



Appeal Decision

Site Visit made on 21 June 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2021

Appeal Ref: APP/W1905/W/21/3270131

13 Westfield Close, Waltham Cross, Hertfordshire EN8 7EY

- 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 & Mrs S. Dean against the decision of Broxbourne Borough Council.
 - The application Ref 07/20/0967/F, dated 23 October 2020, was refused by notice dated 23 December 2020.
 - The development proposed is for the erection of a new three-bedroom dwelling to include the installation of rear facing solar panels to the proposed roof.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new three-bedroom dwelling to include the installation of rear facing solar panels to the proposed roof at 13 Westfield Close, Waltham Cross, Hertfordshire EN8 7EY, in accordance with the terms of the application Ref 07/20/0967/F, dated 23 October 2020, and the plans submitted with it, subject to the conditions within the attached schedule.

Application for costs

2. An application for costs has been made by Mr & Mrs S Dean against Broxbourne Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellants have submitted two amended plans. The first seeks to increase the size of bedroom three by adjusting the location of an internal wall (plan 4935-PO1 rev G). This plan would result in no material change to the rest of the first-floor bedrooms or the external appearance of the dwelling. This would, to my satisfaction, result in the creation of a suitable internal layout. The second plan shows an acoustic screen on the boundary with the railway line (plan 4935-OS2 rev H). This would integrate with the character and appearance of the local area. In the application of the 'Wheatcroft Principles' I am satisfied that no party would be prejudiced by my accepting of these plans.
4. The Council has stated that the first revised plan would address its concerns with respect to reason for refusal two. As such, I shall consider this point of dispute to be resolved.

Background and Main Issue

5. The Council partly refused the proposal on the basis of the proximity of the adjacent railway line and the resultant effect this would have on the living conditions of future occupiers. However, the Council has not specified how the

effect would manifest. Nevertheless, in consideration of the submitted evidence and my own observations of the site and its context, I find the proposal would be most likely affected by noise.

6. The main issue is therefore the effect of the proposed dwelling on the living conditions of future occupiers with particular respect to noise.

Reasons

7. The appeal site is adjacent to a railway line. Land around the site is relatively flat, although the line itself is raised by around two metres in comparison to the appeal site. There is a landscape buffer inside the railway demarcation that is around six metres wide. The proposed dwelling would extend an existing terraced row of dwellings. It would be similar in design and form to the existing row and therefore complement the local pattern of development, without appearing cramped. It would be located on the side garden of the host dwelling, with no side windows overlooking the railway line.
8. The National Planning Policy Framework (The Framework) requires, at paragraph 180, for new development to avoid noise giving rise to significant adverse impacts on health and the quality of life. Also, Planning Practice Guidance (PPG) requires decision making in consideration of noise impacts, to consider whether or not a good standard of amenity can be achieved.
9. The Appellant's Noise Impact Assessment found a daytime average noise level of 59dB and a night-time level of 54dB due to the proximity of the railway line. These noise levels are reflective of the site being within an urban area and adjacent to a strategic transport network. It is recognised that the use of the railway could intensify over time. However, any change would be unlikely to significantly alter the noise levels recorded in the current Assessment.
10. The Assessment recommends that the proposed glazing incorporates a sound reduction of 34dB in the living room and kitchen and 44dB in the bedrooms. Glazing specifications to achieve this are set out at table 3 of the Assessment. The scheme also proposes the use of passive ventilation, in the form of trickle vents, to provide adequate ventilation without having to open windows. The glazing specification would deliver a sound reduction that would result in a suitable internal environment.
11. The external area would be subject to noise levels that would be marginally above the guidelines of the World Health Organisation. However, the convenience of this location for users to gain access to jobs and services, derives a benefit to occupiers of the proposed dwelling. Furthermore, noise effects would be partly mitigated through the provision of the proposed sound attenuation boundary. Additionally, the land is already in use as a garden, within a wider residential area. Therefore, the locational benefits of the site and the proposed mitigation would off-set the noise levels apparent within the garden.
12. The Council's Environmental Services officer raised no objection to the proposal subject to the imposition of conditions that included the need for a noise survey and contamination assessment. The conclusions of the submitted Noise Assessment have been undisputed by the Council. Consequently, despite the proximity of the proposed dwelling to the railway line, the noise impact of the

railway on future occupiers would be limited to acceptable levels subject to the specified mitigation measures of chapter 7 of the Assessment.

13. Consequently, the proposal would result in no significant noise impact on the living conditions of future occupiers of the proposed dwelling and would achieve a good standard of amenity. Accordingly, the proposal would meet policy DSC1 of the Broxbourne Local Plan 2018-2033 (2020). This seeks, among other matters, for development to achieve a high standard of design. This is consistent with the Framework which seeks development to create a high standard of amenity for future users.

Other Matters

14. Westfield Close allows for some on street parking consisting of both roadside parking and within a small communal car park. Dedicated parking is also provided for the host and proposed dwellings to the rear of the plots with access via a service road. Consequently, the provision of parking and turning space would be adequate in consideration of the scale of the proposal. Furthermore, the parking provision was found to be acceptable to the Council and did not receive an objection from the County's Highway Engineer.
15. Some disturbance to the living conditions of adjacent residential occupiers may occur during construction. However, such disturbance would be temporary and limited due to the scale of the development. Also, the site appears to be of sufficient size to accommodate vehicles and materials during construction to limit disturbance to neighbours. Moreover, any unsociable noise impacts would be appropriately managed through existing environmental legislation.
16. Concerns raised in regard to access rights over the service road are private matter between associated landowners. This has not therefore affected my consideration of the main issue. Also, the provision of two further parking spaces would be unlikely to substantially increase traffic movements along this route.
17. Interested parties have identified that the proximity of the dwelling to the railway line would be dangerous. However, as the site is already used as a garden and the proposed garden would be enclosed by fencing, the proposal would not present a greater risk to future occupiers than currently exists.

Conditions

18. I have considered the use of conditions in line with guidance set out in the PPG. I shall take the Council's suggested conditions into consideration and impose most of these with some amendments and adjustments for clarity. I have conjoined the suggested conditions with respect to the provision of parking and its retention for simplicity.
19. I have imposed the standard conditions advised by the PPG for clarity and certainty [conditions 1 and 2]. Conditions with respect to materials are required in the interests of the character and appearance of the area [3] and to secure the required parking provision [4]. Also, a condition is required to ensure that the parking areas include an electric vehicle charging point to comply with the Council's low emission requirements of policy TM4 of the LP [5]. A condition relating to compliance with the Noise Impact Assessment is also necessary to protect the living conditions of future occupiers [9].

20. I have split the contamination condition into two requiring investigation and remediation [6 and 7] and included a separate provision for unexpected contamination [8]. These are necessary due to the historical use of the site as a nursery. Conditions 6 and 7 are require details to be submitted to the Council prior to the commencement of development. These are necessary at a pre-commencement stage as they may require works to take place within the footprint of the development. I consider the pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. The appellant has agreed to the imposition of these, following formal notification under Regulation 2(4) Notice of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

Conclusion

21. The proposal would accord with the development plan. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal is allowed, and planning permission is granted subject to the attached conditions.

Mr Ben Plenty

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 4935-OS1 rev D, Block Plan 4935-OS2 rev H, Plans and Elevations as proposed 4935-PO1 rev G, landscape plan and elevation of acoustic fence dated 8 February 2021.
- 3) Details/samples of all external facing and roofing materials shall be submitted to the Local Planning Authority and approved in writing before any part of the development is constructed above ground level.
- 4) The dwelling shall not be occupied until space has been laid out within the site, in accordance with drawing no. 4935-OS2 rev H, for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes only.
- 5) Prior to the first occupation of the development, electric vehicle charging points as shown in the proposed drawing (4935-OS2 Rev:D) shall be installed for the proposed new dwelling.

- 6) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters; and
 - ecological systems.
- 7) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied.
- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out before the development is resumed or continued.
- 9) The proposed development shall be undertaken in accordance with the mitigation specified within the Noise Impact Assessment, by Acoustics Plus dated 26/1/21, and with specific regard to the specification detailed in section 7 and the provision of a three-metre high acoustic boundary fence.

End of conditions