



Appeal Decision

Site visit made on 19 June 2019

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal Ref: APP/A1015/W/19/3226426

Land Adjacent to 11 Newbridge Street, Old Whittington S41 9HN

- 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 Carl Bayliss against the decision of Chesterfield Borough Council.
 - The application Ref CHE/18/00427/FUL, dated 15 June 2018, was refused by notice dated 15 March 2019.
 - The development is proposed semi-detached houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Land stability, with particular reference to coal mining legacy;
 - Whether the proposal would provide acceptable living conditions for future residents with regards to noise and disturbance from a nearby business use; and
 - Whether the proposal would make suitable provision for car parking.

Reasons

Land Stability

3. The Coal Authority (CA) has objected to the proposal as the site is located in a defined Development High Risk Area and a Coal Mining Risk Assessment Report, or equivalent, has not been submitted as part of the application.
4. The appellant has submitted a Non-Residential Mining Report which makes a number of findings in respect of coal mining activity. The appellant contends that no problems were identified in this report. However, I note that the report highlighted evidence or potential of past and future underground coal mining and mine entries. I also note that the CA have considered this report and maintained their objection stating that the report does not adequately address the impact of coal mining legacy on the proposed development. Reference is made to shallow mine workings in the area with a potential serious risk to ground stability and public safety. Taking a precautionary approach, it is therefore clearly difficult to conclude positively in relation to this issue.

5. The appellant considers that this matter could be addressed by a condition requiring detailed site investigation works. However, the onus of proof is on the appellant to demonstrate that subsidence will not unacceptably adversely affect the proposal or that it can be satisfactorily mitigated in the design of the development. There is no substantive evidence before me to demonstrate that such matters can be satisfactorily addressed. I also note the concerns raised that this may lead to an amendment to the layout of the proposal requiring a further planning application. Whilst the appellant may be prepared to accept this risk, this does not lead me to a different conclusion with regards to requiring sufficient evidence with regards to land stability.
6. I therefore conclude that insufficient information has been provided in relation to land stability issues which may affect the appeal site, and that the appellant is unable to demonstrate that the site is safe, stable and suitable for development. The proposal would therefore be contrary to the National Planning Policy Framework (the Framework) which seeks to ensure that a site is suitable for its proposed use taking account of any risks arising from land instability and that adequate site investigation information, prepared by a competent person, is available to inform this assessment.

Noise and Disturbance

7. The appeal site is located in close proximity to a fencing business and the Council has referred to a history of complaints from existing residents in the area relating to noise from this business. The owner of this business has also objected to the proposal referring to complaints with regard to this long-established business and the potential effect of new residential development neighbouring the premises.
8. Reference is made to various noise generating activities associated with the business, including a 'shaker table' which has a strong low frequency tonal character. At my site visit I also observed a forklift truck manoeuvring inside the site with associated noise which would be apparent from the appeal site.
9. The appellant has submitted a Planning Noise Assessment (PNA) and further information which considers the noise spectrum of activities at the business. On the basis of the PNA and subsequent information, the appellant's noise consultant concludes that proposed façade treatments including glazing design and trickle ventilation would mitigate noise sufficiently to achieve the required indoor ambient noise levels¹. However, this would rely on residents closing their windows and I have significant concerns about the appropriateness of such mitigation for the proposed dwellings in this suburban context. Although the need for residents to close their windows may be intermittent, I consider a reliance on trickle ventilation would not be adequate due to the nature of the proposed accommodation and the times of industrial operations.
10. Furthermore, the wish of residents to open their windows may lead to complaints in relation to the operation of the nearby business which could be difficult to address. Whilst residents would have the option of closing their windows this cannot be enforced and I consider that it would be difficult to use the availability of trickle ventilation to counter complaints that may arise. In this respect I consider that the proposal would conflict with the Framework which states that existing businesses should not have unreasonable restrictions

¹ As required by BS 8233:2014 - Guidance on sound insulation and noise reduction for buildings

placed on them as a result of development permitted after they were established.

11. I acknowledge that the history of complaints may have arisen from residents of properties with more limited acoustic mitigation than that proposed. However, this does not lead me to a different conclusion with regards to the suitability of the proposed mitigation and the need for residents to close their windows. The appellant has also referred to potential mitigation including acoustic fencing and the planting of a hedge. However, there is no substantive evidence that this would address noise issues without relying on residents keeping their windows closed.
12. I conclude that the proposal would not provide acceptable living conditions for future residents with regards to noise and disturbance arising from a nearby business. The proposal would therefore be contrary to Policies CS2 and CS18 of the Chesterfield Borough Local Plan 2013 (LP) with regards to the amenity of users taking account of noise. The proposal would also be contrary to the Framework with regards to achieving a high standard of amenity for future users and the effect on an existing business.

Car Parking

13. The site is accessed via Newbridge Street which is of a predominantly residential character. I saw that there were a number of vehicles parked along this street with some parked partially on the footpath. As a result of this parking the width of the carriageway available for the passing of vehicles was narrowed and there were some obstructions to pedestrians passing along the footpaths.
14. The proposal would provide one off-street parking space for each dwelling. The Council refers to a Highway Authority requirement for 2 parking spaces for each two-bedroom dwelling, although it accepts that this is a maximum figure and not a minimum requirement. Mindful of the limited size of the dwellings I consider that the provision of one space for each dwelling would be appropriate and would not lead to a material increase in on-street parking in the area to the detriment of highway safety. I note that this reflects the comments of the Highway Authority which states that it would be difficult to sustain an objection on this issue alone.
15. The site currently contains a number of garages and off-street parking spaces which would be removed. The appellant emphasises that the users of the garages have been told to vacate the site and that this parking provision would be lost regardless of the outcome of this appeal. I acknowledge that the loss of the garages could displace the parking of vehicles, although I saw that properties in the immediate vicinity of the appeal site on Newbridge Street and Langtree Avenue had off-site parking provision. Whilst residents of terraced properties in the area may use the garages, the majority of these properties are located some distance from the appeal site. The evidence therefore suggests that displaced parking would not lead to a significant increase in on-street parking in the immediate vicinity of the appeal site.
16. Newbridge Street also provides access to a gate for the adjacent business. At the time of my visit this access was blocked by materials stored on the site, although a commercial vehicle was parked on the access. I acknowledge that manoeuvring space is limited on the highway to the front of the site and there

may have been conflict between parked vehicles and deliveries to/from the business. However, I have concluded that the proposed off-street parking provision for the development would be appropriate and this would therefore not lead to an increase in on-street parking to the detriment of access to the business.

17. I conclude that the proposal would make suitable provision for car parking. The proposal would therefore comply with Policy CS18 of the LP with regards to providing adequate and safe parking. The proposal would also comply with the Framework with regards to the impact on highway safety.

Conclusion

18. Notwithstanding my conclusion in relation to parking provision, I consider that inadequate information has been provided with regards to land stability and that the proposal would not provide suitable living conditions for residents with regards to noise and disturbance. The proposal would therefore conflict with the policies of the development plan as a whole with regards to the amenity of future residents and the Framework in respect of ground conditions and pollution.
19. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR