conditions. I consider that the harm that I have identified could not be overcome by the imposition of reasonable conditions.
21. I therefore conclude that this would be an unsuitable site for the development and that this scheme would be an unsustainable form of development for the purposes of Policy CS10 of the Core Strategy because the benefits of providing additional housing would be outweighed by the harm caused to the occupiers' living conditions.

Conclusion

22. For the reasons given above the appeal is dismissed.

Grahame Gould

INSPECTOR