
Appeal Decision

Site visit made on 1 September 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 September 2020

Appeal Ref: APP/B3030/W/20/3252277

Land between 48 & 50 Middleton Road, Newark on Trent NG24 2DL

- 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 Taylor Lindsey Ltd against the decision of Newark & Sherwood District Council.
 - The application Ref 19/02266/FUL, dated 19 December 2019, was refused by notice dated 14 February 2020.
 - The development proposed is the erection of 4 dwellings and associated works (resubmission of application 19/01128/FUL).
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 4 dwellings and associated works at Land between 48 & 50 Middleton Road, Newark on Trent, NG24 2DL, in accordance with the terms of planning application 19/02266/FUL dated 19 December 2019, and subject to the conditions within the attached schedule.

Procedural matters

2. I have taken the address from the appeal form and Council's Decision Notice as the address given on the application form is incomplete. I have also removed some superfluous words from the original description of development as these do not describe development.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the streetscene, with particular regard to the effect on nearby protected trees; and
 - the effect of the proposal on the ongoing activity associated with the adjacent Newark Industrial Estate, with particular regard to noise.

Reasons

Character and appearance

4. Middleton Road serves a residential area of largely semi-detached properties. The majority of these have hipped roofs and consist of either brick or rendered walls with some including porch canopies. The majority of plots have retained front gardens with driveways that are generally wide and shared between

neighbouring occupiers. Landscaped front gardens and low boundary walls and fences are a predominant characteristic. Some dwellings are set back with shared driveways and a greater extent of hardstanding, such as 58-64 Middleton Road.

5. The existing pattern of development shows that some dwellings have a disjointed relationship to the highway, such as 5 Terry Avenue and its neighbour, where the frontages are behind existing rear gardens. The submitted block plan illustrates that local plot widths vary to some extent with a commensurate variation in plot density. The appeal site is located between 48 and 50 Middleton Road (No's 48 and 50) and to the rear of 50 and 52. The site is part of a larger area of open land that consists of unkempt grassed areas and woodland with ad hoc pathways running through it. The Newark Public Footpath (No.28) also runs through the site connecting Middleton Road to the Yorke Drive playing fields to the south. The site makes a neutral contribution to the character and appearance of the area.
6. The proposal consists of four dwellings; two would be in between No's 48 and 50 (Plots 1 and 2) and a further two would be to the rear of No's 50 and 52 (Plots 3 and 4). The proposed dwellings would be two-storey with hipped roofs. The proposal would add interest to the design through the use of brick walls, soldier course details and porch canopies. These features would replicate characteristics of the existing built form. Therefore, the design would enable the proposed dwellings to integrate well with the existing built vernacular. The plot widths of the proposed dwellings would be narrower than seen in many local examples. However, this would not be so different as to be construed as disharmonious. Plots 1 and 2 would continue an established front building line and be of a similar height to neighbouring development. These would therefore complement the existing streetscene.
7. Plots 3 and 4 would be located to the rear of the site. These would be accessed by an extended driveway that would also serve the existing footpath. These would be perpendicular to the highway and would be behind existing dwellings on Middleton Road. Nevertheless, the dwellings within these plots would have a coherent relationship to plots 1 and 2 as an integrated extension of the frontage development. Moreover, the proposed extent of hard surfacing would accord with the appearance of existing development within the residential area. As a result, the proposal would accord with the established pattern of local development.
8. Furthermore, the proposed dwellings within both areas of the site would be of sufficient size to cater for day-to-day use, be a comparable density to local plot sizes and would include appropriate parking provision. Moreover, the separation distance between the rear of No's 52 and 54 to the side elevation of plot 3 would be adequate to prevent an adverse impact on outlook. Consequently, the proposal would make efficient use of the land that would not result in an over-development of the site.
9. The rear parcel of the site is adjacent to trees subject to Tree Preservation Order (TPO). These make a strong contribution to the character of the area. They form a largely continuous line of screening to the eastern boundary of plot 4. The Appellant's Arboricultural Assessment identifies that these trees are mostly early maturity and semi-mature. Consequently, whilst they would have some future growth this would be limited and would not therefore overwhelm

the proposed gardens. The proposal would result in limited shading to parts of the rear garden of plot 4.

10. Therefore, the proximity of the tree group would not have a significantly harmful effect on future occupiers of plots 3 and 4 or result in substantial nuisance through overshadowing or leaf clearance. Moreover, the proposed works would have a limited impact on the health of the trees, and this could be further mitigated through the imposition of a planning condition. The trees would therefore be capable of continuing to make an ongoing positive contribution to the area. As such, taking all of the above reasons into account, the proposed dwellings would make a positive contribution to the character and appearance of the streetscene.
11. Accordingly, the proposal would satisfy policies 9 and 12 of the Amended Core Strategy 2019. Amongst other things, these seek development to be appropriate in scale and form to its context and protect the District's ecological, biological and geological assets. The proposal would also satisfy policy DM5 of the Allocations and Development Management Development Plan Document 2013 (LP) where it seeks to only allow back-land development that would be in keeping with the general character and density of an area. These policies are in general conformity with the National Planning Policy Framework (The Framework) which seeks development to be sympathetic to local character.

Noise impact

12. Policy NUA/E/3 of the LP allocates the Newark Urban Area – Employment Site 3 for employment development uses. The Council identifies that the rear part of the appeal site forms part of this allocation. The Council also explains that the allocation included this site to provide a buffer between the employment land and the residential zone beyond. The tree group is outside the appeal site. This provides a strongly defined visual buffer between the two uses. The proposed development would be beyond the buffer and in close proximity to the existing dwellings of Middleton Road.
13. Paragraph 182 of the Framework requires new development to integrate effectively with existing businesses. It identifies that where existing businesses could have a significant adverse effect on new development suitable mitigation should be provided by applicants acting as agents of change. The objective is to prevent an existing business having unreasonable restrictions placed on it through the introduction of new development nearby.
14. The industrial estate is undergoing regeneration and some plots remain undeveloped. However, those plots nearest to the site have been occupied by a St John's Ambulance station, a vehicle repair garage and Appollo Engineering. A corner plot, adjacent to St John's Ambulance station is subject to planning approval for open storage. Other plots within the estate, further from the appeal site, are yet to come forward. Appollo and St John's Ambulance station have reasonably large buildings that present two-storey blank rear elevations towards the appeal site. As such, the industrial buildings address Telford Drive rather than the appeal site. Furthermore, the adjacent trees act as a wide and relatively tall barrier between the industrial estate and the existing residential properties of Middleton Road.
15. The proposed dwelling of Plot 4, nearest to the industrial estate, would present a side elevation towards the tree buffer with no side windows. The Appellant's

Noise Assessment found that daytime noise levels were dominated by road traffic noise from the A1, with noise from the industrial estate being only occasionally audible. It concluded that noise levels across the appeal site are characterised as being the lowest observed adverse effect rather than having a significant effect. It recommended that window glazing and trickle vents are designed to meet an identified acoustic performance specification to reduce the identified noise levels.

16. The Council's Environmental Health Officer largely agrees with the conclusions of the Noise Assessment. I recognise that the Council's concerns extend beyond the existing situation and speculate as to how the industrial estate may evolve over time. The Government's Planning Practice Guidance (PPG) states that any noise effects should consider both the current activities and also those that a business can carry out, even if they are not occurring at the time of the application being made. Nevertheless, in this case the proposed plots 3 and 4 are only marginally closer to the industrial estate than existing dwellings. In addition, the tree buffer further acts as a visual and physical barrier to the edge of the industrial estate. It is therefore unlikely that occupiers of these dwellings would experience substantially greater noise levels than that observed from within existing local dwellings.
17. Furthermore, the Council's refusal of some development within the industrial estate indicates to me that the proximity of dwellings along Middleton Road already has an effect on the suitability of some types of development on the perimeter of the industrial estate. Accordingly, the proposal would not materially increase the limiting effect of residential development in close proximity to the industrial estate. I am therefore unconvinced that all land to the rear of Middleton Road is required as a buffer between these different uses. Moreover, the proposal would not impede development of the vacant plots within Newark Industrial Estate. The evidence is therefore unconvincing that the proposed development would act as a restriction on the future development of the estate. Moreover, I am satisfied that the Noise Assessment's recommended glazing attenuation could be secured by an appropriately worded condition to address the limited noise impact of the industrial estate.
18. Paragraph 47 of the Framework requires planning decisions to be determined in accordance with the development plan, unless material considerations indicate otherwise. The proposal would represent a departure from the development plan due to allocation NUA/E/3. However, the arrangement of existing buildings and the scale and location of the tree group indicate that the appeal site is not suitable for employment use and is beyond a reasonable and practical delineation of the allocated employment land. These matters are material and of overriding importance in the consideration of the merits of the case.
19. Accordingly, the proposal would satisfy policy DM5 of the LP, where it seeks development to have regard to its impact on the amenity or operation of surrounding land uses and where necessary mitigate any detrimental impact. The proposal would also accord with the Framework which seeks development to integrate effectively with existing businesses.

Other matters

20. The issue of precedent has been raised by interested parties. Although, each case must be considered on its own merits, the site represents a relatively unique parcel of land and such a proposal as submitted would not be readily replicated.
21. The proposed dwellings of plots 3 and 4 would be beyond the rear boundary of No's 50 and 52. These would not include side windows and would have one first-floor bedroom window that would afford only oblique views into the rear most part of neighbouring gardens. As such, the effect on the privacy of the occupiers of these dwellings and their associated gardens would be limited.

Conditions

22. I have considered the use of conditions in line with the guidance set out in the PPG. I shall impose the majority of the Council's suggested conditions and have made minor adjustments to them for clarity. I have also removed some tailpiece elements of some suggested conditions for clarity. I have added a condition requiring acoustic glazing and vent details to accord with the advice of the Appellant's Noise Assessment.
23. The Council has suggested that a condition be imposed to protect trees on site from various effects. However, condition 9 would provide adequate protection for trees on site. Those trees off-site would be suitably protected through the existing TPO. Accordingly, suggested condition 10 would not pass the tests as being necessary. I have also adjusted the trigger time for boundary treatment details to remove the pre-commencement requirement in accordance with advice within the PPG.
24. I have therefore applied the following conditions in the interests of certainty and to define the approval [1 and 2], in the interests of the character and appearance of the local area [3 and 8], to meet highway safety requirements [4, 6 and 7], to satisfy arboricultural interests [9], and to protect the living conditions of future occupiers [5 and 10].

Conclusion

25. For the above reasons the appeal succeeds, and planning permission is granted subject to the attached conditions.

Ben Plenty

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing Site Location & Block Plan MR/OS/01b, Proposed Block Plan MR/BP/01e, and 'House Type 68' PD-68-01a.
- 3) No development shall be commenced beyond floor slab level until samples of facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority. Development shall thereafter be carried out in accordance with the approved details.
- 4) No part of the development hereby permitted shall be brought into use until a dropped vehicular footway crossing is available for use and constructed in accordance with the Local Planning Authority's specification.
- 5) Prior to the occupation of any dwelling hereby approved, a wheelie bin collection point shall be provided, to be located in a position to be agreed in writing with the Local Planning Authority, which shall thereafter be retained in perpetuity.
- 6) No part of the development hereby permitted shall be brought into use until the parking areas are provided in accordance with plan MR/BP/01e. The parking areas shall not be used for any purpose other than the parking of vehicles.
- 7) No part of the development hereby permitted shall be brought into use until the access to the site has been completed and surfaced in a bound material for a minimum distance of 5m behind the highway boundary in accordance with the approved plan.
- 8) Notwithstanding the submitted information, no development shall be commenced beyond floor slab level until details of proposed boundary treatments including types, height, design and materials, have been submitted to and approved in writing by the local planning authority. The approved boundary treatment shall be implemented prior to the occupation of the dwellings and shall then be retained in perpetuity.
- 9) All works/development shall be carried out in full accordance with the approved arboricultural method statement (by AWA Tree Consultants Nov 2019).
- 10) No development shall be commenced beyond floor slab level until details of glazing attenuation and trickle vents, in accordance with the recommendations of the Spectrum Acoustic Consultants Noise Assessment dated 23/4/19, have been submitted to and approved by the Local Planning Authority in writing. The relevant works shall then be carried out in accordance with the approved details.

End of conditions