

Appeal Decision

Site visit made on 20 August 2020

by R Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2020

Appeal Ref: APP/C4615/W/20/3253120

Land Rear Of, 19-25, High Street, Lye

- 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 Mr Muhammad Ali against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P19/0981, dated 9 July 2019, was refused by notice dated 10 December 2019.
 - The development proposed is erection of 6no. 2 bedroom houses in 2no. terraces of 3.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application which accurately describes the proposal.
3. The address given in the heading above is taken from the Council's decision notice which more accurately describes the location of the appeal site than that provided in the application form.

Main Issue

4. The main issue is whether future occupiers would be likely to experience acceptable living conditions with particular reference to noise and disturbance.

Reasons

5. The appeal site is located between Lye High Street and the bypass road. The immediate area contains a range of other uses including, amongst other things, a vehicle repair shop and flats. The High Street contains several shops and facilities including a takeaway, which has an extraction system close to the appeal site. The Council's concerns relate to this extraction system.
6. The appellant understood the Council's concerns to relate only to noise and disturbance within the gardens of the proposed dwellings. However, the Council's officer report and decision notice does not stipulate this. Moreover, the Council have confirmed that their concerns relate to both the internal and external areas of the proposed development.

7. Although I have been referred to differing guidance, it is clear to me that the guidance within BS 4142:2014+A1:2019 (the BS) is of most relevance for rating and assessing commercial sound at proposed dwellings, as stipulated in paragraph 1.2 of the BS.
8. During my late afternoon site visit, the takeaway was open, and I was unable to hear the extraction system. Instead, noise from the bypass was the predominant background noise. However, I am mindful that my observations represent a snapshot in time, and this could vary in the evening when traffic noise would be lower.
9. Based on the differing technical evidence I cannot be certain of the background noise levels and the level of effect from the extraction system when in operation in the evening. However, even taking the lower figures outlined in the appellant's NR¹, the extraction system would result in an adverse impact according to the BS (section 11).
10. Whilst an adverse impact differs from the Council's position of a significant adverse impact, it still indicates that the extraction system would have the potential to cause an annoyance and sleep disturbance to future occupants of the proposed development.
11. The appellant's NR's assessment against the BS, stipulates mitigation would be needed and could include installing a silencer or installing measures to help direct the sound around the appeal site. The appellant advises that a silencer has recently been installed on the extraction system. However, no substantive evidence of this has been provided and there has been no updated NR submitted. This limits the weight I can afford to this and my observations on site. Moreover, although I'm told that the ownership of the takeaway is within the appellant's family, as it falls outside of the red edge of the appeal site, I am not able to consider the use of conditions to secure mitigation at the source.
12. I have had regard to the proposed boundary fencing and the use of double glazing and trickle vents. However, the NR advises that the fencing would ensure that noise levels from the car garage do not affect the dwellings negatively. No reference is given in the NR to this mitigating the extraction system and given its height, it seems unlikely that such fencing would have any meaningful impact.
13. Whilst the use of double glazing and trickle vents would help when the windows are shut, during the summer months when windows are likely to be open there would be little protection from the extraction system. I therefore have no substantive evidence before me that such measures would provide appropriate mitigation.
14. Whilst I have had regard to the site's context, the appeal site is not on the busy high street but behind it. From my observations on site the High Street is distinctly busier than the area to the rear around the appeal site. The proposed built form would reduce some of the background noise from the bypass within the rear garden and rear rooms of the proposal. Moreover, traffic noise is likely to be less in the evening. As such, and in the absence of any updated technical evidence following any changes to the extraction system, its position has the potential to be a source of disturbance even considering the site's context.

¹ Measurement of Environmental Noise – E2 Consultants

15. I recognise that there are other properties close to the extraction system and my attention has also been drawn to another approval nearby. However, I do not have the full details of the circumstances that led to that proposal being accepted. As such, I cannot be sure that it represents a direct parallel to the appeal proposal in its relationship to the extraction system. Moreover, the absence of complaints does not mean that there isn't noise or disturbance and I must have regard to the evidence before me.
16. Drawing the above together, I cannot be satisfied that the future occupiers would be likely to experience acceptable living conditions with particular reference to noise and disturbance. I therefore conclude that the proposal would conflict with the requirements of Policies D2, D5 and L1 of the Dudley Borough Development Strategy (DS) (adopted 2017). These stipulate, amongst other things, that where development would be subject to high noise levels the Council will require the proposal to include measures to reduce noise intrusion to an agreed appropriate level.
17. These policies are broadly consistent with the National Planning Policy Framework (the Framework). Moreover, the proposal would conflict with the requirements of the Framework, including paragraphs 127, 180 and 182 which seek, amongst other things, to ensure good standards of living conditions for future occupants.

Other Matters

18. There would be benefits from the proposed housing. However, given the scale of development the associated benefits would be modest, and I attach modest weight to them. I have come to this conclusion having regard to the importance that the government places on boosting the supply of housing in sustainable locations and by making effective use of land including previously developed land.

Conclusion

19. I have taken account of all the other matters raised including the benefits of the proposed housing. However, none changes the balance of these findings and the harm I have identified to the living conditions of the future occupiers of the proposed development.
20. For the above reasons, the appeal is dismissed.

Robert Walker

INSPECTOR