
Appeal Decision

Site visit made on 13 June 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 4th July 2017

Appeal Ref: APP/W4705/W/17/3171653

The Croft, Thwaites Brow Road, Keighley, BD21 4ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D Pittea against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 16/06629/FUL, dated 2 August 2016, was refused by notice dated 23 November 2016.
 - The development proposed is construction of three detached houses. Improvements to access drive with turning head.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of its future occupiers with regard to noise and disturbance.

Reasons

3. The appeal site comprises an area of open land on the eastern side of The Croft. It is opposite to a large industrial site occupied by Byworth Boiler Hire Ltd, and is separated from it by a tall leylandii hedge. In addition, a railway line and the A650 dual carriageway are located around 75m and 300m away to the north respectively.

It is not uncommon for dwellings to be located this close to a railway line or a major road. In this regard, the level of noise I observed from these sources during my site visit was not intrusive. The industrial noise emanating from the Byworth Boiler Hire site, however, is a different matter. In this regard, it is clear from the evidence before me that this generates significant levels of noise on a regular basis.

4. Both of the main parties agree that noise within the proposed dwellings could be adequately controlled through the installation of triple glazing to the front windows of the dwellings. This could be secured by condition. However, whilst this would limit internal noise if the windows were closed, it would not do so if they were left open. This situation would be less than ideal. Moreover, the rear garden areas to the properties would still be exposed to noise from the Byworth Boiler Hire site. Whilst the dwellings would be orientated so as to partially screen the garden areas from that noise, it is unclear to what extent

this would provide mitigation. In this regard, a noise assessment has not been submitted and the precise levels of noise that are generated, and the effect of any mitigation measures, are therefore unclear.

5. An adjacent site to the north was subject to a dismissed appeal for 4 dwellings in 2009 (ref APP/W4705/A/09/2106548). That Inspector concluded that the noise generated by the Byworth Boiler Hire site would have an unacceptable effect on the living conditions of future occupiers. The appellant contends that the current appeal site has a different relationship to the Byworth Boiler Hire site. However, it is in close proximity to it including to the operational testing building to the north. In this regard, the current appeal site would be directly affected by noise emanating from that building.
6. The previous Inspector noted that Byworth Boiler Hire Ltd undertake at least 200 'safety valve lifts' annually, amounting to 3 or 4 a week. He further noted that the level of noise that this generates is quite considerable. The recent representation from Byworth Boiler Hire Ltd, dated 26th August 2016, indicates that its activities have not changed significantly since that time.
7. Overall, the development would introduce noise sensitive properties close to an industrial site. Current activities would be likely to cause disturbance and annoyance to people using the proposed gardens, and it cannot be guaranteed that the noise situation would not deteriorate in the future. Moreover, if future occupiers were to lodge noise complaints it could lead to an abatement notice being served on the business that could hamper its operation.
8. My attention has been drawn to 2 recent permissions granted in the vicinity of the appeal site. The first (ref 09/04274/HOU) relates to a domestic extension to The Cobbles, which is located to the south of the appeal site. However, that development did not involve the creation of a new dwelling or new outdoor amenity areas. Similarly, the permission to convert an existing dwelling and outbuilding to annexes of Regency Court Care Home (ref 15/07045/FUL) also did not involve the creation of new outdoor amenity areas. These permissions are therefore not directly comparable to the current appeal development.
9. My attention has also been drawn to noise-related conditions attached to previous permissions to extend the Byworth Boiler Hire site (98/02336/FUL and 08/06263/FUL). However, full details of the noise mitigation measures that were installed at that time are not before me. I further note that those permissions were granted prior to the previous dismissed appeal on the adjacent site.
10. Whilst the Council has not received any recent noise complaints regarding the Byworth Boiler Hire site that does not necessarily mean that no annoyance is currently caused. Separately, the Council's Environmental Health section was entitled to revisit its position prior to the determination of the application, based on the receipt of further information.
11. For the above reasons, I consider it likely that the living conditions of the future occupiers of the development would be unacceptably harmed with regard to noise and disturbance. The development would therefore be contrary to saved Policies P7 and D1 of the Bradford Replacement Unitary Development Plan (2005). It would also be at odds with the National Planning Policy Framework ('the Framework') which seeks to prevent noise from giving rise to

significant adverse impacts on health and quality of life as a result of new development.

12. In coming to that view, I have had regard to the appellant's assertion that Policy P7 only relates to noise generated by new development. However, I consider that the policy wording applies equally to the introduction of noise sensitive development close to existing sources of noise. That interpretation is confirmed by the introductory text to the policy, which states that:

*"The Council wishes to use its powers as Local Planning Authority to help reduce the problem of noise pollution. This will be done in two ways. **First, by controlling the introduction of noise sensitive development (such as housing, schools, and hospitals) close to the existing sources of noise.** Second, by controlling the introduction of new noise sources (e.g. certain employment uses) close to existing noise sensitive development."*
(my emphasis)

Other Matters

13. In my view, the proposed access arrangements would be appropriate for the number of dwellings that are proposed. In this regard, I note that Highway Authority have not objected to the development.
14. The appeal site is not located in the Green Belt and therefore Green Belt policies do not apply in this case.
15. Compliance with the Building Regulations is a matter that falls outside of the planning regime.

Conclusion

16. The Council is currently unable to demonstrate a 5 year supply of housing sites, as required by the Framework. In these circumstances, paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up-to-date.
17. However, given the harm I have identified above, and the relatively modest economic and social benefits associated with the provision of 3 additional dwellings, the lack of a 5 year supply does not alter my view in this case. The harm I have identified would clearly and demonstrably outweigh the benefits of the development. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted, and the proposal would not represent sustainable development.
18. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR