
Appeal Decision

Site visit made on 27 March 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 21 April 2017

Appeal Ref: APP/U4610/W/16/3153438

Land at Beake Avenue, Coventry, Warwickshire.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Steve Birchley (Taylor Wimpey (Midlands) Limited) against the decision of Coventry City Council.
- The application Ref S73/2016/0411, dated 3 February 2016, was refused by notice dated 10 May 2016.
- The application sought planning permission for a residential redevelopment of up to 135 dwellings without complying with a condition attached to planning permission Ref OUT/2013/0012, dated 11 April 2013.
- The condition in dispute is No 16 which states that:
"No dwelling hereby approved shall be occupied unless the following noise mitigation measures have been implemented:

(i) A 3m high landscaped bund with a continuous 2.5m high close boarded timber fence to be constructed along the top of the bund to the east of the site in the location shown on the Parameters Plan

(ii) All windows to habitable rooms with a significant view of the adjacent commercial use to the east or Beake Avenue to the west to be fitted with acoustic glazing with the windows having acoustic trickle vents so that the units have an overall minimum specification Rw 38dB sound reduction

(iii) All windows to habitable rooms with a significant view of the adjacent commercial use to the east shall be fitted with acoustic mechanically assisted ventilation units incorporating fans with acoustic covers inserted in the external walls ensuring that the acoustic performance of the external wall is not compromised

(iv) no residential facade within 40m of the commercial use to the east of the site

These mitigation measures shall be retained unless otherwise agreed in writing by the local planning authority".

- The reason given for the condition is: *"To ensure a satisfactory residential environment for future occupiers and to reduce the likelihood of complaints against existing industrial uses in accordance with Policies EM5, OS6 and H9 of the Coventry Development Plan 2001".*

Decision

1. The appeal is allowed and planning permission is granted for a residential development of up to 135 dwellings at land at Beake Avenue, Coventry, Warwickshire in accordance with the application Ref S73/2016/0411 dated 3
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February 2016, without compliance with condition number 16 previously imposed on planning permission Ref OUT/2013/0012 dated 11 April 2013 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Preliminary Matters

2. The application was refused for two reasons relating to noise and affordable housing. The Council has confirmed that it does not wish to defend the affordable housing reason for refusal on the basis that section 19 of the original S106 agreement binds its obligations on subsequent permissions created under section 73 of the Act.

Main Issue

3. In light of the above, this is whether Condition 16 is necessary and reasonable to protect the living conditions of the occupiers of the development.

Reasons

4. The appeal site comprises a recently completed residential development on the east side of Beake Avenue. Whilst the site is bounded by residential development to the north, south and west there is an industrial estate a short distance beyond the eastern site boundary.
5. Those properties within the scope of Condition 16 are located to the east of the site on what is now known as Bluebird Drive. They face towards the eastern site boundary which is demarked by a bund and an acoustic fence. When I conducted my mid-morning site visit it was evident that most, if not all, of the properties along Bluebird Drive are occupied. I was able to walk along the boundary and view the adjacent industrial site through a gap in the fence. In the 30 minutes or so I was at the site, I did not observe any noise.
6. Condition 16 of the 2013 permission seeks sought the installation of acoustic rated trickle vents¹ to those habitable room windows with a view of the adjacent industrial estate. However, standard trickle vents were installed.
7. A Noise Assessment submitted with the application found that even with the windows open the requirement of the relevant British Standard² for bedrooms was met. Further survey work undertaken in September 2016 concluded that internal noise levels fell within acceptable tolerances when the windows were open and closed. The Council for their part accept that the results demonstrate a satisfactory noise environment for sleeping even with the windows open. However, rather than that leading to the approval of the application, the Council has persisted in its objections on the basis that it cannot be certain that the factory was operating its noisiest equipment on the survey nights.
8. Whilst that may be so, this line of argument seems to me to rely on a considerable amount of conjecture and implies that the appellant ought to have known when the factory was going to be generating higher levels of noise and scheduled the survey accordingly. There is no evidence before me to support the Council's view that the appellant's surveys are not representative of normal acoustic conditions at the industrial estate. Moreover, the Council's submissions are lacking in technical or anecdotal evidence such as complaints

¹ To meet the overall minimum specification Rw 38dB sound reduction

² BS8233:1999 'Sound insulation and noise reduction for buildings – Code of Practice'

from the occupiers of the units or its own noise readings. As such there is nothing that leads me to conclude that the installed standard trickle vents have resulted in adverse living conditions for occupiers.

9. Based on the above, I conclude that condition 16 is unnecessary and its removal would not materially harm the living conditions of the occupiers of the development. There would thus be no conflict with Policies H9 and EM5 of the "*Coventry Development Plan 2001*" or the "*National Planning Policy Framework*". Collectively these seek to safeguard the amenity of neighbouring occupiers as well as the provision of an attractive residential environment.

Conditions

10. The Council has suggested a condition which stipulates, that no dwelling shall be occupied until, inter alia, a 3m high landscaped bund and 2.5m close boarded fence have been installed to the eastern site boundary.
11. For the reasons set out above, and having taken account of all other matters raised, I conclude that the appeal should succeed.

D. M. Young

Inspector