



Appeal Decision

Site Visit made on 11 October 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2021

Appeal Ref: APP/T2405/W/21/3278060

43 New Street, Blaby LE8 4GT

- 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 James Perry on behalf of Cropston Properties Limited against the decision of Blaby District Council.
 - The application Ref 20/1322/FUL, dated 16 November 2020, was refused by notice dated 14 May 2021.
 - The development proposed is described as demolition of existing dwelling and erection of 7 dwellings with associated access, garaging, parking and landscaping, and alterations to 45 New Street to form a fully hipped roof following demolition of adjacent dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr James Perry on behalf of Cropston Properties Limited against Blaby District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. It has been brought to my attention that a New Local Plan is emerging. However, there is nothing before me to indicate that it is currently at a stage that should attract anything more than limited weight. I shall consider the appeal accordingly.

Main Issues

4. The main issues are:
 - The effect of the proposed access upon the living conditions of adjoining residential occupiers, having particular regard to potential noise and disturbance; and
 - Whether or not it has been satisfactorily demonstrated that acceptable arrangements for the collection of household waste from the site would prevail.

Reasons

Living conditions

5. The scheme involves the creation of a new shared access road and associated pavement (the access), which would run to the main rear portion of the site via the grounds presently occupied by No 43 New Street. The access would run alongside the neighbouring properties situated to either side, Nos 41 and 45 New Street (Nos 41 and 45).
6. A Noise Impact Assessment¹ (the NIA) prepared by an Acoustics Engineer has been submitted at appeal stage which incorporates a survey of the existing noise climate and an assessment of noise impacts resulting from movements along the access. This assessment is based upon the intended installation of 1.8m brick walls to either side of the access (where to abut neighbouring rear garden spaces) and indicates that predicted sound levels at Nos 41 and 45 would be acceptable.
7. In accordance with the NIA's findings, upon inspection I was able to corroborate that existing traffic noise already influences the local noise environment to a not insignificant degree. I also accept that the number of vehicular movements to be generated by the introduction to the appeal site of seven dwellings would realistically be limited. The same applies with respect to the level of anticipated pedestrian movements.
8. When acknowledging the meaningful degree of mitigation that would be offered via the intended 1.8m brick wall treatments, I am content that the level of noise experienceable alongside the access would not translate to material harm being caused to the living conditions of adjoining occupiers. To offer further assurances in this sense, even though property ownership/occupation shall inevitably evolve in the future, it is relevant to note that letters of support for the scheme have been received from the current occupiers of Nos 41 and 45.
9. For the above reasons, having particular regard to the potential for noise and disturbance to occur, the access's future use would not cause harm to the living conditions of adjoining residential occupiers. The proposal accords with Policy DM1 of the Local Plan (Delivery) Development Plan Document (February 2019) (the Local Plan) and the National Planning Policy Framework (July 2021) (the Framework) in so far as these policies require development proposals to provide a satisfactory relationship with nearby uses that would not be significantly detrimental to the amenities enjoyed by the existing or new occupiers.

Waste collections

10. The Council's Neighbourhood Services team has indicated that statutory waste collections shall only be carried out upon roads maintained at public expense and adopted as public highway. This is consistent with its published Waste Storage and Collection Guidance for New Developments (reviewed April 2021) where it is set out that new developments and their access roads should be designed to accommodate the Council's collection vehicles and be adopted as public highway. The same guidance confirms that indemnity agreements shall not be entered in to.

¹ Existing Noise Climate and Noise Impact Assessment, Revision 1, 24 June 2021

11. The Highway Authority has not raised an objection and confirmed that parking and turning facilities would be provided in accordance with minimum requirements as set out within the Leicestershire Highway Design Guide. However, the access, in terms of its specification when considered as a whole, would not be adoptable. The Highway Authority has provided confirmation in this regard and the appellant has acknowledged that the access has not been designed to be adopted. Indeed, the existence of an advanced payment scheme to promote/secure the provision of private roads constructed to a high standard does not alter this situation.
12. Thus, even though turning facilities able to accommodate large collection vehicles are intended to be provided, the evidence before me strongly indicates that the Council's collection crews would be unable/unauthorised to access the site off New Street. It must also be noted that I have no power to force the Council to undertake collections other than in accordance with its own standard practices. Therefore, even in the absence of a development plan policy formally setting out the Council's detailed requirements in a waste collection context, the various bin collection points depicted upon the submitted Site Layout² would not offer workable arrangements for Council waste collections.
13. It has been suggested that a bin collection point to serve the whole development could be provided at the site's connection to New Street. However, it is unclear how a collection point could be suitably accommodated at this location without necessitating undue obstructions to pedestrian movements. Moreover, it has not been demonstrated that a fit-for-purpose facility would be capable of being provided on-site and adjacent to the highway. In any event, the setback distances of a number of the proposed dwellings would prejudice the convenient use of a collection point located to the western edge of the site.
14. It has been suggested that a private contractor could be commissioned to collect waste from the development. However, a statutory duty to collect waste/recycling from domestic households applies to the Council. Indeed, it would be unusual for alternative private arrangements to be put in place for the collection of domestic waste and a degree of caution should rightfully be applied when considering the merits of such an approach. This is particularly when noting that the same statutory duty that would apply to the Council would not apply to any private contractor.
15. It is relevant to note that no legal agreement has been drafted and put before me with the aim of seeking to secure a suitable collection agreement (or similar) with (a) private contractor(s). Moreover, reflective of the importance of this matter, a planning condition, however drafted, could not provide the necessary degree of certainty that private waste collections from the site would continue in perpetuity in the event the appeal be successful and the scheme be implemented.
16. It has been brought to my attention that the Council collects refuse from Harvey Close (the Close), which is situated just to the north of the site and is not an adopted highway. However, it is my understanding that the Close and the dwellings served by it were granted planning permission in excess of 20 years ago in the context of a different development plan. It is reasonable to assume that the Council's specific in-house requirements with respect to the

² Ref 120 D

provision of waste collection facilities for new developments would have evolved since the Close's origination. Thus, the arrangements in place at the Close do not justify the implementation of similar methods at the appeal site.

17. A recent decision³ at Blue Banks Avenue, Glen Parva relating to the erection of a block of 12 apartment units has been referred to where I understand bagged bin collections were ultimately agreed to by the Council. Nevertheless, there are material differences between that scheme and the proposal now before me. This is not least due to dwellinghouses rather than apartments now being considered. It is also my understanding that the site's planning history and the presence of a fallback position influenced decision making at Blue Banks Avenue. I find that it is a development of limited relevance here.
18. An undetermined scheme⁴ at Avon Road, Braunstone Town for housing development has been referred to in the evidence that is before me, where I am led to understand that a potential indemnification agreement to allow access to an unadopted road by Council collection vehicles has been mooted. However, to my knowledge, such an arrangement has not been finalised. Indeed, in the absence of planning permission, the Avon Road scheme is of limited relevance to my considerations.
19. Considerable efforts have evidently been made by the appellant to seek to resolve this waste collection matter. Even so, a satisfactory solution has not been found. Thus, it has not been satisfactorily demonstrated that acceptable arrangements for the collection of household waste from the site would prevail. On the basis that substandard/inadequate waste collections would be to the detriment of the living conditions of future occupiers and the general amenities of the area, I identify significant harm in this sense.
20. The proposal conflicts with Policy CS2 of the Local Plan (Core Strategy) Development Plan Document (February 2013), Policy DM1 of the Local Plan and the Framework in so far as these policies promote the application of good design principles and set out that proposals shall not be significantly detrimental to the amenities enjoyed by existing or new occupiers.

Other Matters

21. I have noted objections/concerns raised with respect to matters including the privacy of future occupiers, the effect upon the living conditions of neighbouring occupiers, highway safety (including parking) and the effects upon existing trees and wildlife. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters further here.

Planning Balance

22. In terms of the scheme's benefits, seven residential units would be erected on an under-utilised area of land situated in an urban location well served by facilities and services. Whilst the appellant has acknowledged that the Council is currently able to demonstrate a five-year supply of deliverable housing sites, the Framework reaffirms the Government's objectives of significantly boosting the supply of homes and making an effective use of land. I also note an anticipated future requirement to plan for a proportion of unmet housing need

³ Ref 20/0093/FUL

⁴ Ref 20/1373/FUL

within the adjoining City Council area. In the context described here, even though seven additional units of housing (when factoring in that No 43, to be demolished as part of the scheme, is not seemingly in a habitable state) would not make a clear or noticeable difference to the District-wide housing supply situation, the benefit associated with delivering housing in this particular location attracts meaningful and considerable weight.

23. The scheme would also create jobs during the construction phase and would provide support to the local economy/community facilities during the construction and occupation phases of development. Nevertheless, these benefits attract relatively limited weight due to the fairly modest extent of new development under consideration.
24. Any net-gain in biodiversity to ultimately be delivered by the scheme would realistically be minimal and attractive of limited weight in the planning balance. Furthermore, given the surveillance of the site already offered by neighbouring residential properties, any potential improvement in security terms (including for the adjacent Bowling Club) would attract limited weight. This is even when acknowledging any possible existing threat of trespass.
25. The scheme's benefits, when considered cumulatively, would be considerable. However, they would not outweigh the significant harm and associated policy conflict that I have identified in a waste collection context. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

26. Whilst I have found that the proposal would have an acceptable effect upon the living conditions of neighbouring occupiers having particular regard to potential noise and disturbance, I have identified that significant harm would be caused by virtue of acceptable arrangements for waste collection having not been satisfactorily demonstrated. This harm is the overriding consideration in this case.
27. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR