
Appeal Decision

Site visit made on 3 July 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th September 2020

Appeal Ref: APP/X4725/W/20/3245584

Land off Railway Avenue / Stuart Street, Pontefract

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Wakefield District Housing and STG against the decision of Wakefield Council.
 - The application Ref 17/02704/FUL, dated 13 October 2017, was refused by notice dated 10 October 2019.
 - The development proposed is the demolition of existing building and erection of 28 affordable houses.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The initial application was for 28 affordable dwellings. However, following negotiation with the Council the proposed development was reduced to 22 affordable dwellings. The revised layout showing 22 affordable houses is shown in Drawing Number 2361.26.102F, dated January 2019.

Main Issues

3. The main issue is the effect of the operation of the adjacent bus depot on the living conditions of the future occupants of the proposed development with regard to noise and associated noise mitigation measures.

Reasons

4. The site is located to the east of Colonel's Walk which runs from the town centre through a predominantly commercial area to some housing just north of a railway embankment. It is broadly rectangular, includes several redundant structures and slopes upward from north to south. It sits within the Tanshelf Industrial Estate which Policy SPA7 of the Wakefield Local Development Framework: Site Specific Policies 2012 (SSP) identifies as being suitable in principle for mixed uses including residential development.
5. A bus depot operated by a company called Poppletons Coaches Ltd ('Poppleton's depot') occupies an adjacent piece of land on the north side and has an L-shaped boundary between it and the appeal site. Opposite the front entrance to the site is a small industrial estate. The area is generally quite quiet during the day subject to occasional punctuations from background

- traffic, passing trains and vehicular movements to and from the various local business.
6. The 11 pairs of 2-storey semi-detached affordable dwellings (12 dwellings for rent and 10 dwellings for shared ownership) would be arranged along a T-shaped cul-de-sac that would be accessed from close to where Railway Avenue intersects with Colonel's Walk. Each semi-detached dwelling would incorporate a small area of garden to the front and rear.
 7. Plots 1, 2, 21 and 22 would be very close to the rear yard of Poppleton's depot where some of the buses are parked. The firm operates around 13 buses, many of which are used for school-runs. The firm's operation is not subject to any time restrictions although the number of bus movements in and out of the garage tends to be greatest on weekdays between around 5.30am and 9.00am and between 2.30pm and 6.00pm.
 8. On weekday winter mornings drivers must warm up the bus engines prior to departure and in snowy weather need to clear Colonel's Walk with a tractor. They are subject to a legal requirement to test their horns prior to departure. The buses are cleaned with jet sprays which are also a source of noise.
 9. Sound recordings were undertaken at 4 locations on the site by Hepworth's, an acoustics consultant, on behalf of the Appellant at various times of the day Thursday 1 June, Wednesday 14 June and Thursday 15 June. The recordings show that without mitigation the noise produced by the Poppleton's depot would cause an unacceptable level of harm to prospective occupants of the proposed dwellings.
 10. To eliminate any possible significant adverse effects the Appellant proposes: to erect an acoustic screen along the northern side of Railway Avenue, between the Poppleton's depot and Plot 22, and along the boundary of the rear gardens of Plots 1, 5 and 6; to install upgraded acoustic glazing in the living room and bedrooms of Plots 1-4 and 19-22; and to install mechanical ventilation or a fully ducted system for the living room and bedrooms in each of the dwellings on the site with trickle-vents for all other rooms.
 11. The acoustic screen would be 2.5 metres in height at all locations except along the boundary with Plot 22 where it would be 3 metres high. According to the Hepworth report the combination of acoustic screen, upgraded glazing and mechanical ventilation would ensure that there would be no harm to the future occupants of any of the dwellings caused by the operation of Poppleton's depot.
 12. The dwelling at Plot 22 would include a door and two windows along the side elevation facing Poppleton's depot. Some trees between the side elevation and the acoustic screen would provide additional mitigation. Nevertheless, these openings would be within a few metres of the area where some of the buses would be parked. The rear elevation of the property would be at an oblique angle to the Poppleton's depot but, again, it would be very close.
 13. The noise from the Poppleton's depot would probably be intermittent and of limited duration given the pattern of operation described earlier. However, given the absence of restrictions this is by no means certain and could change in the future according to business and operational needs.
 14. In combination with upgraded acoustic glazing, and mechanical ventilation or ducting, the acoustic screen would provide noise mitigation to occupants inside

- the proposed dwelling at Plots 1, 2, 21 and 22. However, the need to refrain from opening windows at noisy times would amount to a change in the natural instincts and behaviour of the occupants which is undesirable and, in the context of family housing, difficult to envisage being fully observed. This would cause harm to the living conditions of the future occupants of those plots close to the Poppleton's depot, particularly Plots 1, 2, 21 and 22.
15. Furthermore, given the adjacency of the bus depot and the number of buses that could be parked close to the boundary, I am not persuaded that the acoustic screen would provide effective mitigation for occupants in the back gardens of Plot 22 and Plot 21.
 16. The plots on the southern side of the site would occupy a slightly more elevated position than those closer to the Poppleton's depot, and possibly above the level of the proposed acoustic screens. Nevertheless, due to the distance from the Poppleton's depot, the occupants of these proposed dwellings would probably not experience any significant diminution in living conditions due to noise.
 17. A retailer on Colonel's Walk specialising in performance motorcycles is subject to a planning condition restricting the hours of operation 7.30am to 6pm. However, because of the intermittent nature of any noise and the distance between the unit and the proposed dwellings this would not significantly adversely affect the living conditions of future occupants of the appeal proposal.
 18. Another firm specialising in supplying insulation materials is based in Unit 2 of the Tanshelf Industrial Estate close to the entrance to the proposed development proposal. A noise report prepared on behalf of the applicant in connection with the proposal to remove the hours of operation condition found that there would be no significant effect on a residential property located about 60 metres away on Hardcastle Avenue. Consequently, it would not have any significant adverse effect upon the living conditions of future occupants of the appeal proposal, the nearest of which (Plot 1) would be around 80-90 metres away.
 19. However, notwithstanding the findings regarding the motorcycle retailer and the insulation supply firm the future occupants of those proposed dwellings located close to Poppleton's depot would be significantly adversely affected by noise. Therefore, for the reasons given above the proposed development would fail to provide for the satisfactory living conditions of future occupants. It would therefore fail to accord with Policies CS10 and D9 of the Wakefield Local Development Framework Core Strategy 2009 (CS) and the Wakefield Local Development Framework Development Policies 2009 (DP) which, respectively, seek to ensure that new development minimises noise pollution and provides a quality setting for occupants.
 20. Furthermore, the proposal would fail to conform to the advice set out in Paragraph 127f) of the National Planning Policy Framework that new development should provide for high standards of living conditions for future users. Finally, it would fail to accord with the advice set out in Part 1 of the Council's Residential Design Guide 2018 that new homes should be located away from major sources of noise.

Other Matters

21. All 22 dwellings within the development proposal would be affordable and would thus comfortably exceed the 30% provision requirement set out in Policy CS6 of the CS. To guarantee their affordable status the Appellant has submitted a draft bilateral s.106 agreement and has agreed to convert this to a unilateral undertaking.
22. The proposal would make quite a significant contribution to addressing the deficit in affordable housing provision within the district which the Appellant states is identified in the Council's Strategic Housing Market Assessment 2016.
23. Furthermore, the proposal would be compliant with the Council's objective to focus new development within a principal town as encouraged by Policies CS1 and CS3 of the CS. It would also make a significant contribution to the economic and physical regeneration of the Tanshelf Industrial Estate area which is described as a key gateway to Pontefract in SPA7 of the SSP.
24. By virtue of its location prospective occupants would be within walking distance of the town centre and have easy access to public transport services, and so complying with Policy CS4 of the CS. Moreover, the proposal would make effective use of a brownfield site whilst also providing some land for landscaping.
25. By attracting people to live in the area the proposed development would also help to make this key gateway safer and so reduce any anxiety that some might have about walking through it in the evenings going to and from the town centre.
26. The acoustic screen would project slightly beyond the side of the Poppleton's depot and across part of the front forecourt. However, given the modest scale of this section it would not harm the character and appearance of the area. Furthermore, there is no credible evidence to suggest that the acoustic screen would present any fire hazard.
27. The proposal would not cause any problems as regards highway safety or parking. Furthermore, it would not cause any flood risks. An ecological survey has confirmed that there is a low to medium chance that bats are present on the site. However, this could be addressed through a condition requiring the installation of bat boxes and therefore is not an impediment to development.
28. I give considerable weight to the benefits that would be derived from the provision of much needed affordable housing on a brownfield, gateway site in an area in great need of physical and economic regeneration and close to the centre of this principal town. Moreover, I note that the proposal would not conflict with the need to protect bats, prevent flooding and reduce traffic congestion.
29. However, even when taken together these benefits do not outweigh the fundamental conflict with the Development Plan as regards the significant adverse effect that the proposal would have upon the living conditions of future occupants of the dwellings close to the Poppleton's bus depot.

Conclusion

30. For the above reasons the appeal should be dismissed.

William Walton

INSPECTOR