



Appeal Decision

Site visit made on 26 January 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/Z4718/W/21/3281950

Land adjacent to 60 Northgate, Cleckheaton BD19 3NB

- 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 I Storer of D & M Middleton, against the decision of Kirklees Metropolitan Council.
 - The application Ref 2020/62/91747/E, dated 9 June 2020, was refused by notice dated 5 August 2021.
 - The development proposed is described as 'Demolish former dairy/snooker centre plus external storage and replace with 12 light industrial units'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by D & M Middleton against Kirklees Metropolitan Council. This application is the subject of a separate decision.

Preliminary Matter

3. The description of development above is taken from the application form. However, the description adopted in the decision notice and appeal form of 'Demolition of former dairy/snooker centre/storage and erection of 9 light industrial units' more accurately reflects the proposal as the scheme was amended during the processing of the planning application to reduce the initially proposed number of units from 12 to 9. I have determined the appeal accordingly.

Main Issues

4. The main issues are whether the proposal would provide a biodiversity net gain, and the effect of the proposed development on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

5. The appeal site is a vacant piece of land in an edge of town location, which has been cleared of previous built form. The immediate area has a mixed-use character, with commercial uses located alongside residential properties.

Biodiversity

6. Policy LP30 of the Kirklees Local Plan Strategy and Policies (February 2019) (the LP) states that development proposals will be required to minimise the

impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist. A biodiversity metric calculation was submitted with the proposed development, which indicates that there would be a net loss for biodiversity, despite the limited ecological value of the appeal site.

7. It has been suggested that if green roofs were adopted, the net loss of biodiversity would be substantially reduced, albeit it would still fail to deliver a net gain. However, there are no details before me regarding the inclusion of green roofs to the proposed buildings.
8. Nevertheless, the evidence before me suggests that the appellant has proposed to deliver a biodiversity net gain of 10% through a financial contribution to facilitate habitat improvements in an offsite location. This would be secured through a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990. The Council has indicated it is satisfied with this approach. However, no further details are before me and the appellant has not submitted a planning obligation with this appeal. Therefore, I cannot take this matter into account or afford the financial contribution positive weight.
9. The Planning Practice Guidance makes it clear that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.
10. Accordingly, in the absence of a planning obligation, the proposed development would fail to provide a biodiversity net gain and it therefore fails to comply with the biodiversity aims of Policy LP30 of the LP and the National Planning Policy Framework (the Framework).

Living Conditions

11. There are a number of residential properties within close proximity to the appeal site. It is acknowledged that the residents of these properties would likely experience some activity associated with the proposed development in the immediate vicinity, even the properties on George Street which are sited perpendicular to the appeal site and on a no-through road. This could include comings and goings of vehicles, the use of the industrial doors on the units and general activity associated with the proposed use.
12. However, the locality is mixed in character with a high number of commercial uses. These include a vehicle repair garage on George Street, an adjacent industrial unit on Northgate and a large retail store accessed from Horncastle Street. There is also a nearby supermarket and a plethora of shops and services further along Northgate on the high street. At the time of my site visit I also observed that Northgate and Scott Lane were not quiet residential streets, but rather had moderate levels of traffic along them and several people in the area. I do not consider my observations to be unusual given the location of the site in a built-up edge of town location. Given all the above, residents

would already be accustomed to a high level of comings and goings and general activity in this locality.

13. The proposed development of light industrial units would fall under use class E(g) of The Town and Country Planning (Use Classes) Order 1987 (as amended). Uses within this class are identified as being a use which can be carried out in a residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Accordingly, the proposed units would not accommodate general industrial, or storage or distribution uses, which are typically more intensive in terms of processes, operations and comings and goings than uses falling under use class E(g).
14. Due to the use class which the proposed units would fall under, the majority of vehicles accessing the site would be private motor and light commercial vehicles. Articulated vehicles accessing the site would likely be very limited. There are also a number of controls which could be employed so as to limit the effect of the proposed development on neighbouring residents. These include noise restrictions on each unit including its vehicle movements, work activity, fixed mechanical services and external plant and equipment, and a restriction on hours of operations so as to limit noise at unsociable hours.
15. Consequently, although the proposal would see a concentration of commercial units close to residential properties, due to the character of the area, the proposed use of the units and matters which could be appropriately controlled via conditions, I consider that the associated activities, including comings and goings of vehicles, would not result in a significant introduction of noise and disturbance. The proposed development would not therefore harm the living conditions of neighbouring residents and would accord with Policy LP24 of the LP and the Framework which collectively seek to ensure that developments provide a high standard of amenity for neighbouring occupiers.

Other Matter

16. Concern over the ownership of the land, the Council's processing of the planning application and the propriety of the Council are not matters relevant to this case, which I have determined solely on its planning merits.

Conclusion

17. The proposed development would create employment opportunities in the local area and would improve the currently neglected appearance of the appeal site. These matters weigh in favour of the proposal and I collectively afford them moderate weight. The lack of harm to living conditions of neighbouring residents is a neutral matter.
18. However, due to the lack of a planning obligation in order to secure a biodiversity net gain, the proposal would lead to conflict with the development plan to which I afford substantial weight. There are no material considerations that indicate a decision should be made other than in accordance with the development plan, therefore the appeal should be dismissed.

H Ellison
INSPECTOR