



Appeal Decision

Site visit made on 22 February 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/W4705/W/21/3286686

The Croft, Keighley BD21 4ND

- 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 B K Pittea against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 21/01717/FUL, dated 27 March 2021, was refused by notice dated 4 June 2021.
 - The development proposed is residential development of four dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the submission of the appeal, the 2021 Housing Delivery Test (HDT) results were published on 14 January 2022. The HDT results indicate that the presumption in favour of sustainable development contained within paragraph 11(d) of the National Planning Policy Framework (the Framework) will apply. Both main parties have had the opportunity to comment on the HDT results and I have had regard to the comments raised. I also note that the Council's officer report states that the Council cannot demonstrate a 5-year housing land supply.

Background and Main Issue

3. A number of planning applications for residential development at this site have been refused, the most recent being a proposal for 3 detached houses which was dismissed on appeal in July 2020¹. In dismissing that appeal, the Inspector set out the main issue with regards to the living conditions for future occupiers with particular reference to noise and disturbance. However, in respect of the appeal before me, the Council refers to potential complaints from future residents of the proposal and the effect on the operation of the nearby business of Byworth Boiler Hire Ltd (Byworth Boilers).
4. On that basis, the main issue is whether the proposal would provide suitable living conditions for future residents in respect of noise and disturbance, and the related effect on the operation of a nearby business.

¹ Appeal Ref: APP/W4705/W/20/3248880

Reasons

5. The appeal site is a steeply sloping area of rough grassland, bounded by a detached dwelling to one side and development including a residential home on the other. To the north is an industrial site occupied by Byworth Boilers which is behind a screen of trees.
6. The appellant has taken a number of steps to address the reasons for the dismissal of the previous appeal. This includes measures such as the layout of the proposal, the building fabric including acoustic glazing systems, sealed glazing units serving the mainly non-habitable rooms which face onto Byworth Boilers, and acoustic fencing.
7. However, the appellant's Acoustic Report identifies a sound level as high as 68 LAMax dB in a habitable room with a window open when Byworth Boilers are venting compressed air, although steam release is also referred to in the Appeal Noise Statement which indicates that this occurs 3-4 times a week and lasting for approximately 30 seconds. This sound level exceeds an arbitrary limit of 50 LAMax dB identified in the Acoustic Report, which goes on to recommend further mitigation measures as an alternative to opening a window to provide rapid ventilation.
8. To address this matter, the appellant proposes to use a Mechanical Ventilation and Heat Recovery (MVHR) system. The appellant emphasises that the MVHR is an approved and accepted system, and refers to various regulations and guidance that it complies with. Reference is also made to an appeal decision where the Inspector referred to evidence that mechanical ventilation systems are an accepted form of development.
9. However, for the MVHR system to be effective in respect of noise mitigation, residents of the proposed dwellings would need to close their windows. Even with the MVHR in operation, there is no certainty that residents would do so. I am also mindful that there are other benefits for occupants from opening windows and patio doors, such as connection with the outside, sense of fresh air, experience of draughts when overheating and a sense of control over one's environment². Residents would therefore have a reasonable expectation that they will be able to open their windows and patio doors without being subjected to unacceptable noise.
10. Given those reasonable expectations and the identified sound levels, the operations of Byworth Boilers would generate noise of a degree which could lead to complaints from residents against the business. This in turn could lead to action against the noise source, which would fetter the operation of the business. Paragraph 187 of the Framework is clear that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
11. My attention has been drawn to the nature and location of operations associated with Byworth Boilers, by the appellant as well as comments from a Ward Councillor in support of the appeal. The Council now accepts that the fabrication referred to in its first reason for refusal does not take place at the nearby site. However, there are other noise generating uses associated with the business in this location, and the evidence in respect of operations on the

² As referred to in 1.18 of the Acoustics Ventilation and Overheating: Residential Design Guide, January 2020.

site refers to impact noises including hammering, as well as compressed air and steam release. Furthermore, with the exception of a specific storage building, the evidence suggests that the site has an unrestricted B2 General Industrial use classification, so that noise generating operations such as fabrication could be introduced onto the site without requiring a further planning permission.

12. Reference has been made to other residential properties in the area, and as requested by the appellant I viewed the location of these on my visit. However, as noted in the previous appeal, the existence of nearby residential properties does not mean that the noise levels inside those properties is acceptable. Even with the mitigation measures as proposed, it would not be appropriate to introduce further dwellings into an area which could increase the potential for complaints against a nearby business.
13. The appellant refers to the benefits of MVHR, such as carbon reduction, energy efficiency and clean air; and that it may be a lifestyle choice to live in an MVHR house. However, whilst that may be the case for some residents, for others it may not. Consideration of these matters does not mean that MVHR would be used as suitable mitigation and that the windows at the proposed dwellings would be closed.
14. Drawing the above together, the proposal would include measures which could mitigate against potential harm in respect of noise. Planning conditions could ensure that such measures, including the MVHR, are provided as part of the development. However, there is no certainty that such measures would be used effectively, particularly in respect of the need to close windows and patio doors as well as the operation of the MVHR.
15. It has therefore not been demonstrated that the proposal would not lead to significant harm to the living conditions of residents in respect of noise, or would not unduly restrict the operation of a nearby business. The proposal would therefore conflict with the amenity and noise nuisance considerations of policies EN8 and DS5 of the Core Strategy Development Plan Document 2017. The proposal would also conflict with the Framework with regards to ensuring that it is appropriate for its location taking into account the likely effects on living conditions, the potential sensitivity of the site and the wider area, and the potential for unreasonable restrictions to be placed on an existing business.

Planning Balance and Conclusion

16. It is common ground that paragraph 11(d) of the Framework is engaged in respect of the presumption in favour of sustainable development.
17. I have had regard to the benefits of the proposal. The development would add to the supply and mix of housing in the area. However, even given the evidence in respect of the Council's housing land supply and the HDT results, this contribution would be of limited benefit given the number of dwellings proposed. The proposal would benefit the local economy at both the construction phase and through the spending of residents, although given the scale of the development such benefits would be limited. The environmental benefits arising from the use of MVHR would relate to impacts from the development itself, and are a neutral factor in the planning balance.

18. Even considered cumulatively, these benefits would not outweigh the significant harm that I have identified in respect of living conditions and the operation of a nearby business. On these matters, I conclude that the proposal would conflict with the development plan and the Framework.
19. Overall, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the identified benefits when assessed against the policies of the Framework taken as a whole. Consequently, the proposal would not represent sustainable development and the appeal should be dismissed.

David Cross

INSPECTOR