



Appeal Decision

Site visit made on 31 August 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/W4515/W/21/3269100

Holywell Engineering, Station Road, Backworth NE27 0AE

- 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 Andrew Little, David Little Pension Trust Fund against the decision of North Tyneside Council.
 - The application Ref: 18/01373/FUL, dated 28 September 2018, was refused by notice dated 30 September 2020.
 - The development proposed is described as the redevelopment of Holywell Engineering site for residential use (Class C3) including demolition of several buildings, conversion of Backworth Lodge, Dairy Cottage and Ivy Cottage. The proposed accommodation is: A new apartment building (13 apartments) Conversion of lodge (4 flats) 27 no. new build dwellings Conversion of Dairy Cottage into 1 no. dwelling Conversion of Ivy Cottage. into 1 no. dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted a Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 during the course of the appeal. The Council was given the opportunity to comment on this document. The appellant confirmed that it is this version of the UU that is for my consideration. I deal with it later in my decision.
3. I address the Council's third and fourth reasons for refusal together in my decision as they both concern conservation area matters. The reasons for refusal include reference to the National Planning Policy Framework (Framework). A revised version has been published since the Council's decision. The main parties were given the opportunity to comment on this matter during the appeal, and which I have considered in my decision.

Main Issues

4. The main issues are (i) whether the proposal would provide suitable living conditions for its future occupiers by way of noise and the related effect on the operation of a nearby commercial premises; (ii) whether it would preserve or enhance the character or appearance of the Backworth Conservation Area; and (iii) the effect on biodiversity interests, in particular in relation to a Local Wildlife Site (LWS) and protected species.

Reasons

Noise

5. The appeal site consists of land that was formerly associated with a colliery that lies on the edge of the settlement of Backworth. Much of the site is now in disuse and comprises buildings in various states of repair, vacant land and tree cover. The site is accessed off Station Road where the site has a long frontage. It forms part of a larger mixed use allocation under the North Tyneside Local Plan (2017) (Local Plan).
6. There are employment uses to the north-east of the appeal site. These include a food processing business known as Keenan Processing Ltd, which contains an industrial unit and an associated area of open land which lies close to the boundary of the site. Based on the evidence before me, there are no restrictions on how this business operates. The enterprise includes early morning activities, and can involve heavy goods vehicle deliveries, the use of forklift trucks and refrigeration units. There is a 2 metre brick wall on the nearest part of the boundary.
7. With the proximity of this use to the site, there is the potential for the related noise to impact on the living conditions of the occupiers of the proposed dwellings. Accordingly, the appellant carried out a noise survey and this has informed the Noise Assessment. This has regard to the method described in British Standard 4142¹.
8. Paragraph 185 of the Framework sets out that planning decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life. The Noise Assessment considers the use of the open land associated with Keenan Processing Ltd, if this was to be utilised, and predicts that at the position of the closest proposed dwelling, the sound source is 17dB(A) above the measured night time background during the early morning period. The potential impact would be during the early hours of the morning between 04:00 to 07:00. This would result in a significant adverse impact. It would also be at a time when it would be expected that the occupiers would be sleeping in the bedrooms that would have windows that face in the general direction of the land in question.
9. In other respects, a significant adverse impact would not arise and the results presented do constitute a worse-case scenario. Nevertheless, this does not address the potential for the living conditions of the occupiers of the closest dwelling to be seriously harmed by the noise, especially due to disturbance to sleep. This would be most apparent during the warmer summer months, when the occupiers may understandably wish to keep the windows open.
10. The appellant proposes that mitigation would be provided by way of the installation of a mechanical ventilation system that could be operated so as to enable the bedroom windows to be shut. However, regardless of the provision of such ventilation, future occupiers may wish to open the windows for access to fresh air or for other reasons. Such actions are not within the control of either the appellant or the Council. Nor is it evident whether the operation of the ventilation system itself would cause sleep disturbance by way of noise, as its specification is not before me, or if there would be a requirement for the

¹ BS 4142:2014 Methods for rating and assessing industrial and commercial sound

future occupiers to awake in the night to close the windows and turn the system on. Overall, it is not persuasive as an acceptable means of mitigation.

11. As such, there would be a distinct possibility that the bedroom windows would remain open and therefore a significant adverse impact would arise. It would also be unsurprising if the future occupiers made a nuisance complaint to the Council about the noise, which the Council would be obliged to investigate and take action as appropriate. Paragraph 187 of the Framework is however clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. It would not be a satisfactory state of affairs.
12. The appellant considers that standard mitigation measures would overcome the activities of the business, if they took place on the land. I have already cast doubt over the effectiveness of the relevant measures that have been put to me and it would not be reasonable for that business to be expected to provide the additional measures. It would be contrary to where paragraph 187 sets out that where the operation of an existing business facility could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.
13. With regard to the reported lack of an objection from the Council's Manager of Environmental Health, the consultation response itself raises similar concerns to what I have set out above. Whilst the suggested conditions may concern the mitigation measures that have been put forward, they would not address the noise concerns that would arise. The presence of road noise would be adequately addressed through the acoustic mitigation measures, but again this would not overcome the harm that I have identified.
14. I conclude that the proposal would not provide suitable living conditions for its future occupiers by way of noise and the related effect on the operation of a nearby commercial premises. Hence, it would not comply with Policies S1.4 and DM5.19 of the Local Plan where they are concerned with that proposals should be acceptable in terms of their impact upon local amenity for new or existing residents and businesses, adjoining premises and land use; the use of mitigation measures to provide a satisfactory living environment; and development that may be sensitive will not be sited in proximity to polluting sources, amongst other considerations.
15. In addition, it would not accord with the Framework for the reasons that I have set out in relation to the effect of noise on the living conditions and the unreasonable restriction that it would place on an existing business, as well as that it would not provide a high standard of amenity for the future occupiers.

Conservation Area

16. The southern part of the site provides a pleasing parkland setting due to the conspicuous amount of mature tree coverage. The trees have significant amenity value in this regard and are protected by a Tree Preservation Order² (TPO). The trees also line an attractive view along the internal access road up to Backworth Lodge. This building lies in a secluded position that is well set back from Station Road. It is a pleasing 19th century villa property whose

² The Holywell Engineering, Station Road, Backworth Tree Preservation Order 2017.

- original purpose may have been linked to the colliery. It displays some signs of disrepair and has been the subject of unsympathetic extension and alteration.
17. The northern part of the site is different in character in that it is devoid of the parkland setting. It contains a number of mainly derelict buildings close to the site frontage. Of note is the grade II listed Daisy Cottage, a single storey extended property constructed of stone with a slate roof. The prominent chimney features remain largely intact. Ivy Cottage is of a similar form, but displays a plainer appearance. As with Backworth Lodge, it is a non-designated heritage asset. A stone wall extends along much of the site frontage of both parts of the site.
 18. The conservation area has particular qualities in relation to its verdant appearance, the use of stone, and demonstrates elements of both a rural and colliery influenced character. The site lies in the south eastern corner of the conservation area. The contribution of the site to the significance lies in Backworth Lodge with its tree lined approach, Daisy and Ivy Cottages, the stone wall along the site frontage and the parkland setting.
 19. The proposal would include the restoration of Backworth Lodge, Daisy Cottage and Ivy Cottage. Their conservation would be a positive contribution to the significance. An unsympathetic extension would be removed from Backworth Lodge and the tree lined approach would remain. The stone wall along the site frontage would also be restored and largely retained.
 20. The materials used in the restoration of Daisy Cottage and Ivy Cottage would by and large be in keeping, with the existing openings retained. The proposed extensions would not depreciate from the character, and the attractive chimneys on Daisy Cottage would be retained. The Council has already granted listed building consent³ for the works to Daisy Cottage. These properties would no longer be in such a state of disrepair. The proposed dwellings nearest to these cottages would be of a height of 1 and a half storeys, and so would not unduly detract from their contribution to the significance.
 21. In relation to the parkland setting, the proposal would result in a loss of a number of mature trees. This is in order to accommodate the proposed apartment building and some of the proposed dwellings close to the southern boundary of the site. When viewed from the south, the reduction in tree coverage would be likely noticeable over the adjacent open land, in particular as the proposed dwellings would also be apparent in view in this direction.
 22. The Council cite 'over-development', but rather the issue is that the proposal would be out of keeping with its surroundings in this regard because the parkland setting would be eroded by the loss of these trees and the associated increase in the amount of development in this part of the site. This would not be overcome by the bespoke nature of the design of the proposed dwellings and with the mature state of the trees to be removed, replacement planting would be unlikely to be effective for some considerable time.
 23. In relation to deliberate neglect of, or damage to, the heritage assets, there is no substantive evidence to assert this contention. The state of such buildings can deteriorate for various reasons. Matters in relation to whether there would

³ Council ref: 18/1374/LBC

be further tree loss or pruning caused by future occupiers also does not seem to be borne out by the concerns that have been raised on their living conditions, which concern noise. In relation to the construction of footpaths through the trees, I see no reason why this could not be dealt with by way of a planning condition if I was minded to allow the appeal.

24. In drawing these considerations together, there are factors which count for and against the effect of the proposal on the contribution to the significance of the asset. Overall, it would leave the character or appearance unharmed. The effect would therefore be neutral.
25. On this basis, and in applying the statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude that the proposal would preserve or enhance the character or appearance of the conservation area.
26. For similar reasons, it would comply with Policies S6.5, DM6.6 and DM6.1 of the Local Plan where they are concerned with respecting the significance of assets, sustaining and conserving assets including the built fabric and architectural detailing that contributes to the heritage asset's significance and character, and high and consistent design standards. I also find it would accord with paragraph 134 of the Framework because this is not a development overall that is not well designed.
27. Policy DM5.9 of the Local Plan solely concerns itself with trees, woodland and hedgerows. With the loss of the trees that would arise, it would not protect and manage the existing woodland and trees for the purposes of this policy. Nor would it comply with paragraph 131 of the Framework where it sets out that planning decisions should ensure that existing trees are retained wherever possible.

Biodiversity

28. The south-east corner of the site lies within the Eccles Colliery LWS. This designation also extends well beyond the site boundary. Based on the evidence before me, the site is designated for species rich grassland, albeit that it was evident from my site visit that it also contains a not insignificant amount of broadleaf woodland, which includes the part of the site that falls within the designation. There is not an obvious separation between the site and the LWS, despite references to a mound and a former minerals railway line.
29. The proposal would result in the loss of some of the trees within the site that also lie in the LWS. A number of the trees that are immediately adjacent to the south-east corner would though remain, and it is these trees that would be nearest to the rest of the LWS. Whilst there would be some loss of habitat, it would be of a minor and localised nature, and not significant. In terms of the potential to create a buffer and wildlife corridor, this would already seem to be restricted by the building and hardstanding that is already found close to this part of the site.
30. Nor would there be an apparent impact on the species rich grassland. Construction impacts by way of noise, lighting and disturbance could be dealt with through the imposition of a management plan type planning condition. As the operational impacts would relate to the residential use, these considerations would be unlikely to have an untoward effect, also having

regard to the trees that would be retained in the corner. In relation to recreational disturbance, the LWS already permits public access and so this would also be unlikely to be a particular concern.

31. I have also been referred to cumulative impacts with other development, in particular a further proposal on the allocation. What such impacts would be is not though apparent in relation to the effect on species rich grassland and woodland. If there is a reason why this is of importance, it is not plain from the submissions.
32. There would be a reasonable likelihood of protected species being present by way of bats. The appellant's Bat & Great Crested Newt Survey records bat activity in the vicinity of Backworth Lodge and concludes that it is being used as a day roost. The proposal would have the potential to result in adverse effects on bats. As a result, a number of mitigation measures are set out and these would adequately deal with such effects. They include the provision of alternative roosts, construction management controls and restrictions over lighting. In relation to foraging and commuting, clearly a number of trees would be removed, but overall, and when the tree cover within the LWS outside the site boundary is also considered, this would not be unacceptable in this regard.
33. I conclude that the proposal would not have an unacceptable effect on biodiversity interests, in particular in relation to the LWS and protected species. Therefore, it would comply with Policies S5.4 and DM5.5 of the Local Plan where they are concerned with protecting biodiversity resources, including non-statutory sites; conserving, enhancing and managing local sites and wildlife corridors; and the effects on protected species and locally designated sites. It would also comply with paragraph 180 of the Framework because significant harm to biodiversity would not result.

Other Matters

34. The proposal would fall within the setting of a listed building, Daisy Cottage. The existing building is already located where there is evidence of other buildings on the site and this is also apparent when it is viewed from Station Road. The proposed dwellings within the vicinity of this asset would respect its significance with their proposed scale, design and arrangement. The proposal would therefore preserve the setting of this listed building. With the restoration of Ivy Cottage and Backworth Lodge, it would also not adversely affect the significance of these non-designated heritage assets.
35. The UU that has been submitted concerns financial contributions towards a coastal mitigation service to mitigate for the impacts on the Northumbria Coast Special Protection Area (SPA) and improvements at Backworth Park Primary School. Based on the submissions that I sought on this issue, the contributions would meet the tests that are set out in the Framework and the CIL Regulations⁴. The UU is not though complete as it has not been finalised, signed and executed as a deed. In relation to considering the impact of the proposal on the SPA itself in accordance with the Habitat Regulations, there is not secured mitigation in place because of the incomplete UU.

⁴ Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended, 2019)

36. With regard to the compatibility of the proposal with the allocation, the Local Plan evidence that is before me does not suggest a requirement for all parts of the allocation to be mixed use in nature. It has been contended that if less dwellings were proposed or if employment development was included in the proposal, then this would likely address the matters of dispute. The proposal is however to be dealt with on its own merits, rather than an alternative which is not the subject of my decision.

Planning Balance and Conclusion

37. The proposal would bring heritage assets back into use through the restoration of Backworth Lodge, Daisy Cottage and Ivy Cottage. It would increase housing provision with the number of additional units created and thereby make a contribution towards the Government's objective of significantly boosting the supply of homes. No affordable housing is proposed, but this is due to viability matters that arise from the restoration of the heritage assets and is not in dispute.
38. The proposal would also make use of previously developed land and aid housing mix and balanced communities. Economic benefits would arise through construction, spend in the local economy and receipts that the Council would receive. Sustainable design methods are also proposed.
39. In relation to the harm that arises, the proposal would fail to provide suitable living conditions for its future occupiers by way of noise. That the significant adverse impact would concern only one property does not account for the detrimental effect on those occupiers. There is also the matter of the related effect on the operation of the nearby commercial premises, and the potential for the related business to have an unreasonable restriction placed on it. I have also found harm by way of the effect on the tree cover of the southern part of the site. The UU is also deficient. These matters attract very significant weight in my decision.
40. The submissions have also referred to the economic, social and environmental objectives of the Framework, notwithstanding these are not criteria against which every decision can or should be judged. I have taken these into account where they apply to the proposal. All other matters raised attract neutral weight.
41. Set against the identified harm would be the benefits that I have set out in relation to heritage assets, housing, economic considerations and sustainable design. Such benefits do attract significant weight. The harm that would arise would not though be outweighed by the benefits.
42. In coming to my conclusion, I have considered all relevant matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. For this reason, the proposal conflicts with the development plan when considered as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR