



Appeal Decision

Site visit made on 18 June 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2019

Appeal Ref: APP/A2470/W/18/3219503

Brooke Road Allotments, Brooke Road, Oakham, Rutland

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by The Burley Estate Farm Partnership against the decision of Rutland Council.
 - The application Ref 2017/0989/OUT, dated 9 October 2017, was refused by notice dated 13 August 2018.
 - The development proposed is an outline application for the erection of up to 40 dwellings with associated open space, landscaping and infrastructure (access for detailed consideration with all other matters reserved for future consideration).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by The Burley Estate Farm Partnership against Rutland Council. This application is the subject of a separate Decision.

Procedural Matter

3. The appeal proposal was submitted in outline with the means of access being considered at the outline stage. Notwithstanding that, an illustrative layout plan has also been provided. However, with the exception of the site access, the details shown on this plan are not being considered at the outline stage. I have therefore treated these details as being indicative to show a possible way of developing the site.

Main Issues

4. The main issues are whether the proposal would provide suitable living conditions for the future occupiers of the development with particular regard to noise from the adjacent railway line; and the effect of the development on highway safety.

Reasons

Living conditions

5. The appeal site is located on the north-eastern side of the Leicester to Peterborough railway line and was last used as allotments. As set out by the Council, the appeal site is at a lower land level than the adjoining railway line which was evident from my site visit.

6. From the Acoustic Design Statement (ADS) provided by the Appellant, it was freight trains which generated the loudest noise source. At my site visit, I observed, and heard, two freightliner trains passing the site – one in each direction. The noise I heard was loud and without any noise mitigation measures I consider it would be likely to cause an unacceptable level of noise disturbance to the future occupiers of the development.
7. The Planning Practice Guidance states at paragraph: 008 Reference ID: 30-008-20140306 that *'for noise sensitive developments mitigation measures can include avoiding noisy locations; designing the development to reduce the impact of noise from the local environment; including noise barriers; and, optimising the sound insulation provided by the building envelope. Care should be taken when considering mitigation to ensure the envisaged measures do not make for an unsatisfactory development'*.
8. In considering such noise mitigation measures the ADS sets out that an acoustic fence located along the site boundary with the railway line should give an attenuation level of 5dB when the noise source is just visible to the receiver and 10dB when the screen completely hides the noise source.
9. However, given the raised nature of the railway line, I have serious reservations over whether an acoustic fence would make any meaningful difference in respect of noise reduction within the site without it being excessively tall. This is particularly the case as the height differential between the railway line and the appeal site is such that passing trains would still be highly visible from any rear gardens, and from windows of habitable rooms, facing the railway line. Therefore, the suggested reduction in noise as a result of such an acoustic fence is unlikely to be achievable given the characteristics of the site. Even if such a fence could be constructed it would be likely to be in excess of 4 metres in height given the land level differences and would not be visually attractive feature. This therefore presents a serious flaw in the suggested noise mitigation measures.
10. The ADS also sets out that the spatial separation between the noise source and the receptor should be maximised, and that the layout of the scheme should be used to reduce noise propagation across the site. The orientation of buildings should be used to reduce noise exposure to sensitive rooms and the building envelope should be used to mitigate noise to acceptable levels. It is also indicated that all first floor bedrooms should have at least one window facing away from the railway line.
11. Whilst the use of some or all of these measures would assist in providing some mitigation to noise from passing trains, the application and appeal documentation does not provide enough information for me to safely conclude that these measures would be sufficient to ensure that the future occupiers of the dwellings would be provided with suitable living conditions both internally and externally as a result of noise from passing trains.
12. In coming to that view I acknowledge that this is an outline application and the exact nature of the development is not known. However, in the absence of sufficient information to conclude that it would be possible to develop the site in a way which would provide suitable living conditions for its future occupiers it would not be appropriate for me to grant planning permission for such a development.

13. In addition to the above, I have also taken into account that there are other residential properties on the western side of the railway line and that there is a housing development currently under construction to the south-east of the appeal site. At my site visit I observed the juxtaposition of the residential properties on the west side of the railway line and I noted that it is not as elevated to the same degree as the appeal site. I also took the opportunity to visit the housing site under construction. As pointed out by the Council, the railway line at that point is not elevated and therefore the characteristics of the relationship of the housing sites to the railway line are materially different. In that sense, I can only give this limited weight.
14. I have also had regard to the suggested planning condition in relation to noise mitigation measures. However, from the evidence before me, I cannot safely conclude that it would be possible to provide suitable living conditions for the future occupiers of the development. As such, it would not be appropriate to grant planning permission, even with such a condition, as there would still be the possibility that such acceptable measures would not be possible thereby nullifying the benefit of any permission.
15. For the above reasons it has not been demonstrated that the development would provide suitable living conditions for the future occupiers of the development and would therefore be contrary to Policy SP15 of the Site Allocations and Policies Development Plan Document (2014) (SAPDPD) which amongst other matters seeks to ensure that the amenity of the occupiers of the development is not adversely affected by noise.

Highway safety

16. The access to the appeal site would be located around 70 metres to the north-east of the level crossing over the Leicester to Peterborough railway line. From the evidence before me Brooke Road is not a heavily trafficked road and has on street parking spaces demarcated on the carriageway. At my site visit there were some cars parked in these spaces and I observed how traffic flowed through this section of road. I also observed the traffic flows before and after the barriers to the level crossing had been lowered. However, I acknowledge that my visit was only a snapshot in time and at other times of the day different traffic characteristics may occur.
17. From what I observed, the parked cars affected the traffic flows and caused some short-term congestion as a result of vehicles having to negotiate their way past the parked cars particularly following the lifting of the level crossing barriers. Any increase in traffic as a result of the development would be likely to exacerbate this current situation which would not be in the best interests of highway safety.
18. It is also clear that the addition of new dwellings at the site would inevitably result in an increase in traffic movements in the area. However, I also note that the Transport Assessment (TA) indicates that a greater proportion of traffic from the development site would flow towards the town centre. The TA indicates that the development would therefore be unlikely to have any significant impact on traffic crossing the railway line. I have not been presented with any significant evidence to suggest that the traffic flows indicated in the TA are unrealistic and I therefore give this significant weight.

19. As part of the development proposals, there would be a re-alignment of Brooke Road which would result in the parking spaces being contained in a dedicated parking bay off the main carriageway of the road. This would result in a significant change to the characteristics which I observed and what has been presented to me by the Council and local residents.
20. To my mind, this would provide the necessary mitigation against the increase in traffic as a result of the development. It would also have a wider benefit to traffic flows and highway safety through the better and safer flow of traffic along Brooke Road. I come to this view even when the possible increase in the amount of rail traffic is taken into account and the resultant knock on impact of a greater amount of time when the barriers are in a lowered position.
21. For the above reasons the development would not be detrimental to highway safety and would accord with Policy SP15 of the SAPDPD which amongst other matters seeks to ensure that development makes provision for a safe access by vehicles and that development does not have an unacceptable adverse impact on highway safety.

Other matters

22. As part of the appeal proceedings the Appellant has provided a completed section 106 agreement (dated 5 June 2019) which seeks to provide affordable housing and on-site open space (including a LEAP) together with its future maintenance.
23. The delivery of on-site open space is designed to mitigate the need for open space as a result of additional housing. I am also conscious that the delivery of much needed new housing is clearly a benefit of the scheme, as is the provision of affordable housing. I am also clear that the highway improvements would also benefit the wider area, as would the provision of on-site open space. However, whilst all of these factors are in favour of the development, these do not outweigh the harm I have found in relation to the living conditions of the future occupiers of the development.
24. I have also had regard to the matters raised in the representation received on the proposal which includes issues such as the loss of open space, loss of highway trees, drainage and sewers, the need for new houses, archaeological matters, the lack of footpath along site frontage, and infrastructure in the area. However, none of the matters raised provide a further compelling reason why planning permission should not be granted.

Conclusion

25. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR