



Appeal Decision

Site visit made on 4 May 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday, 27 May 2021

Appeal Ref: APP/A2525/W/20/3263442

37 Fleet Road, Fleet, Spalding, Lincolnshire, PE12 8LA

- 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 Martin Ash, Gem-Mix Holdings Ltd against the decision of South Holland District Council.
 - The application Ref H05-0326-20, dated 17 April 2020, was refused by notice dated 10 July 2020.
 - The development proposed is erection of 3 pairs of semi-detached 3-bed dwellings along with up graded site entrance, and roadway, car parking and bin storage.
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Decision

1. The appeal is allowed, and planning permission granted for the erection of 3 pairs of semi-detached 3-bed dwellings along with up graded site entrance, and road way, car parking and bin storage on land to the rear of 37 Fleet Road, Fleet, Spalding, Lincolnshire, PE12 8LA in accordance with the terms of planning application H05-0326-20 dated 17 April 2020 subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues in this appeal are:
 - the effect of the operation of the neighbouring commercial activity on the living conditions of the occupiers of the proposed dwellings; and,
 - the effect of the proposed development on the living conditions of the residents of Grimwood Close.

Reasons

Living conditions of the occupants of the proposed dwellings

3. The appeal site is currently disused land between a new housing development and a commercial use. It is accessed from Fleet Road and is long and narrow. There is a vegetable garden with sheds and other associated buildings at the entrance to the site together with parking for the dwellings on Fleet Road.
4. The commercial use to the left of the site (when entering) is comprised of a large area of concrete hardstanding and large storage type building with large doors. There is currently appears to some sort of wire fence separating the site from the commercial use. As well as the commercial premises visible from within the appeal site there are other commercial uses in the area which form an industrial estate.

5. To the right of the appeal site lies a small residential development known as Grimwood Close. This appears to have been recently constructed and backs on to the appeal site.
6. The commercial building, according to the evidence, operates as a storage and distribution centre with some fabricating taking place on site. Heavy goods vehicles (HGVs) visit the site and are unloaded by forklift trucks (FLTs). The premises start operating at around 05:00 with activity associated with the HGVs and FLTs beginning at around 07:00. The site currently operates to around 19:00. The Acoustic Report submitted by the appellant took account of this activity and the noise it generated. It also noted that the noise environment of the site was also affected by traffic on Fleet Road, the A17, aircraft and other commercial premises on the industrial estate.
7. The Acoustic Report appears to relate to a previous planning application on the appeal site for 7 dwellings. In the appeal proposal before me it appears that some of the mitigation measures set out in the Acoustic Report have been incorporated in its design and layout. For example, the dwellings on plot 1, 2, 3 and 4 have been orientated so that their principal elevations do not face towards the commercial use and a pair of semi-detached houses has been moved away from the boundary with the commercial site. However, and notwithstanding the differences in layout between the two proposals, it appears that the Council's Environmental Health Officer has accepted the methodology of the Acoustic Report is applicable to both proposals. In terms of the noise environment of the site I am satisfied that the Acoustic Report represents an accurate assessment of the current situation at the site and is applicable to the case before me.
8. As well as commenting on the layout of the dwellings, the report also recommended measures to be incorporated within the dwellings to mitigate the effect of the nearby commercial premises. These measures include: a 2m high acoustic fence between the site and the commercial premises; double glazing, window seals and mechanical ventilation. However, the report has not recommended that any of the proposed dwellings should be completely sealed with non-opening windows. Furthermore, the recommended 2m high acoustic fencing would be limited to the boundary of the site with the commercial premises.
9. It is clear from the Acoustic Report and evidence supplied at the time of the planning application that the noise levels likely to be experienced by any dwellings on the site from the neighbouring commercial use would be intermittent. Although any noise is likely to commence quite early in the morning. Moreover, the Acoustic Reports recommendations, if implemented, would reduce the noise experienced by the proposed dwellings to levels which are acceptable in terms of the appropriate noise standards. This applied to both the indoor and outdoor spaces of the proposed dwellings.
10. In terms of the effect of the proposed mitigation measures themselves on the occupants of the proposed dwellings it is evident that these will not seal the dwellings completely. Furthermore, the 2m high acoustic fence does not enclose the entire site. Consequently, I consider that the proposed mitigation measures would not create unacceptable living conditions of the proposed occupants.

11. I have been supplied with an appeal decision by the Council¹ which they argue supports the position that the proposed mitigation measures would create unacceptable living conditions for the occupiers of the proposed dwellings. I have had regard to this decision, however it is apparent that there are material differences between the case supplied and the case before me. For instance, in the appeal decision it is clear that with the proposed mitigation the site would not integrate into the surrounding area and the proposed dwellings would need to be completely sealed to provide acceptable living conditions.
12. There is no suggestion in the evidence supplied with the appeal before me that the proposed dwellings would have to be completely sealed in order to provide acceptable living conditions. Furthermore, the noise experienced in the gardens of the proposed dwellings would also be within acceptable limits at most times of the day. Therefore, whilst I have had regard to this appeal decision it carries limited weight in this decision due to the material differences between the two cases.
13. I have also had regard to paragraphs 180 and 182 of the National Planning Policy Framework (the Framework). These parts of the Framework seek to ensure that development is appropriate for its location. In particular where an operation of an existing business could have a significant effect on new development in its vicinity the applicant should be required to provide suitable mitigation before the development has been completed.
14. The applicant has provided an analysis of the current noise regime in the area and the likely effects of the existing nearby commercial uses on the living conditions of the proposed dwellings. This analysis has included proposed mitigation measures designed to limit the effects of the nearby commercial uses on the proposed dwellings to acceptable levels. I have stated above that I consider that these measures would be appropriate and achieve what the Framework is seeking to achieve by these paragraphs. I therefore find no conflict between the proposed development and the policies of the Framework.
15. The development plan is made up of the South East Lincolnshire Local Plan, adopted in 2019 (SELLP). Policies 2, 3 and 30 deal with how a new development should integrate with its surroundings in terms of creating acceptable living conditions and dealing with the potential pollution, including noise.
16. I have found that with the mitigation measures proposed in the Acoustic Report submitted with the proposal that the dwellings will integrate with their surroundings and provide acceptable living conditions for the occupants in terms of the noise generated by the neighbouring commercial use. In this respect therefore, I find that the proposal is consistent with the policies of the SELLP.

Living conditions of the occupants of the dwellings on Grimwood Close

17. Grimwood Close is comprised of relatively new houses one side of which backs on to the appeal site. These dwellings are set back from the appeal site and have their rear gardens between their rear elevations and the boundary of the

¹ APP/F6915/A/20/3246041

- appeal site. The rear gardens are of more or less a standard depth for new dwellings.
18. The first five dwellings on the left-hand side of Grimwood Close, when entering from Fleet Road, would be relatively unaffected by the proposed development. This is because the dwellings on plots 1 and 2 of the appeal site would be set back from the boundary of the gardens of Grimwood Close by around 10m. This would mean that their rear gardens would not be subject to an unacceptable degree of overlooking and the distance between facing windows, where that would occur, would be acceptable.
 19. Whilst there would be an access road and parking close to the rear boundary fence on the appeal site, it is unlikely that this would cause significant disturbance to the residents of the houses on Grimwood Close due to the relatively small scale of the appeal proposal and the limited amount of vehicular movement it would generate.
 20. The gable of the dwelling on plot 6 of the appeal site would be close to the end of the rear gardens of dwellings at No 11 and 13 Grimwood Close. The rear gardens of these dwellings on Grimwood Close have a length of around 10m. The gable wall of the proposed dwelling on plot 6 of the appeal site would be set off the boundary of the rear gardens of the dwellings in Grimwood Close by around 1m. This would give a distance between the rear elevation of the Grimwood Close dwellings and the proposed dwelling on plot 6 of the appeal site of around 11m.
 21. The Council has argued that it has standards that require 12m to be provided between rear elevations and gables and this is contained in an emerging design guide that will become a development plan document (DPD). I note that the DPD has yet to be adopted and the SELLP itself does not contain such standards. Therefore, I can give limited weight to the DPD in this decision.
 22. Although the gable would be sited at the end of the gardens to Nos 11 and 13 Grimwood Close it would be relatively narrow and around 11m away from the rear windows. Consequently, and in this respect an acceptable outlook would be maintained from these dwellings and an overbearing relation between the gable and the dwellings at No 11 and 13 Grimwood Close would not be created.
 23. I note that a previous Inspector when determining an appeal for a single dwelling on part of this appeal site, considered that a close relationship between a gable wall on the appeal site and the gardens on Grimwood Close acceptable due to the amount of open land retained across the appeal site. However, the current site is wider than that considered by the previous Inspector. This has allowed the dwellings on plots 1, 2, 3 and 4 to be set back from the boundary with Grimwood Close. Moreover, a significant gap is proposed at the centre of the site to accommodate car park and manoeuvring areas. This together with the position of the dwellings on plots 1,2,3 and 4 will retain an open outlook for the dwellings on Grimwood Close, despite the proximity of the gable of dwelling on plot 6 to the boundary of Nos 11 and 13 Grimwood Close.
 24. The SELLP at policies 2 and 3 seeks, amongst other things, to ensure a satisfactory relationship between existing and proposed development and to ensure that residential amenity is protected. I find the appeal proposal is

consistent with these policies of the SELLP as it retains an open outlook for the dwellings on Grimwood Close for the reasons set out above.

Other Matters

25. I note the officer's report refers to the compliance of the proposed development with the Nationally Described Space Standards (NDSS). I also note that the SELLP has not adopted the NDSS. Therefore, I cannot give weight to the compliance with the NDSS by the proposed development in this decision. Moreover, the Council has not referred to non-compliance with space standards in its decision nor in any evidence it has supplied with the appeal documents. I therefore give this argument limited weight in this appeal.
26. It has been brought to my attention that properties facing on to Fleet Road and backing on to the appeal site might have right of access over the appeal site. This is a private matter between the owner of the appeal site and those who claim this right of access, should it be affected by the proposed development.
27. I note some of the residents of Grimwood Close have objected to the appeal proposal on the basis that their rear gardens would be overlooked by the dwellings on plots 5 and 6 on the appeal site. Whilst I can appreciate their concern, I consider that any overlooking they might experience in their rear gardens would be no more than the overlooking they already experience from their neighbours on Grimwood Close. Therefore, whilst I have had regard to the objections, I give them limited weight in this decision.
28. I acknowledge that there has been some concern expressed about the collection of refuse generated by the site. Refuse is shown to be collected from a collection point situated in the front garden of No 37 Fleet Road, which is within the control of the appellant. No further details are given of how this collection point is to be designed. Therefore, whilst I see no issue with a collection point away from the houses which are the subject of this appeal it is necessary for the details of the design and layout of the collection point to be approved so that it can function as expected. I therefore consider that this matter can be dealt with through the imposition of an appropriately worded condition.
29. I note that some of the objections relate to increased traffic danger where the site access meets Fleet Road. I have had regard to these points in this decision, however provided that visibility splays shown on the plans are provided at the junction of the site with Fleet Road, there are no reasons why the access will not be as safe as other junctions in the vicinity.
30. Some of the objections to the appeal proposal have referred to an increase in noise from the proposal that would affect their gardens, especially traffic noise. Whilst I appreciate the concerns expressed, given the scale of the development, I do not foresee that the residents of adjacent dwellings will be unreasonably be affected by traffic noise from the proposed development.
31. The effect of the proposal on the character and appearance of the area has been mentioned in some of the objections to the appeal proposal. However, to a large extent the development would reflect the character and appearance of other residential developments in the area especially those that are served from culs de sac. The appearance of the development is also capable of being controlled through conditions.

32. Finally, I acknowledge that some of the objectors to the proposed development have expressed concern over the loss of wildlife and a habitat for wildlife which would result from the proposed development. I note that there has been no objection from the local or national organisations which are responsible for conserving wildlife and their habitats. I also note that the site has no specific designation as an area important for wildlife. Therefore, whilst I have had regard to these matter in this decision there is no specific evidence to indicate species or habitat will be lost should the appeal proposal be implemented.

Conditions

33. In addition to the standard condition relating to commencement there is a need, in the interests of clarity, for a condition that references the approved plans and the documents that relate to this decision.
34. I also consider, given the importance to the acceptability of the proposal of the impact of noise from the adjacent commercial premises on the proposed dwellings, that a condition is necessary to ensure that the recommended mitigation measures are installed on the site and in the dwelling prior to their occupation. It is also important that they are retained in the dwellings for their lifetime.
35. Given the location of the development it is also necessary to ensure that the proposal is implemented in accordance with the measures set out in the Flood Risk Assessment (FRA) submitted with the planning application together with a surface water drainage scheme, so that the development does not increase the risk of flooding in the area nor is subject to a risk of flooding itself.
36. I note that the Council has opted to adopt part G of the Building Regulations and incorporate this into the policies of the SELLP. Therefore, a condition is necessary to ensure that the water consumption of the proposed dwellings is kept within the required limits.
37. Conditions are necessary for the details of boundary treatments, landscaping, and materials (including those to be used on all hard surfaces) to be approved by the Council in order to ensure that the proposed development integrates with its surroundings.
38. I note that the Council has suggested a condition requiring details to be approved of all external service boxes and the soil vents pipes prior to their installation. Whilst I understand the reason for this, I do not consider given the location and scale of the development that this condition is necessary to make the development acceptable.
39. Finally, as I indicated above a condition is necessary to ensure that the proposed refuse collection point is designed in a way that encourages its use and that it is fit for purpose, is installed prior to the occupation of the dwellings and retain during its lifetime.

Conclusion

40. Whilst I have had regard to the arguments objecting to the development, S38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal is consistent with the policies of the SELLP. I have also found that the material

considerations advanced by the Council and objectors are of insufficient weight to determine that the proposal should be decided other than in accordance with the development plan.

41. Therefore, and for the reasons set out above the appeal is allowed.

Peter Mark Sturgess

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:
 - SA/MA/04/18 SA PP003
 - SA/MA/04/20 SA PP02
 - SA/MA/04/18 SA PP02 (site lines)
 - SA/MA/04/08 SA PP002 (existing site plan)
 - SA/MA/04/08 SA PP006 Rev B1
 - Design and Access Statement dated April 2020
 - Environmental Noise Assessment by Acoustic Associates (Report No SEM/J3457/17/454) dated October 2029
 - Flood Risk Assessment by Ellingham Consulting Limited dated May 2019
 - Biodiversity Conservation Survey Report.
- 3) Before the occupation of the first dwelling to be completed on the site, the acoustic mitigation measures contained in Section 3 of the Environment Noise Assessment by Acoustic Associates (Report No SEM/J3457/17454) shall be implemented in full in all dwellings and across the site. The mitigation measures set out in the report and incorporate in the dwellings and across the site shall remain in place for the lifetime of the development.
- 4) The development shall be carried out in accordance with the details set out in the Flood Risk Assessment submitted with the planning application and prepared by Ellingham Consulting Limited, dated May 2019.
- 5) Prior to the commencement of any above ground works on the site a surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved scheme has been completed to the reasonable satisfaction of the Local Planning Authority. The scheme shall be retained and maintained in full in accordance with the approved details for the lifetime of the development.

- 6) The water consumption of each dwelling hereby permitted should not exceed the requirement of 110 litres per person per day (as set out in the optional requirement on Part G of the Building Regulations 2010 and the South East Lincolnshire Local Plan, 2019). The person carrying out the work must inform the Building Control Body to which this duty applies. A notice confirming the requirement for the water consumption has been met shall be submitted to the Building Control Body and Local Planning Authority no later than five days after the completion of each dwelling.
- 7) Prior to the commencement of above ground development full details of the design and layout of the proposed bin store at No 37 Fleet Road shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be completed in full before the occupation of the first dwelling on the site and be retained thereafter for the use of the occupiers of the dwellings hereby approved for the lifetime of the development.
- 8) Prior to its installation, details of the proposed boundary treatments, including a schedule of fencing levels, heights and materials, and details of the size and species of any hedging, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full before the occupation of the first dwelling on the site and retained for the lifetime of the development thereafter.
- 9) Before the commencement of any above ground works on the site, a landscaping and tree planting scheme shall be submitted to and approved in writing by the Local Planning Authority. This shall include the location, quantum, species and heights of the proposed trees and shrubs. The approved scheme shall be implemented in full within the first planting season prior to the occupation of the first dwelling on the site. All trees and shrubs shall be maintained for a period of five years from the date of the occupation of the final dwelling on the site and any losses during that period shall be replaced.
- 10) Before the commencement of any above ground works on the site a schedule of materials to be used on all the external surfaces of the development, including paved areas, areas of hard standing and car parking and manoeuvring areas, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented fully in accordance with the approved details.