
Appeal Decision

Hearing Held on 17 January 2018

Site visits made on 15 and 17 January 2018

by David Cross BA (Hons), PGDip, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2018

Appeal Ref: APP/X1355/W/17/3180002

Dovecot Hill, South Church, Bishop Auckland, Co. Durham DL14 6TA

- 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 Chris Dodds of Gleeson Developments Ltd against the decision of Durham County Council.
 - The application Ref DM/16/00528/FPA, dated 19 February 2016, was refused by notice dated 23 March 2017.
 - The development proposed is erection of 56no. 2, 3 and 4 bedroom two storey dwellings with associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form which differs from that stated on the Council's decision notice. In Part E of the Appeal Form the appellants confirm that the description of development has not changed from that on the application form. Neither of the main parties has provided written confirmation that a revised wording for the description of development has been agreed. Accordingly, I have used that given on the original application.
3. The Council's reason for refusal refers to Policy GDP1 of the Wear Valley District Local Plan 1997 (WVDLP). However, the Council accepted at the hearing that this was an error and that this should refer to Policy GD1 of the WVDLP. Furthermore, I note that the appellants' Appeal Statement also states that Policy GDP1 of the WVDLP does not exist and assumes that Policy GD1 is the correct reference. I therefore consider that the parties in this appeal would not be prejudiced by my proceeding to determine the appeal on the basis of Policy GD1 of the WVDLP.
4. Prior to the Hearing I made an unaccompanied site visit on 15 January 2018 and was able to view the site and its surroundings from the highway and public rights of way.

Main Issue

5. The main issue in this appeal is whether the development would be compatible with nearby industrial uses.

Reasons

6. The appeal site is located in close proximity to the South Church Enterprise Park, which is identified by Proposal I4 of the WVDLP as a Prestige Industrial Site suitable for uses including B2 General Industrial use. A previous proposal for residential development on the appeal site was dismissed at appeal¹ due to the impact on the amenity of future residents and the potential restrictions placed on the operation of existing businesses arising from statutory noise nuisance.
7. There are a number of businesses on the industrial estate, and evidence including a noise assessment² has been submitted on behalf of two of the businesses which operate in close proximity to the appeal site i.e. Teescraft Engineering Limited and the subsidiary business of Steel Pro Services Ltd (SPS). As well as general metalworking, the operations of SPS include the removal of excess paint from metal products. This process includes the hammering of metal frames prior to treatment in an industrial oven and subsequent jet washing. This activity is carried out in and around a partially open lean-to structure on the eastern side of the main buildings i.e. that part of the site closest to the appeal proposal.
8. At my accompanied site visit, I saw that there were three industrial ovens within the SPS compound, although only one was in use at the time of my visit. The clangs and bangs of the hammering operation were clearly audible from the appeal site. At my unaccompanied visit the same intensity of activity was not apparent, but based on the evidence before me and my observations of the industrial process I consider that the noise environment on my accompanied visit was not an excessive representation of noise that would arise from the industrial operations.
9. In response to the previous appeal decision, the appellants have undertaken a further acoustic assessment based on a more extensive monitoring period and have amended the scheme to include measures to mitigate noise impact. The mitigation measures include a proposed site layout where the majority of dwellings would be set back from the industrial estate as well as the erection of a 3m high acoustic barrier. It is also proposed to use a mechanical positive ventilation system (termed as a 'PIV') for the dwellings, which would include purge ventilation which can be used as an alternative to opening windows.
10. I note that the Council's Environmental Health Officer (EHO) considers that the methodology for the acoustic assessment submitted by the appellants is robust and appropriate for the nature of the site and the existing noise sources identified. The EHO concludes that the appellants' assessment currently demonstrates that, following mitigation works, noise levels would be equal to or close to the threshold levels specified in the Council's Technical Advice Note (TAN) on Noise.
11. However, the Council express concern about significant uncertainty in relation to noise levels affecting the appeal site. In part, this stems from variation between the findings of noise assessments prepared for the current and previous proposals for the site. The variation in noise measurements and subsequent assessment of effects is emphasised further by the noise

¹ Appeal ref: APP/X1355/W/15/3127823

² Noise Assessment, Dovecot Hill, Bishop Auckland. December 2017. NJD Environmental Associates.

assessment submitted on behalf of Teescraft Ltd. Furthermore, a particular concern is identified in relation to future operations of the businesses on the adjacent industrial estate as well as the development of vacant sites.

12. In relation to the expansion of businesses, Teescraft Engineering has purchased a strip of land to the east which will lead to the industrial operational area extending closer to the appeal site. The company also owns a vacant plot of land to the north east of the industrial estate which it intends to develop. The extent of industrial operations in the vicinity of the appeal site may therefore increase in the future.
13. Furthermore, the adjacent industrial estate has no planning restrictions on the nature of businesses that fall within use class B2 or their operating hours or processes. For example, in common with other businesses on the industrial estate, SPS have no restrictions in relation to their hours of operation and state that industrial operations are commenced as early as 0600 on a Saturday due to the operational requirements of customers. This flexibility is an important element of attracting businesses to the industrial estate, as well as enabling existing businesses to expand and respond to changing circumstances. I note the concerns expressed by consultees such as Business Durham and South Durham Enterprise Agency that limitations to this flexibility could hamper development on this business park.
14. To consider the effects of potential business expansion, the appellants have assessed the effect of the existing daytime noise environment if this occurred at night. With the acoustic barrier in place, the data suggests there may be 6 times per hour where the L_{AFmax} would be at such a level as to disturb sleep. However, the appellant states that if windows were closed and the PIV system was in use, then the noise levels would be within the desirable standard for resting recommended by BS8233³.
15. However, the appropriateness of using BS8233 has been raised by both the Council and the evidence submitted by the nearby businesses. The EHO states that the threshold levels in BS8233 relate to 'anonymous' noise. The evidence provided by the businesses emphasises that industrial noise is not an anonymous source. This reflects my observations during my site visit where the distinct noise events were clearly associated with a particular operation e.g. the bangs from the hammering at SPS. I note the appellants' contention that the anonymity of noise sources will vary over time i.e. sometimes a particular industrial noise source will be identifiable, at other times it will not. However, this does not detract from the fact that noise from existing operations in this area will, at times, be clearly identifiable. This therefore limits the weight I can give to the standards within BS8233. In this respect, I concur with the Council's EHO that whilst BS4142⁴ advises that consideration should be given to other standards, it remains the primary standard in relation to noise sources within this area.
16. In this situation, the Council considers that the proposal should be assessed applying BS4142 in accordance the TAN and would be significantly above the TAN threshold levels. In this respect, I note that the appellants' evidence states that if the businesses were to expand their operation such that they operated at night in exactly the same way as they do during the day, the

³ BS8233:2014 Guidance on sound insulation and noise reduction for buildings

⁴ BS4142:2014 Methods for rating and assessing industrial and commercial sound

Rating Level of the industrial noise could be 15 dB above the Background Sound Level. This is indicative of a significant adverse impact depending on context as assessed against BS4142.

17. In relation to context, the appellants state that even if residents opened windows, the noise level inside would be within the reasonable conditions for sleeping, as set out in BS8233. Furthermore, if residents closed their windows, and utilised the PIV system, the internal noise level would be 5-10 dB quieter than the desirable standard recommended for sleeping in BS8233 which would also allow flexibility for the future expansion of nearby businesses. However, for the reasons stated above, due to the nature of industrial noise in this area I consider that limited weight should be given to the standards of BS8233.
18. Moreover, I have significant concerns about the appropriateness of the proposed mitigation measures. Notwithstanding the proposed installation of mechanical ventilation, the windows of the dwellings would not be sealed shut, even if such a feature was considered to be acceptable for family accommodation in a suburban context. Residents would be able to open their windows and may therefore be exposed to unacceptable noise levels in bedrooms at night.
19. Although the need for residents to close their windows may be intermittent, I consider that this will be harmful to living conditions due to the nature of the proposed family accommodation and the times of industrial operations. I therefore agree with the Council that the need for residents to close their windows would represent a significant observed adverse effect.
20. The wish of residents to open their windows at night may lead to complaints in relation to the operations of nearby businesses. Whilst residents would have the option of closing their windows and use the mechanical ventilation system, this cannot be enforced and I consider that it would be difficult to use the availability of this option to counter complaints that may arise. In this respect I consider that the proposal would conflict with paragraph 123 of the National Planning Policy Framework (the Framework) which states that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.
21. In support of the proposal, the appellants refer to existing dwellings at Bigland Terrace and Rosemount Court to the east of the appeal site, which do not have acoustic mitigation measures and therefore may also restrict the operation of industrial premises. However, the noise assessment submitted on behalf of Teescraft Ltd states that the noise impact on residents of Bigland Terrace is considered to be low, in part due to the greater distance from the identified measured noise source. Based on the evidence before me and my own observations on site, I consider that the impact on residents of existing dwellings would be of a different nature and intensity in comparison to that which would affect residents of the proposed dwellings. The potential for complaints from existing residents is therefore materially different from that which would arise from the proposed development and this matter does not therefore weigh significantly in favour of the proposal.
22. The appellants contend that development on nearby industrial sites could be planned to ensure no adverse impact on residents, such as placing noisy activities on the opposite side of buildings from dwellings. However, in my

view the need for such arrangements is representative of the undue restrictions that may be placed on the future development of both existing and proposed industrial uses. It was also confirmed at the hearing that the location of noisy activities further away from the acoustic barrier would reduce its effectiveness, which would also hinder the layout of future industrial development. Such restrictions would reduce the attractiveness of these sites to future investment compared to sites which are not similarly encumbered.

23. The appellants also brought to my attention that Teescraft Ltd owns a site elsewhere within the industrial estate which would be available for the future development of the business. I viewed this site on my accompanied visit and I saw that this was located further way from the appeal site and existing residential properties. However, the owners of Teescraft Ltd confirmed at the hearing that this site is to be developed for a separate part of the business. In any event, I do not consider that the availability of alternative sites for existing operations should reduce the weight given to the consideration of noise impacts. The existing operations could remain at the site or could be replaced by similar industrial processes should the business relocate.
24. In support of the appeal, the appellants have referred to a proposal⁵ submitted in 2015 in the Durhamgate area. The appellants express concern that although it was identified that residents may be affected by noise, the Council was prepared to accept passive trickle vents and did not assess potential increases in noise from adjacent industrial sites. However, I note that this permission related to the variation in a masterplan for a mixed use development which was originally granted in outline in 2008. The Council also confirm that the identified dominant noise source at Durhamgate was from road traffic which is not enforceable through statutory noise nuisance controls and that the original outline permission did not secure noise mitigation controls. The circumstances that applied to that case are therefore materially different to the appeal before me which I have in any event determined on its own merits.
25. Concerns have also been raised in relation to the visual impact of the acoustic barrier. Due to the height of the barrier directly to the rear of plots 55 and 56, I consider that it would have an overdominant and enclosing effect on the rear gardens of those properties with subsequent harm to the enjoyment of the external amenity areas. The barrier would also be located in close proximity to the rear elevation of the dwelling on plot 55 and would have an overdominant relationship to the ground floor windows of habitable rooms to the rear of that dwelling.
26. I therefore conclude that the development would not be compatible with nearby industrial uses. The development would be harmful to the living conditions of future residents as a result of noise, disturbance and visual impact. As a result of noise and disturbance, there is a significant possibility that the development would also lead to unreasonable restrictions being placed on nearby businesses due to complaints from future residents. The proposal would therefore conflict with Policy GD1 of the WVDLP which states, amongst other things, that development should not conflict with adjoining uses or be detrimental to public health. This Policy is broadly consistent with the Framework in respect of building a strong economy as well as securing high

⁵ Planning Application Reference DM/15/02341/VOC

quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

27. The appellants state that the Council cannot currently demonstrate a 5 year housing land supply. In response, the Council refer to a number of scenarios provided within the County Durham Issues and Options report (June 2016) which indicate a land supply of between 4.20 to 4.91 years. I have also had regard to the significant number of residential commitments in the Bishop Auckland area. Moreover, the Council refer to the standard methodology which was recently consulted on by the Government⁶ which would establish a housing land supply in excess of 5 years when applied to the Council's area.
28. However, the new methodology was contained within a consultation document and I note that the Council is yet to formalise its position on the issue of a 5 year housing land supply. On that basis, I conclude that the Council cannot demonstrate a five year supply of deliverable housing sites. In such circumstances paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date. The appeal proposal should therefore be considered on the basis of paragraph 14 of the Framework which states that where relevant policies are out of date permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
29. The Council contends that it has a relatively substantial supply of housing and that, in the light of the recent methodology consulted on by the Government, less weight should be afforded to the boost to housing supply. However, I consider that the provision of 56 dwellings would be a significant benefit of the proposal. Whilst the appellant does not propose any affordable dwellings for viability reasons, I note that a development model is proposed which would provide low cost homes for people on low incomes. Therefore, notwithstanding the Council's comments in relation to a relatively healthy housing land supply, I consider that the amount and form of housing proposed would be a substantial benefit of the scheme.
30. The appellants have provided a Training and Employment Management (TEM) plan in relation to employment and skills opportunities arising from the carrying out of the development, which would be ensured by a Planning Obligation. Whilst the benefits arising from this would be limited to the development period, I give the benefits arising from the TEM plan moderate weight due to the nature of the opportunities provided and the social and economic characteristics of the area.
31. The planning obligation would also include a contribution towards off-site play facilities to help mitigate the impact of the development on existing open space and recreation provision. However this is required to mitigate the impact of the development rather than representing a benefit of the scheme and is therefore neutral in the overall planning balance.
32. The site is designated as Open Space by Policy BE14 of the WVDLP. At the time of the adoption of the WVDLP the site was in use as allotments, although this use has since ceased and the land is now used for agriculture. In the

⁶ Planning for the right homes in the right places: consultation proposals. Department for Communities and Local Government, September 2017.

previous Appeal Decision in relation to this site, the Inspector concluded that the development of the site for housing would not harm the character and amenity of the area and would therefore comply with Policy BE14. The Council has expressed concern in relation to this interpretation, as it considers that the wording of the policy does not allow such an assessment to be made. In this respect, I concur with the Council and therefore disagree with the conclusion of my colleague Inspector on this matter. In my view, it is clear that the site is designated as Open Space by Policy BE14 of the WVDLP and the development of the land for housing would conflict with this designation. However, due to the change in the circumstances of the site since the adoption of the WVDLP I give this conflict very little weight.

33. I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the proposal on the Grade I Listed Buildings of St. Andrew's Church and of East Deanery which are in the vicinity of the site. The significance of these buildings is summarised by the list descriptions and I am mindful of the content of the Framework in relation to heritage assets. I saw that the location of the proposed development is such, taking into account the topography and character of the landscape, the screening effect of proposed tree planting and the physical separation, that the setting of the listed buildings and their significance would not be adversely affected. I note that this reflects the conclusions of the Council on this matter.

Planning Balance and Conclusion

34. Drawing the above issues together, I conclude that the proposal would not be compatible with nearby industrial uses. The proposal would lead to substantial harm to the living conditions of future residents and would be likely to lead to unreasonable restrictions being placed on the operation of businesses on the South Church Enterprise Park.
35. I am mindful that the proposal would have the substantial benefit of adding to the supply of housing in an area of under-supply and would also be in a location which the parties accept has suitable access to services. There would also be moderate benefits in relation to employment and training.
36. However, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The material considerations considered above do not justify making a decision other than in accordance with the development plan, even allowing for the very little weight attached to conflict with policies for open space. When assessed against the development plan and the Framework as a whole, on balance, the overriding considerations are that the scheme would fail to contribute to the economic role of sustainable development in relation to coordinating development requirements; the social role of creating a high quality built environment which supports the communities health and well-being; and the environmental role of enhancing the built environment and minimising pollution.
37. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sarah Worthington MPhil(EnvPI) MAVED MRTPI
Nick Treby BEng(Hons) MIOA MAES
Chris Dodds
Samuel Fisher
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Steven Robson
Penny Watson
Anthony Savage

Teescraft
Steel Pro Services Ltd
NJD Environmental Associates
MD2 Ltd
The Enterprise Agency
The Enterprise Agency
Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Agreement pursuant to section 106 of the Town and Country Planning Act 1990 relating to land at Dovecot Hill, South Church, Bishop Auckland, Co. Durham (Signed and dated 16 January 2018).
2. Technical Document dated 30 November 2016 (Spectrum Acoustic Consultants) and associated e-mail correspondence.
3. Note to Inspector – Community Infrastructure Levy Regulations 2010 (*N.B. unsigned*).
4. Statement of Common Ground (Signed and dated 16 January 2018).
5. Agreed Condition List (*N.B. subsequently superseded*).
6. Agreed List of Plans.
7. Paper copies of Drawing Nos: GH31:L:01G, GH31:L:04D, GH31:L:03E, 403/1H, 401/1G, 314/1-, 310/1D, 307/1B, 304/1E, 313/1-, 309/1E, 303/1E, 311/1A, 301/1G, 202/1F and 201/1F.

DOCUMENTS RECEIVED FOLLOWING THE HEARING (BY REQUEST OF THE INSPECTOR)

1. Note to Inspector – Community Infrastructure Levy Regulations 2010 (Signed and dated 19 January 2018).
2. Agreed Condition List.