
Appeal Decision

Site visit made on 22 November 2021

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th December 2021

Appeal Ref: APP/W0734/W/21/3283975

Land off James Street, Middlesbrough TS3 6LJ

- 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 Omega Metal Recycling Ltd against the decision of Middlesbrough Borough Council.
 - The application Ref 21/0299/FUL, dated 15 April 2021, was refused by notice dated 29 July 2021.
 - The development is change of use from B8 to scrap metal yard (sui generis).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site is currently in use as a scrap yard and so I have dealt with the appeal on the basis of it being a retrospective application.
3. The majority of the site is hard standing following the demolition of the former storage buildings on the site. Two steel containers were present at the time of my site visit, one of which contained the site office, and which are presumably the 'welfare facilities' referred to on the plans accompanying the application. The plans show the welfare units and weighbridge being situated close to the eastern boundary of the appeal site; however, they were in fact situated much further away from the eastern boundary than indicated. Four open air storage areas were in situ on the northern boundary with two breeze block low walls separating the areas. Scrap metal was being stored at the time of my site visit.
4. For the avoidance of doubt, I have considered the appeal on the basis of the plans which accompanied the planning application and which were the basis of determination by the Council.
5. An interested party submitted audio/video evidence; however, this type of evidence cannot be accepted by appeals being dealt with by written representations.
6. An amended plan was submitted by the appellant alongside final comments showing the provision of a landscaping bund along the western boundary of the site. The landscaping bund would involve substantial earthworks to form the bund and the landscape zone would be of significant depth and would, therefore, represent a significant change to the appeal proposal. Furthermore, due to the late submission, the Council and in particular interested parties have

not had the opportunity to comment on the amended plan. I have not, therefore, taken it into account in my decision.

Main Issues

7. The main issues in this case are:

- The effect of the proposal on the living conditions of existing occupiers of neighbouring properties with specific reference to noise; and
- The effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

8. The appeal site is situated off James Street within a mixed-use area of North Ormesby. To the west of the site are residential properties located on Conyers Way and Saxon Close. To the north of the site is an area of grassland which lies between the site and the A66. A vehicle self-storage yard is situated to the east and a residential Travellers site is situated immediately opposite to the south. A primary school and associated playing fields are situated to the south west. The site is unallocated and lies around 110m outside the Middlesbrough Business Action Zone and outside the Lawson Industrial Estate, an allocated employment site.
9. There would be a total of four steel containers, two of which are already in place; a weighbridge; designated open air storage areas, floodlighting and designated parking bays. The weighbridge and open-air storage areas are in-situ, although the parking bays are not demarked. The existing access off James Street is being utilised.
10. Residential development at Conyers Way is immediately adjacent to the appeal site, separated only by the rear gardens and a brick wall. The Design and Access Statement refers to approximately 10 vehicle movements per day including deliveries and collections. According to the Statement of Case the site would operate between 0800 and 1630 Monday to Friday and 0800-1300 Saturday with no working on a Sunday and Bank Holidays. However, I note the appellant's final comments that typically the site only operates from 0900 to 1500 Monday to Friday and 0900 to 1300 on Saturdays.
11. An Environment Noise Assessment¹ (ENA) was undertaken by the appellant in support of the planning application. It assesses noise levels from the site with no yard activity and with yard activity. The ENA considers noise levels when yard activity is occurring and averages the noise levels over an hour period, converts to a 16-hour period (to be in line with measurements in BS8233:2014) and then concludes that the noise from the yard is compliant with BS8233:2014 at ground floor level of the adjacent residential units but that levels will not be compliant at first floor level. In terms of external amenity, the noise report concludes that the daytime noise from the site would be 54.4 dBA compared to the BS8233 standard of between 50-55dB.
12. The Council is concerned that the appellant has incorrectly used BS8233:2014. The noise levels have been averaged out over an hour period and a 16-hour period which means that the 'impact noise' such as bangs and crashes as metal

¹ Noise Technology 21 June 2021

is dropped, horns sounding etc would be lost in an averaging period. I share these concerns as BS8233:2014 is applicable to the design of new buildings or refurbished buildings undergoing a change of use but does not provide guidance on assessing the effects of changes in the external noise levels to occupants of an existing building.

13. BS4142:2014 'Methods for rating and assessing industrial and commercial sound' provides the criteria required for assessing the impact of a source of industrial or commercial sound on people who might be inside or outside a dwelling or premises used for residential purposes upon which sound is incident. It takes account of ambient, background and residual sound levels.
14. The activities of the scrap yard will include noise from machinery, reversing alarms, intermittent bangs, crashes and cascades of loose material dropped from a height onto other metal or into trucks. BS4142: 2014 would properly take account of this type of noise source by adding acoustic corrections to the noise levels to take account that these types of noise can be detrimental to the amenity of the area. In the absence of a proper assessment, I am unable to conclude that the proposal would not have a harmful effect on the living conditions of nearby residents.
15. It is suggested that whilst the first-floor bedroom windows do not comply with BS8233:2014 the yard would not be operational during the night when rooms are most likely to be occupied for sleeping purposes. However, this does not take into account that bedrooms may be occupied during the day by shift workers or young children.
16. The Noise Management Strategy² sets out a number of measures in an attempt to mitigate the potential noise and vibration emanating from the site such as silencers being fitted to equipment; only working during operational hours; training of operators for 'soft landings' of grab lift and drop activities. However, without a proper noise assessment, it is not clear whether those measures would be sufficient to mitigate noise levels to an acceptable level. In the absence of such an assessment, I must conclude that the development would have an adverse effect on the living conditions of existing occupiers in nearby residential properties.
17. I acknowledge that the existing use of the site is B8 (Storage and Distribution) and that there would be some noise associated with these activities and also with the nearby A66. I also note that the appellant suggests that the Council or housing developer should pay for the installation of additional sound proofing measures for the adjacent residential properties as it has allowed residential use next to the appeal site. However, a scrap metal yard is sui-generis and the nature of the operation differs significantly from the approved B8 use. There would be noise which is additional to that associated with B8 uses such as intermittent bangs, crashes and cascades of loose material dropped from a height onto other metal or into trucks. Consequently, the 'agent of change' referred to in paragraph 187 of the National Planning Policy Framework (the Framework) is the appeal proposal. It is, therefore, incumbent upon the appellant to demonstrate that the development would not have a harmful effect on neighbouring occupiers with regards to noise.

² Sjd architects

18. For the reasons stated, I conclude that the development would cause harm to the living conditions of neighbouring residents with specific reference to noise. It would, therefore, be contrary to criterion c of Policy DC1 of the Local Plan which seeks to ensure that the effect of development on the surrounding environment and amenities of occupiers will be minimal. Conflict also arises with paragraphs 174 (e) and 185 (a) of the National Planning Policy Framework which seek to prevent existing development being adversely affected by unacceptable levels of soil, air, water or noise pollutions and mitigate and reduce to a minimum potential adverse impact resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and quality of life.

Character and appearance

19. The site is situated within a mixed-use residential and commercial area. There is a barrier on the road around the point at which James Street leads into Brewsdale Road. To the west of this barrier there are mainly residential uses at Conyers Way and Saxon Close together with a primary school. Further west along James Street are commercial and public uses associated with the centre. Beyond the barrier to the east lies an industrial estate. A Travellers site is situated opposite which has residential units and a range of vehicles and fun fair equipment being stored. To the east of the site is a commercial vehicle storage site and to the south east are warehouse buildings within Lawson Industrial Estate.
20. The appeal site had been cleared leaving a hardstanding. There were two portacabins on site, together with storage of scrap material and mechanical equipment. The appeal scheme utilises the existing access off James Street and includes the installation of new inwardly opening double entrance gates. The Council raise no objections to the proposed entrance gates and boundary treatment. From everything which I have seen in submissions and on my site visit, I have no reason to disagree.
21. Within the site, the hardstanding is retained. Two steel containers for secure storage would be around 2.7m, not significantly higher than the existing boundary treatment. They would not, therefore, be particularly visible from James Street and in any event, their appearance would be consistent with similar containers found in the vicinity.
22. To the east of the site there are two steel containers providing permanent office space, referred to as the 'welfare facilities' and a weighbridge. The Council considers that the welfare facilities should be of a more permanent brick construction given that they would provide permanent office facilities. However, the containers are of a similar size to the proposed secure storage facilities and are only around 0.4m higher than the existing boundary fence along James Street which limits their visibility. If positioned in accordance with the submitted plans, they would be seen against the boundary fence at the furthest point from residential development. In any event, the appearance of the containers is similar to those found on the adjacent self-storage site. Furthermore, the parked lorries and fun fair equipment are clearly visible at the Travellers Site opposite. Consequently, I do not consider that the welfare facilities would be visually intrusive or out of character with the surrounding area.

23. The open storage area to the north of the site contains a variety of scrap metal subdivided into four areas. Two low level breeze block walls had been constructed to divide the areas at the time of my site visit, although no details of the walls have been provided on the plans accompanying the planning application. One of the areas contained scrap metal which exceeded the height of the rear wall and fence to the eastern boundary as photo 1 of the appellant's submissions demonstrate. The metal stacks are, therefore, visible from James Street and from the rear first floor windows of residential properties along Conyers Way.
24. I note that the building merchant's site has a significant amount of open storage to the front; however, the nature of this material is different. Building material is stacked neatly in rows and it is not situated close to residential properties. The scrap metal is loose and stacked high in disorderly piles as photo 1 of the appellant's evidence demonstrates. I have considered whether a condition requiring that the piles of scrap metal do not exceed the height of the subdividing walls could be applied. Such a condition would be enforceable, and this would help to reduce the visual impact from James Street. However, the untidy piles of scrap metal would still be highly visible from the first-floor windows of properties on Conyers Way. Occupiers of those properties would see the prominent and unsightly scrap metal piles on a permanent and daily basis.
25. For the reasons stated, I conclude that the development has a harmful effect on the character and appearance of the area. It is, therefore, contrary to saved Policy DC1 (b) which seeks to ensure that the visual appearance of the layout of the development and its relationship with the surrounding area in terms of scale, design and materials will be of a high quality.

Other matters

26. A number of other matters have been raised in representations by interested parties; however, these would not have led me to reach a different conclusion.

Planning balance and conclusion

27. The proposal makes a contribution to the local economy and employs local people. However, these benefits would be outweighed by the significant harm which I have identified to the living conditions of existing occupiers and the character and appearance of the area.
28. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

Caroline Mulloy

Inspector