



Appeal Decision

Site visit made on 10 June 2020

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/M4510/W/19/3234440

**Land to South of Walker Road, Formerly Saint Peters Scrap Yard,
304 Walker Road, Newcastle upon Tyne NE6 1AH**

- 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 Alamoudi (Yasser Alamoudi Limited) against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2016/1060/01/DET, dated 22 June 2016, was refused by notice dated 28 March 2019.
 - The development proposed is residential development comprising of 58 units in 3 interlinked blocks of 5-6 storeys including a lightweight penthouse level together with associated hard and soft landscaping and 64 car parking spaces with access from Walker Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the appeal site address from the Council's decision notice as it is more precise than that given on the planning application form.
3. Prior to the determination of the planning application the scheme was amended and the description of development changed to that set out in the header above. This was the basis upon which the Council determined the scheme and so shall I.
4. The Council's second reason for refusal references a requirement for an open space and recreation contribution of £145,880. It has been clarified that this was a typographical error and should have been £45,880.
5. Since determination of the planning application the Council's Development and Allocations Plan 2015-2030 (DAP) has been found sound, subject to a number of main modifications. Given the advanced stage of the DAP, I have given due weight to the relevant Policies contained within it.

Main Issues

6. The main issues are:
 - Whether the site is an appropriate location for the development, with particular regard to the effects of odour on the living conditions of future occupiers; and

- Whether appropriate provision would be made for affordable housing and other requirements arising from the development.

Reasons

Odour effects

7. The development would be arranged in three linear interlinked blocks utilising the existing access from Walker Road, which passes initially along the western boundary before turning east into the narrow L-shaped site.
8. Immediately to the north west and adjoining the appeal site is the Byker Waste Treatment and Transfer Station (BWTTTS) operated by SUEZ Recycling and Recovery UK Ltd on behalf of Newcastle City Council.
9. The BWTTTS is a Mechanical and Biological Treatment waste handling facility, which I am informed is the principal waste treatment and transfer facility for Newcastle City's municipal waste collection service. It processes a large amount of household, commercial and industrial waste, including both inert wastes and organic material (such as animal tissue, food waste and green waste) under permit from the Environment Agency (EA).
10. There is no dispute that the BWTTTS is a known source of odour and that the residential development falls within the high sensitivity receptor category. Due to the prevailing wind direction, the development would lie directly downwind from the odour source. This, together with the proximity of the development to the odour source and an expectation that residents would want to open windows and enjoy outdoor space within the development, means that the pathway effectiveness from odour source to receptor should be regarded as highly effective.
11. During the planning application, the appellant provided an Odour Impact Assessment¹. The assessment utilised sniff testing of odour intensity at locations within the site and predicted the likely odour effect to be moderate adverse on the two blocks that have since been removed from the proposals, and slight adverse on the three blocks comprising the appeal scheme. The Council commissioned its own Odour Assessment², which utilised a qualitative risk-assessment approach, together with a review of the appellant's assessment. It predicted moderate adverse odour effects across the whole of the development, but its overall conclusions are similar to the appellant's assessment. Both consider the western part of the site to be at risk of potentially significant odour effects from the BWTTTS, with the risk decreasing further to the east where the three residential blocks are proposed to be sited.
12. However, the conclusion of the Council's odour assessment is qualified with a statement that odours are still likely to be detectable across the entire site from time to time. Furthermore, the appellant's sniff test results show that on two separate test days unpleasant municipal waste odour was detectable at the eastern end of the site. This is consistent with the history of odour complaints against the BWTTTS from greater distances than any part of the development. There is nothing substantive before me to support assumptions that these complaints were a result of abnormal operations at the BWTTTS or abnormal meteorological conditions.

¹ By Spectrum environmental support, dated 8 May 2017

² By Air Quality Consultants, dated 4 September 2017

13. The objection from the EA, a statutory consultee, is a very weighty matter. It indicates that in 2018 there was a significant spike in the number of complaints about odour from the BWTTTS within as much as a 1km radius of the development. This is corroborated by the objection from the Council's Waste Management Section, adding that the spike in 2018 complaints came despite efforts made by the facility to control odours after a peak of complaints in 2014-2015. This indicates that even with reasonable odour reduction measures at the source and effective operational pollution regulation in place, the surrounding area still experiences effects from residual odour caused by the BWTTTS.
14. I am also mindful that the BWTTTS is permitted to operate 24 hours per day, 7 days a week. Accordingly, the potential exists for the facility to operate more intensively than at present. The objection from the operator of the facility highlights the importance of flexibility to be able to work longer hours should the need arise, or if waste management requirements and targets change over time. In addition, the Council's Waste Management Section advises that mandatory weekly food waste collection may be introduced in the future. These factors could further increase the risk of odour effects from the facility.
15. Moreover, I am cognisant that the access for the development closely hugs the western boundary with the BWTTTS. It is common ground that the western part of the site could be exposed to potentially significant odour effects. Therefore, irrespective of whether the remaining residential blocks to the east would be exposed to unacceptable odour effects, it is likely that future occupiers of the development could experience the unpleasant odours from the BWTTTS on a regular basis as they enter and leave the site, by foot and by vehicle. Whilst this would be for short periods each time, cumulatively, this experience could cause annoyance and increase the potential for odour complaints against the BWTTTS.
16. In addition, the amendments introduced a "grass amenity" area in the western part of the site where one of the residential blocks was removed from the scheme because of potentially significant odour exposure in that location. As such, it would be likely that its users could be regularly exposed to unpleasant odours, particularly during warmer weather, thereby impacting on their health and well-being, as well as increasing the potential for odour complaints against the BWTTTS.
17. The introduction of dense planting along the western boundary may assist in the dispersion of odour to part of the site, but there is no substantive evidence that it would be highly effective in mitigating the effects of odour exposure from the BWTTTS. Indeed, the appellant's odour assessment acknowledges that this should not be considered as a mitigation plan which is certain to reduce the impact of odour exposure to the proposed development.
18. Drawing all these matters together, I cannot rule out the possibility that future occupiers of the development could be exposed to harmful odour effects from the BWTTTS. There is also a realistic prospect that the proposal could lead to further odour-related complaints against the BWTTTS. This could result in further costly measures and restrictions being placed on its operations. Not only would this disadvantage an existing business, but it could also unacceptably prejudice the Council's essential waste management and

recycling infrastructure and services. In these circumstances, I consider that a precautionary approach is a necessity.

19. For all these reasons, I conclude that the site is not an appropriate location for the development, with particular regard to the effects of odour on the living conditions of future occupiers. Thus, the development would be contrary to Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (CSUCP), which requires that the wellbeing and health of communities is maintained and improved by among other things, preventing negative impacts on residential amenity and wider public safety from air quality. It would also conflict with Policy DM23 of the DAP, which includes a requirement for development to provide a high quality environment and a good standard of residential amenity for existing and future occupants, ensuring among other things, that smells, fumes and other harmful effects from surrounding land uses and/or associated operations will not have an unacceptable adverse impact on residential amenity.
20. The development would also be contrary to paragraphs 127f, 180 and 182 of the National Planning Policy Framework, which seek to ensure a high standard of amenity for all existing and future users; that development is appropriate for its location taking into account the likely effects of pollution on living conditions; and that existing businesses and facilities do not have unreasonable restrictions placed on them as a result of development permitted after they were established.

Affordable housing and other requirements arising from the development

21. The Council has identified the need for the provision of 15% affordable housing, a financial contribution of £45,880 towards open space and recreation improvements in the vicinity, a Training Employment Management Plan, internal estate road and footpath management details, and the monitoring costs associated with the obligations. These have been identified and calculated on the basis of the specific development proposed and the Council's adopted development plan policies and supplementary guidance.
22. On the evidence before me, there is no suggestion that these provisions are anything other than necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. I am therefore satisfied that they would comply with the relevant tests for planning obligations as set out in the Framework and in Regulation 122 of the CIL Regulations.
23. The appellant has indicated willingness for all of the above mentioned requirements and contribution to be secured by a legal agreement, but there is no legal agreement before me. I have noted the request for the provision of a legal agreement to be conditioned; however, the Planning Practice Guidance (PPG)³ states that a positively worded condition which requires the applicant to enter into a planning obligation is unlikely to pass the test of enforceability. The PPG also adds that a negatively worded condition limiting the development taking place until a planning obligation is entered into is only appropriate in exceptional circumstances, citing more complex and strategically important development, which the proposal would not constitute.

³ Paragraph: 010 Reference ID: 21a-010-20190723

24. Accordingly, in the absence of any legal agreement, it is the case that the development would not make appropriate provision for affordable housing and the other identified requirements arising from the development. Thus, it is contrary to CSUCP Policies DEL1, CS5, CS11, CS13, CS18, saved UDP Policies OS1.1, OS1.2 and T7.1, and DAP Policies DM14 and DM27, in so far as they require new development to be made acceptable through the provision of affordable housing, and refer to the specific obligations and infrastructure requirements that have been identified.

Other Matters

25. The proposal would make effective use of previously developed land, which is identified for housing potential in the Walker Riverside: Area Action Plan. It would also add to the supply and choice of housing in the area, create employment opportunities and make a contribution to the local economy from additional revenue and expenditure from future occupiers. These are meaningful benefits of the proposal, but they do not outweigh the significant harm identified and the proposal's failure to comply with the policies of the development plan as a whole.
26. I have noted the variety of other issues raised by interested parties that have not been encapsulated above. This includes concerns regarding noise, design, traffic, wildlife, privacy, flooding, archaeology, land contamination and stability. However, these matters did not feature in the Council's refusal reasons and as I am dismissing the appeal for other reasons, it is not necessary to consider these matters any further, as any findings in these respects would not change the appeal outcome.

Conclusion

27. For the reasons given, the appeal should be dismissed.

A Caines

INSPECTOR