
Appeal Decision

Site visit made on 18 April 2017

by CD Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/P1133/W/16/3159527

Haldon Thatch, Haldon Hill, Kennford, Exeter, Devon EX6 7XX

- 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 Ms Angela Ball against the decision of Teignbridge District Council.
 - The application Ref 16/00747/REM, dated 14 March 2016, was approved on 24 May 2016 and planning permission was granted subject to conditions.
 - The development permitted is restaurant (A3) and house.
 - The conditions in dispute are Nos 9 and 10 which state that:
Condition 9- The dwelling shall not be occupied until a scheme for protecting the garden area from road traffic noise, to include a noise assessment of the existing noise levels and the estimated noise levels with mitigation, has been submitted to and approved in writing by the Local Planning Authority. The mitigation shall be completed before the dwelling is occupied unless an alternative period is approved in writing by the Local Planning Authority.
Condition 10- Should Access Point 'C' shown on drawing no. D4 Rev 00 come under the ownership of the applicant or successor in title it shall be permanently stopped up the details of which shall have previously been submitted to and agreed in writing by the Local Planning Authority.
 - The reasons given for the conditions are:
Condition 9- To protect the amenity of future occupiers of the dwelling.
Condition 10- In the interests of highway safety.
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Decision

1. The appeal is allowed in part and dismissed in part and the planning permission Ref 16/00747/REM for a restaurant (A3) and house at Haldon Thatch, Haldon Hill, Kennford, Exeter, Devon EX6 7XX by Teignbridge District Council, is varied by deleting condition No 10.

Background

2. The appeal site is situated between two roads, with the A380 dual carriageway running along the eastern boundary and a more minor road (described by the Council as the former A38) along the western boundary. Planning permission has been granted for a restaurant and detached dwelling on the site. The appellant seeks the removal of conditions 9 and 10 of this permission.
 3. Condition 9 requires a scheme for protecting the garden of the proposed dwelling from road traffic noise to be approved by the Council and subsequently implemented. This includes an assessment of estimated noise
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levels before and after mitigation. It is argued by the appellant that this is impractical and the condition could not be enforced.

4. Condition 10 is made in the interests of highway safety and requires an existing vehicular access from the A380 to be blocked if the land ever comes under the ownership of the appellant or their successor in title. It is argued that there is no credible evidence that the access is dangerous.

Main Issues

5. The main issues in this case are therefore:

- whether condition 9 is reasonable and necessary in the interests of the living conditions of future occupiers.
- whether condition 10 is reasonable and necessary in the interests of highway safety.

Reasons

Condition 9

6. The Council's environmental control officer states that the proposed residential development would be subject to significant levels of noise from the nearby dual carriageway. Indeed, during my own inspection of the site, I was able to clearly hear traffic noise from within the proposed garden. There is evidently potential for such noise to undermine the amenity value of the garden and hence the living conditions of future occupiers.
7. I accept the appellant's point that any noise experienced within the garden would be dependent on a wide number of variables which would fluctuate over time, including environmental conditions and the volume of traffic on the road. However, there are standardised methods for calculating road traffic noise, including those referred to by the Council¹. I have been provided with little technical evidence to explain why noise levels could not be measured within the appeal site using such methods. It is therefore reasonable for condition 9 to require an assessment of existing noise levels within the site in order to determine what level of mitigation may be needed to achieve an acceptable standard of amenity within the proposed garden.
8. The condition requires an estimate of future noise levels within the garden once a mitigation scheme has been implemented. I have little reason to doubt that a suitably qualified acoustic engineer would be able to model the likely effects of a proposed mitigation scheme and hence provide an estimate of future noise levels within the garden. While I recognise the appellant's point that the exact nature and effectiveness of any future mitigation scheme remains somewhat uncertain, very little in the way of technical evidence has been presented to show that it would be impractical to mitigate noise within the garden. Furthermore, the condition would be enforceable as the required noise assessment and evidence of any subsequent mitigation measures could be provided in order to demonstrate compliance.
9. Although I am informed that there was previously accommodation on the site associated with the original Haldon Thatch, this does not negate the need to

¹ Calculation of Road Traffic Noise 1988, Department of Transport.
The Design Manual for Roads and Bridges, Highways England.

protect the living conditions of future occupiers. I have determined this appeal against current planning policies, including paragraph 17 of the National Planning Policy Framework (the Framework) which seeks a good standard of amenity for all existing and future occupants of land and buildings.

10. I therefore conclude on this issue that condition 9 is reasonable and necessary in the interests of living conditions.

Condition 10

11. The development would be able to proceed without condition 10 ever being implemented as it is contingent on the appellant (or their successor in title) owning the land it relates to at an unspecified point in the future. This, in itself, raises questions as to the appropriateness of the condition in light of the tests set out in paragraph 204 of the Framework.
12. Notwithstanding the above, the Council raise no objection to condition 10 being removed on the basis that it has been unable to provide statistical evidence of traffic incidents associated with access point C. The original response from the Highways Agency noted 3 slight injuries in the area between 2010 and 2014, although it is not clear from their letter whether these incidents were directly associated with access point C or indeed whether the proposed development would be likely to exacerbate any highway safety problems.
13. During my visit I saw the high speed of traffic on the A380 and recognise that any vehicles using access point C would be moving slowly in comparison. However, the site can also be accessed from the more minor road to the west where vehicles appear to travel at lower speeds. The appellant argues that access point C would be infrequently used and I have little reason to doubt this given the convenience of the alternative access points. Combined with the lack of evidence of traffic incidents, there is little before me to indicate that access point C should be permanently stopped up in order to make the development acceptable in planning terms.
14. I therefore conclude on this issue that condition 10 is not reasonable or necessary in the interests of highway safety.

Overall Conclusion

15. For the reasons given above, I have found that condition 9 is reasonable and necessary whilst condition 10 is not. The planning permission is therefore varied by the removal of condition 10 while condition 9 is retained in its present form.

CD Cresswell

INSPECTOR