The Planning Inspectorate

Appeal Decision

Site visit made on 17 March 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Appeal Ref: APP/Q3115/W/19/3242394
Land adjacent to Kiln Avenue, Chinnor, Oxfordshire OX39 4BZ

- 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 Taylor Wimpey against the decision of South Oxfordshire District Council.
- The application Ref P19/S1186/FUL, dated 20 March 2019, was refused by notice dated 4 June 2019.
- The development proposed is a fence along the boundary of Kiln Avenue.

Decision

1. The appeal is dismissed.

Procedural Matters

2. At my site visit I observed that the fence has been erected in accordance with the location and at a height similar to that shown on the submitted plans. However, the fence erected was not entirely consistent with the "Fence Planning Elevation" drawing provided in that it has timber posts and gravel board rather than the concrete referred to in the drawing's annotations. The application is referred to as being retrospective on the planning application form and section 7, which refers to materials indicates a wooden fence. Furthermore, there is no express mention that the proposal would replace the posts and gravel board with concrete. Accordingly, I have considered the proposal on the basis of the fence erected on site, unless otherwise specifically referred to in my reasoning below.

3. Although it does not form part of the development plan, both main parties mention the emerging South Oxfordshire Local Plan 2034. However, there is currently a Holding Direction dated 9 October 2019 imposed by the Secretary of State[1] in relation to the plan. As neither party relies upon the emerging policies as part of their case and it is not referred to on the decision notice, it has had little bearing on my determination.

Background and Main Issue

4. Planning permission[2] for the redevelopment of the former Chinnor Cement Works was granted in 2010 and amongst other development, included 178 residential units which have now been largely completed. The fence that is the

[1] Paragraph 2.2 Council's Statement dated 25.2.20
[2] Reference P09/E0145/O approved 29 June 2010

subject of the appeal is in the northern part of the site opposite the properties that face onto Kiln Avenue. The site lies adjacent to the Chinnor and Princes Risborough Railway line (CPRR) which currently operates as a heritage railway. In recognition of the potential noise impact arising from the railway operation on some of the proposed dwellings, condition 22 of the permission required a scheme of noise attenuation to be agreed and implemented.

5. The condition was subsequently discharged[3] and the approved acoustic screen comprised a 2.1m high buffalo acoustic fence on top of a 300mm bund which the Council accepted would provide for appropriate noise attenuation for the occupants of the nearby houses. There is no dispute between the parties that the fence erected on site does not accord with those agreed details but there is disagreement as to whether it is at least equivalent to the approved details in terms of safeguarding the nearby residents from the impact of noise.

6. It is the appellants' view that the fence does provide adequate protection subject to addressing some defects with the fence and that as such, the proposal would provide a suitable alternative that would meet the requirements of condition 22 of the original permission.

7. Therefore, the main issue is the effect of the proposal on the living conditions of nearby residents in Kiln Avenue having particular regards to noise from the CPRR.

Reasons

Living conditions

8. The impact of noise from the CPRR was considered during the determination of the original application that resulted in dwellings being constructed facing onto Kiln Avenue. The imposition of condition 22 reflected the concern that without suitable noise attenuation, the proximity and operation of the heritage railway would be likely to cause unreasonable noise disturbance to some of the future residents.

9. This approach accords with paragraph 127 f) of the National Planning Policy Framework (the Framework) which states that planning decisions should ensure that development creates places with a high standard of amenity for existing and future users. Furthermore, paragraph 170 e) stipulates that planning decisions should prevent new development from contributing to, being put at risk from, or being adversely affected by, unacceptable levels of noise pollution. Additionally, paragraph 180 a) states that decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life.

10. The information provided by the Chinnor and Princes Risborough Railway Association Limited outlines the nature of the heritage railway operation which includes evenings and special events, as well as coinciding with public holidays and weekends. The operation of older steam and diesel engines will, by comparison with modern engines, generate a higher level of noise. These factors in combination indicate that the potential for noise impact remains and I have not seen evidence to suggest that the acoustic attenuation required by condition 22 is no longer necessary. As such, without an appropriate level of

[3] Reference P10/E1917/DIS approved 9 June 2011, confirmed in Council's delegated report reference P19/S1186/FUL, paragraph 4.5

noise mitigation the levels of noise would result in unreasonable disturbance to nearby residents.

11. Moreover, prolonged concerns arising from noise disturbance is, in the absence of such mitigation, likely to lead to public pressure to reduce or curtail the CPRR operations. Paragraph 182 of the Framework highlights that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. As such, where the operation of an existing business or community facility could have significant adverse effect on new development in its vicinity, the 'agent of change' should be required to provide suitable mitigation before the development has been completed.

12. It is asserted that the erected approximately 2.4m high fence provides an effective barrier in terms of its density and thickness and two reports[4] are provided in support of this. However, I have some concerns regarding the information provided for the following reasons. Firstly, the noise.co.uk report confirms that in order to optimise the effectiveness of its barrier performance, a fence should not contain any airgaps between sections or within the panels, between the panels and the supporting posts and between the panels and the ground. The acoustic report dated 4 July 2017 stated that the fence had been carefully examined and revealed no holes or gaps[5]. However, by March 2019 the evidence[6] shows that quite significant air gaps between the fence panels and the ground had emerged, as well as a number of knot holes. I observed this when I visited the site.

13. The deficiencies that have emerged in a relatively short time are perhaps indicative that the fence erected has not been designed for an acoustic purpose. Such fencing, in order to perform appropriately, is often of a higher quality and construction than might otherwise be the case. Accordingly, the evidence suggests that, even if obvious gaps were addressed, smaller additional gaps may already exist, or more might arise in the future. As such, I am not assured that the quality of the fencing would not necessitate frequent maintenance, prior to which there would be periods where it would not perform effectively and would result in harm to the living conditions of residents.

14. Secondly, notwithstanding the appellants' commitment to rectify holes and make up ground or use a proprietary gravel board at the foot of the fence[7], the evidence does not suggest that the present condition of the fence has been carefully examined. As such, there is little information regarding the extent or nature of such works, nor the likely longevity of repairs and these works are not fully detailed as part of the application. In this regard, the proposal is not equivalent to the level of detail approved as part of the discharge of condition 22 of the original permission, which specified the acoustic fence to be installed. Although the appellants indicate that the approved acoustic fencing has now ceased production, it is not shown that there are no other available acoustic products with similar performance capabilities.

15. Finally, rather than using actual noise measurements from the façade position of the now constructed dwellings in Kiln Avenue to inform the assessment of

[4] Report by 10dB acoustics dated 4 July 2017 & report by noise.co.uk dated 20 March 2019
[5] Paragraph 2.7 10dB acoustics
[6] Figures 3 & 4 noise.co.uk report dated 20 March 2019
[7] In line with the conclusions in noise.co.uk report

the existing performance of the fence, the calculations relied upon in the acoustic report dated 4 July 2017 instead use the predicted measurements given in the acoustic assessment[8] submitted with the original application dated February 2010. Given the representations received from nearby residents regarding the noise levels they experience, it seems reasonable that, in order to demonstrate a robust assessment of the effectiveness of the fencing, it should be informed by more relevant available evidence.

16. Taking these factors together, based on the evidence provided, I am not assured that the proposal provides satisfactory noise mitigation to prevent an unacceptable impact on the living conditions of nearby residents. Nor am I satisfied that the fence erected is the equivalent of the acoustic fence approved under condition 22 of the original permission. My findings on this are reinforced by the comments of the Council's Environmental Health Officer[9], which in light of his expertise and local knowledge I have given considerable weight.

17. Paragraph 130 of the Framework states that local planning authorities, and therefore, by extension, an Inspector, should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used). In my view this is highly relevant to these circumstances.

18. Consequently, the proposal conflicts with saved policy EP2 of the South Oxfordshire Local Plan 2011, January 2006 (LP), which states that proposals that would have an adverse effect on existing or proposed occupiers will not be permitted, unless effective mitigation measures will be implemented.

19. Furthermore, as the proposal does not provide suitable mitigation arising from the 'agent of change' referred to in paragraph 182 of the Framework, it raises the likelihood of increased pressure to limit the operation of the CPRR. Accordingly, the proposal conflicts with saved policies RUR11 and T6 of the LP. Policy RUR11 permits proposals for the redevelopment of the former Chinnor Cement Works subject to criteria, one of which requires development to provide for the continued operation of the Chinnor/Princes Risborough railway line. Policy T6 more generally seeks to protect existing or former rail facilities from development which might affect their use or potential reuse for public transport.

20. The decision notice also refers to policy CH T1 of the Chinnor Neighbourhood Plan, October 2017. Whilst the plan mentions the tourism significance of the CPRR, policy CH T1 sets out circumstances where new tourism facilities will be supported. As such, the nature of the proposal does not fall within its remit and therefore, I find no direct conflict with it.

Other matters

21. My attention is drawn to the ecological assessment[10] of the hedgerow adjacent to the fence. It asserts that should the existing fence need to be replaced in its entirety there would be detrimental effects on the existing hedgerow and local biodiversity. I acknowledge that in those circumstances, harm might result, but given the recommendations in the ecological report, it is not shown that

[8] Prepared by Technology Centre
[9] Consultation response dated 13 May 2019
[10] Prepared by ADAS dated 21 October 2019

appropriate mitigation and compensation could not be achieved. Moreover, this does not outweigh the harm identified in relation to the living conditions of nearby residents.

Conclusion

22. For the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector