
Appeal Decision

Site visit made on 4 June 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Appeal Ref: APP/Y2003/W/20/3246415

Redundant Car Park to the former Balfour Beatty & BPH Offices, Humber Road, Barton upon Humber, North Lincolnshire DN18 5RU

- 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 Gillin Homes Ltd against the decision of North Lincolnshire Council.
 - The application Ref PA/2018/2056, dated 12 October 2018, was refused by notice dated 7 October 2019.
 - The development proposed is Outline Application for Housing.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been submitted in outline with all matters reserved for future consideration. I have dealt with the proposal on that basis, treating details such as those on the proposed site plan as being indicative only.
3. The appellant has raised concerns regarding the Council's handling of the case, and in particular with regard to the submission of raw acoustic data and a perceived lack of response from the Council's Environment Protection Team. However, this is a matter that would need to be taken up with the Council in the first instance and in determining the appeal I have only had regard to the planning merits of the case.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of its future occupiers having particular regard to noise and disturbance.

Reasons

5. The appeal site is a former carpark situated next to a vacant building that would appear to have been previously used as offices. To the other side of this vacant building there is what appears to be an area of overgrown scrubland. On the other side of the appeal site there is a place of worship and an associated car park directly adjacent to it. Beyond this there is what appears to be vacant former commercial site which is bounded by the rear gardens of a row of residential properties. In addition, there also appears to be another vacant site located to the rear of the appeal site. Directly opposite the appeal site, on the other side of Humber Road, there are several large commercial buildings and directly adjacent to and behind these lies an area of residential housing and also what appears to be another vacant site. On this basis, I consider the appeal site to be located primarily

- within a commercial area notwithstanding the fact that there are also non-commercial uses nearby.
6. At the time of my visit there was some background noise from traffic using the A15 however this was not significant, and no vehicles passed by the appeal site at that time. As part of the planning application process the appellant submitted a Noise Survey, dated 6 February 2019, (the Noise Survey). The Noise Survey indicates that the highest noise levels on the site were recorded from an adjacent commercial site, concluding that the appeal site is considered to be 'medium risk'. It identifies that without mitigation noise levels would be such that the internal and external standards of BS8233:2014 would not be met for the indicative proposal, but that with mitigation the internal standards could be met provided that effected windows are kept closed.
 7. In summary, the mitigation proposed consists of 2.5m high acoustic fencing, a specified standard of glazing for all effected windows and ventilation of all effected dwellings via a specified system, such that windows need not be opened for ventilation purposes. The mitigation measures also include a +3 dB penalty meaning that if the noise level at the façade doubled that the internal noise levels would still comply with the standards' criteria.
 8. As outlined above, the Noise Survey submitted by the appellant shows that there would be noise and disturbance to future occupiers resulting from commercial use on the adjacent site behind the appeal site, which both parties appear to agree on. However, from what I saw on my site visit and what I have read, this site appears to be no longer in use. Nevertheless, whilst I note the appellant's point that this closure seems to be permanent, this would not necessarily always be the case should the site be sold, and another business were to take it over in order to resume similar operations under its permitted use.
 9. Furthermore, the fact that the adjacent site to the north of the appeal site has recently seen planning permission granted for another commercial use means that it would be reasonable to think that there is still demand for this type of commercial activity in the area despite the presence of currently vacant sites and buildings. Accordingly, it would also be reasonable to think that the site to the rear of the appeal site and the other currently vacant sites in the area could also potentially be brought back into a similar commercial use again in future.
 10. Consequently, based on the evidence before me, and notwithstanding the potential mitigation of neighbouring commercial activity from one business generating the levels of noise as discussed above, it is reasonable to conclude that future occupiers of the indicative appeal scheme would at some point experience unacceptable harm to their living conditions due to noise resulting from a potential increase in the activity levels of additional neighbouring commercial uses. I am also not convinced by the appellant's argument that given the presence of the existing residential dwellings nearby at Pine Peak, the operational activities of these potential future commercial uses would be less intense and so have a less harmful effect. This was not the case when the Noise Survey was undertaken, and for the above reasons it would also not likely be the case in future. Furthermore, the dwellings at Pine Peak are a further away from these commercial uses than the appeal site which would also make this less likely.
 11. The indicative proposal would, therefore, be contrary to the National Planning Policy Framework (the Framework), particularly paragraph 127, which seeks to secure a good standard of amenity for existing and future occupants of land, and paragraph 180, which states that decisions should avoid noise from giving rise to significant adverse impacts on health or quality of life as a result of new

development. In turn, these circumstances would also be likely to result in complaints from residents of the indicative proposed development against these neighbouring commercial uses. Paragraph 182 of the Framework also states that existing businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

12. For the foregoing reasons, therefore, the potential future level of noise emanating from the commercial uses in the vicinity of the appeal site would be likely to result in unsatisfactory living conditions for occupants of the indicative proposal. Moreover, as a consequence, the proposed residential use would also likely give rise to complaints regarding noise, thereby placing unreasonable burdens on these commercial uses. In these respects, the proposed development would be contrary to the Framework.
13. I acknowledge the appellant's points that the indicative proposal would provide entry-level housing on brownfield land within the built-up area of the settlement and in a relatively sustainable location with access to services and infrastructure. However, and bearing in mind paragraph 81 of the Framework, these factors are not of sufficient weight to outweigh the harm to living conditions of the indicative proposal's future occupiers that I have identified above.
14. I therefore conclude that the indicative proposed development would conflict with the requirements of Policies DS1 (part ix) and H5 (part I) of the adopted North Lincolnshire Plan (May 2003) which, amongst other things, seek to prevent the development of a neighbouring site being prejudiced and ensure that adjacent uses do not detract from the residential amenity which residents of proposed dwellings could expect to enjoy. It would also conflict with paragraphs 127, 180 and 182 of the Framework which aim to create places with a high standard of amenity for existing and future users, mitigate and reduce potential adverse impacts resulting from noise from new development, and ensure that new development can be integrated effectively with existing businesses, amongst other considerations.

Other Matter

15. In support of the appeal scheme the appellant has cited the previous granting of planning permission for change of use of the vacant office building directly adjacent to the appeal site to residential development meaning that the principle of residential development on the site was not at that time regarded as wholly unacceptable close to established commercial uses. However, I do not have all the details of that case before me or the circumstances which led to that decision being taken and so cannot be sure that it represents a direct parallel to the appeal scheme which I have determined on its own merits.

Conclusion

16. For the reasons set out above I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR