
Appeal Decision

Site visit made on 29 June 2020

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2020

Appeal Ref: APP/W4705/W/20/3248880

The Croft, Thwaites Brow, Keighley BD21 4ND

- 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 Mrs C Bailey against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 19/02331/FUL, dated 31 May 2019, was refused by notice dated 31 October 2019.
 - The development proposed is the formation of 3 No detached houses with associated amended driveway serving all properties and continuing access to established properties, visitor parking spaces, pedestrian access routes, servicing and structured low maintenance landscaping.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is whether or not the proposed development would provide adequate living conditions for future occupiers with particular reference to noise and disturbance.

Reasons

3. The appeal site is a steeply sloping area of open grassland. To one side of the site is a detached house (The Cobbles) and to the other is a residential home. To the north, obscured from view by a substantial row of conifers is an industrial site occupied by an industrial boiler hire company. The wider area comprises a mix of residential and commercial uses and a railway line and dual carriageway are also located to the north.
4. The site has in recent years been subject to 2 similar planning applications¹ for housing development both of which were refused and the first one was also dismissed on appeal. In all cases this was on noise and disturbance grounds. Unlike the previous applications an acoustic report (AR) was submitted with this application.
5. The primary sources of noise are from road and rail traffic and the adjacent industrial use. The AR indicates that whilst traffic/train noise can be heard both during the day and the evening/night it is low in volume. This concurs with the comments from the previous Inspector that the noise from these were not

¹ Application Reference 16/06629/FUL and 17/06389/FUL and Appel Reference APP/W4705/W/17/3171653

- intrusive. I also observed this to be the case and am satisfied that these sources would not give rise to unacceptable levels of noise for future occupiers.
6. As well as general noise associated with its boiler maintenance and inspection activities, the business has stated that they undertake "safety valve lifts" which create a significant level of noise and as a result are preceded by warning alarms. The Council has stated that there have been no material changes in circumstances at, or around, the industrial site since the previous applications/appeal, with the latter stating that 3 or 4 of these are undertaken in a week.
 7. The AR indicates that noise levels created at the industrial site are such that mitigation measures would be needed for both the proposed houses and their gardens. It recommends that acoustic glazing is provided to the houses, that windows are kept shut during the day with mechanical ventilation provided to mitigate for this, and that a 3.5m high acoustic fence is provided between each property.
 8. It is common ground that acoustic glazing would be able to control noise within the houses as long as the windows remain shut during the day. However, this would not be the case if the windows were open, a situation the previous Inspector concluded would not be acceptable and I agree. Whilst the appellant suggested that windows only tend to be open in warmer months, this is not necessarily the case, but depends on the individual occupier.
 9. During the day, to ensure satisfactory noise levels in the house, future occupiers would be reliant on mechanical ventilation. The appellant highlights that some houses are designed with windows that cannot open, such as those designed to Passivhaus standards. Be that as it may, in the appeal scheme the need to keep the windows closed is not to meet sustainability criteria but to ensure adequate noise levels within the house. Nor does the AR suggest that the windows only need to be closed for the duration of the testing but for the whole of the day.
 10. The houses have been designed so that the majority of the main habitable rooms are at the rear so that they face away from the industrial site. This means that they face south-west. As a result, the Council consider that the dwellings would be subject to incremental heat gains and unacceptable internal temperatures during the warmer months and thus that the proposed ventilation would be inadequate without being able to open the windows. In the absence of any evidence to the contrary, this is a conclusion with which I agree. As a result, satisfactory living conditions would not be provided for future occupiers within the dwelling.
 11. To provide acceptable noise levels in the rear gardens acoustic fencing would be provided at the side of each house. The Council have not disputed that this would ensure satisfactory noise levels in the gardens but have raised concerns about it causing overshadowing and an oppressive outlook.
 12. At 3.5m high the acoustic fencing would be a substantial structure, but it would be located to the western side of each house and set back from the front and rear elevations. Although those located between each dwelling would not be readily visible either by those travelling along The Croft, or from within the rear gardens, that located between the western most house and The Cobbles would be a greater length and much more prominent. Whilst given the steeply sloping nature of the site, it would be seen against the hillside from the front and

would not appear as tall from the rear garden itself, it would still be a substantial and oppressive feature. Moreover, any landscaping would take many years to mature sufficiently to soften its appearance. In addition, the position and length of this acoustic fence would be likely to cause additional overshadowing to the rear garden of this property.

13. Therefore, whilst the acoustic fencing may ensure satisfactory noise levels in the rear garden it would create a fortress like character to the development as well as some overshadowing to the rear garden of the western most dwelling to the detriment of the living conditions of future occupiers.
14. The appellant has highlighted that there have been no complaints regarding noise from the industrial site from existing residents and that letters of support for the appeal scheme from local residents confirm that noise is not an issue. However, that does not mean that the noise levels either inside their houses or in their gardens are acceptable. Moreover, this site is located closer to the building I understand is used to do the boiler testing than the adjacent houses. In locating more houses in the vicinity of what is clearly a "noisy neighbour", the likelihood of noise complaints and the potential for restrictions on the activities of the firm increases.
15. I note that the noisiest activities on the industrial site take place on weekdays during "normal" working hours. The appellant suggests that this is when most people are at work but this is not something that can be guaranteed or controlled and the dwelling could, for example, be occupied by people who for one of a variety of reasons do not work or who work shifts. Although anyone buying a house on the site might be aware that the houses are in close proximity to an industrial site, they would not necessarily be aware of the level of noise that emanates from the site, particularly because it is not constant.
16. My attention has been drawn to noise related conditions imposed on permissions granted for new buildings on the industrial site, including that used for the boiler testing. However, I do not have the full details of the noise mitigation measures that were installed. Nor am I fully aware of what other restrictions exist on the site for example in terms of operating hours and therefore whether the noise situation could deteriorate in the future if activities increased. Any such increase could be to the detriment of nearby occupiers. Whilst noise levels have to be within acceptable levels for staff working on the site, I would anticipate that they would utilise personal protective equipment, and so this does not mean that noise levels would be acceptable for those living nearby.
17. It has been suggested that the business may be operating in breach of some previously imposed conditions. Whether or not this is the case is not a matter before me at this appeal.
18. Overall, I consider that the proposed development would not provide adequate living conditions for future occupiers with particular reference to noise and disturbance. Accordingly, it would conflict with Policies EN8 and DS5 of the *Bradford Core Strategy Development Plan Document (adopted July 2017)* which seek to ensure future occupiers are provided with adequate amenity and that mitigation measures are provided if a development is likely to be exposed to sources of pollution including noise.

Planning Balance and Conclusion

19. The Council have highlighted that they currently cannot demonstrate a 5 year housing land supply. The *National Planning Policy Framework* (the Framework) indicates that in such circumstances permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole (paragraph 11d).
20. The appeal scheme would make a small contribution to housing supply. The site has good public transport links and is close to a range of services and facilities. The development, both through the construction phase and through the spending of future occupiers, would bring some benefits to the local economy. However, it would not provide future occupiers with adequate living conditions and would also be detrimental to the character and appearance of the area.
21. I note that the previous inspector concluded that the access to the site would be satisfactory and there is no objection to the appeal scheme from the Highways Authority. Nevertheless, an absence of harm in these matters is a neutral factor.
22. All in all, I consider the benefits of the proposed development would be modest and the harm caused by the proposal would significantly and demonstrably outweigh the benefits.
23. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR