
Appeal Decision

Site visit made on 25 February 2020

by Jonathon Parsons MSc BSc(Hons) DipTP(Cert Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/H1705/W/19/3242270

Jaylin, Byes Lane, Silchester RG7 2QB

- 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 Dr Lynne Clark against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 18/03062/FUL, dated 17 October 2018, was refused by notice dated 19 June 2019.
 - The development proposed is the change of use from recreational residential to full residential use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Based on appeal documentation, the proposal has been treated as a change of use of land for residential purposes which does not comprise living accommodation. In this regard, the appellant has indicated that the mobile homes on the site do not need planning permission. It is stated that they have been present on the site for a number of years and an application plan also maintains that they do not form part of the application.
3. As to the lawfulness of the mobile homes, it is not the purpose of this type of appeal to make a determination on an existing or proposed use which is dealt with under sections 191 and 192 of the Town and Country Planning Act 1990.

Main Issues

4. The main issues are the (a) the health and well-being of the users of the land, having regard to noise, and (b) the effect of any noise mitigation measures on the character and appearance of the area.

Reasons

Health and well-being

5. The appeal site comprises an open area of land with an access drive leading to the mobile homes. An adjacent dwelling, Brook House, lies adjacent in a large plot whilst on the other side of the site, there is a wood yard in a class B2/B8 use with unrestricted operational hours. On part of this site, there is a double glazing company which parties accept has a minimal impact in terms of noise. However, the remainder of the site is used occasionally for wood processing activities by the owner and if the double glazing company vacates, the whole of

- the yard would potentially be used again for such activities under existing planning permissions.
6. The appellant's NIAR is for a dwelling, based on recognised professional noise guidance, policy and practice. Assuming a scenario of the yard in full wood processing use (approximately 4-6 hours), a contour map indicates the noise levels emanating from the yard across the site. It shows that external noise levels for much of the site would be above the guideline figures of acceptability, including that of the World Health Organisation (WHO) Guideline for Community Noise, apart from an area to the west of the proposed dwelling. In a previous appeal decision, the Inspector considered mitigation in the form of a 2m high acoustic fence. With this, it was concluded that the impact of noise from wood processing activities would be reduced to a level which would be acceptable under the guidelines.
 7. However, the appeal proposal does not involve a bungalow or other form of living accommodation. There is no contour map showing the impact of noise across the site without a dwelling/residential unit on the site. Much of the NIAR report is focussed on achieving acceptable noise levels within a dwelling and not outside areas. Therefore, it is not possible to assess whether acoustic fencing could reduce noise to acceptable levels for this proposal taking into account the relevant guidelines.
 8. There is no evidence of any permissions/consents for the existing mobile homes on the site but even if there were, the noise screening and reduction effects arising from the mobile homes would be less due to their construction, siting and size. Therefore, it would similarly not be possible to assess whether acoustic fencing could reduce noise to acceptable levels, taking into account the guidelines.
 9. The NIAR has been undertaken on a worst-case scenario basis. The wood yard owner was unable to predict the likelihood of the yard being in full wood processing operation if the double-glazing company were to vacate. However, the neighbouring wood yard has an unrestricted class B2/B8 use, with no restrictions on hours, and part of the yard is still being used on an occasional basis as a wood yard. Over time, operations will change, and the past lack of noise and disturbance does not guarantee future non-occurrence. As a result, an intensification of use under B2/B8 has to be considered as a distinct possibility, being more than just a theoretical option, and accordingly, I attach significant weight to the consideration of this scenario. For these reasons, the proposal should be assessed on a worst-case scenario basis.
 10. The Council has the powers to serve a noise abatement notice on the wood yard users. However, the wood yard is an existing use and the National Planning Policy Framework (the Framework) states that unreasonable restrictions should not be placed upon existing businesses as a result of development permitted after they were established. It is therefore reasonable to conclude that the onus is upon the appellant to demonstrate the acceptability of their proposals in planning terms. In any case, the threshold for gauging adverse impact and legislation for noise abatement notices are different to that considered under planning and therefore, there is no guarantee that a notice would be served and address any noise impacts arising if the proposal were to proceed under planning legislation.

11. The NIAR indicates that the residents at Brook House could have significant adverse impact from noise if the wood yard was fully operational. However, this would not justify a further unacceptable situation arising from the use of the land for residential purposes.
12. For all these reasons, there would be harm to the health and well-being of residential users of this land and the proposal would conflict with policies EM10 and EM12 of the Basingstoke and Deane Local Plan 2011-2029.

Character and appearance

13. The NIAR proposes various heights of acoustic fencing, with 3m achieving the greatest reduction. A 2m high acoustic fence would not be dissimilar to the existing fence along the frontage or that which could be erected without planning permission. However, it is unclear what height of acoustic fencing would be proposed. In this rural location, extensive lengths of fences at heights of 2.5m and 3m would be visually intrusive given their overall size. For these reasons, it has not been demonstrated that the proposal would not harm the character and appearance of the area. Accordingly, the proposal would conflict with policy EM1 of the LP.

Other matters

14. The land is used by the parents of the appellant. However, personal circumstances will seldom outweigh the more general planning considerations as works of a permanent nature will remain long after the personal circumstances have ceased to be material.

Conclusion

15. Based on an intensification of use at the wood yard, there would be harm to the health and well-being of the users of this land and, with acoustic fencing greater than 2m, the character and appearance of the area. Accordingly, the proposal would be contrary to the identified policies of the LP and the development plan taken as a whole. Material considerations would not be of sufficient weight or importance to determine that the decision should be taken otherwise than in accordance with the development plan and therefore planning permission should be refused.
16. For the reasons given above and having regard to all other matters raised, including support, I conclude that the appeal should be dismissed.

Jonathon Parsons

INSPECTOR