



Appeal Decision

Site Visit made on 19 October 2021

by Ian Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/Q3115/W/21/3270911

Land adjacent to Kiln Avenue, Chinnor, Oxfordshire OX39 4BZ

- 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 Wimpey against the decision of South Oxfordshire District Council.
 - The application Ref P20/S2355/FUL, dated 18 June 2020, was refused by notice dated 21 January 2021.
 - The development proposed is the erection of fence along the boundary of Kiln Avenue.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. Prior to the determination of the application a minor amendment to the block plan was submitted on 9 September 2020. The amendment corrected the proposed height of the fence so that it correlated with the elevations and acoustic report provided. The amendment was accepted by the Council and the application was determined on this basis.

Background Information and Main Issue

3. In 2010 planning permission was granted for the redevelopment of the former Chinnor Cement Works. The description of the development in that permission includes reference to a 3.5m high acoustic screen along part of the access road. I have taken the access road to be Kiln Avenue which runs along the side of the Chinnor and Princes Risborough Railway (CPR) sidings. In order to protect the living conditions of residents of the development, condition 22 was attached to the permission. It required a noise attenuation scheme to be agreed and implemented which was generally in accordance with the acoustic report and related information submitted at application stage.
4. As part of the approved scheme, rather than a 3.5m high acoustic screen, a noise barrier consisting of a 'Buffalo' acoustic fence on top of an earth bund producing an overall height of 2.4m was to be erected before first occupation of the relevant dwellings. However, a different close boarded wooden fence of similar overall height was instead erected which is still in place. Gaps and holes in its construction mean that its noise attenuation is inadequate and complaints from residents of noise from the railway have been received by the Council. As a result, an application for planning permission for the fence in 2019 was refused and dismissed on appeal. The application that is the subject of this appeal proposes a 2.55 m tall, high mass, acoustic fence to replace the existing fence.

5. The main issue in this appeal is therefore whether the proposed fence would reduce noise and disturbance from the CPPR to a level that would result in acceptable living conditions for the residents of Kiln Avenue.

Reasons

6. Of the various development plan policies referred to, I consider policies DES6, ENV11 and ENV12 of the South Oxfordshire Local Plan 2011-2035 ('Local Plan') to be the most relevant to the main issue.
7. The CPPR is a heritage railway operation which regularly operates older steam and diesel engines. The sidings for the railway are located next to Kiln Avenue. In the position of dwellings along the street the noise generated by diesel and steam trains operated by the railway vary from 55dB(A) LAeq 1hr to 63 d(B)A LAeq 1hr. As a result, for dwellings along this street, unless appropriate mitigation is in place, noise from the operation of the engines is sufficiently loud to cause considerable disturbance.
8. The officer report on the application explains that in the discharge of condition 22 approved by the Council the 3.5m barrier was reduced in favour of a three part noise mitigation scheme which included enhanced glazing, mechanical ventilation and an acoustic barrier 2.4m in height. I shall therefore assess the proposal on the basis that enhanced glazing and mechanical ventilation has been installed to the dwellings along Kiln Avenue in accordance with the approved details.
9. The 2.4m 'Buffalo' fence which formed part of the approved mitigation scheme is no longer available. It was claimed to produce a reduction in noise from the railway of up to 3dB(A). However, on the basis of the findings of the Council's review of the acoustic barrier submitted at appeal stage it is evident that using the correct source height the barrier would not result in any noise attenuation at all. This review also found that the 2.55m fence that is the subject of this appeal would produce less than a 1 dB(A) reduction in engine noise which would not be noticeable. These findings have not been challenged by the appellant.
10. The noise mitigation scheme would have been designed as a whole and an acoustic barrier forms an integral part of a scheme that seeks to control noise on a housing development adjacent to a railway. An acoustic barrier that would not provide any discernible noise reduction would therefore not be acceptable.
11. The acoustic glazing and mechanical ventilation fitted to dwellings on Kiln Avenue as part of the noise mitigation scheme materially reduce indoor noise levels, so long as windows are kept closed. Keeping windows closed all of the time though is not a reasonable expectation. In my judgement, in the absence of a proposed noise barrier capable of producing a discernible reduction in noise from the railway engines, the point at which noise would become unacceptable would therefore be exceeded along Kiln Avenue. Given the desirable noise level and upper aspirational guideline value contained for outdoor areas in BS8233:2014¹, this would also be so in relation to noise experienced in gardens, which in some cases are located to the front as well as the rear of dwellings along this street.
12. I therefore conclude that the proposed fence would fail to reduce noise levels from the railway to the extent that acceptable living conditions would be

¹ BS8233:2014 'Guidance on sound insulation and noise reduction for buildings'

provided for residents. The proposal would therefore be contrary to policies DES6, ENV11 and ENV12 of the Local Plan and paragraphs 130f, 174e and 185a of the National Planning Policy Framework ('the Framework'), published in July 2021, which seek to ensure satisfactory living conditions.

13. This situation, if unresolved, could also lead to public pressure to limit the operation of the CPPR. Paragraph 187 of the Framework makes clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. As a result, where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change'), which in this case is Taylor Wimpey, should be required to provide suitable mitigation before the development is completed.

Conclusion

14. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

Ian Radcliffe

Inspector