



Appeal Decision

Site visit made on 23 August 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Thursday 15 September 2022

Appeal Ref: APP/V4630/W/22/3292577

Land at Gomer Street, Willenhall WV13 2NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Simon North against Walsall Metropolitan Borough Council.
 - The application Ref 20/1001, dated 17 August 2020.
 - The development proposed is for 15 x 1 Bed Apartments and 3 x 2 bed apartments.
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Decision

1. The appeal is dismissed and planning permission is refused.

Applications for costs

2. An application for costs has been made by Mr Simon North against Walsall Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposed development in the banner heading above is taken from the planning application form. However, during the application stage the number of proposed apartments changed from 18 to 14 to allow for more communal amenity space at ground floor level. The above description therefore differs from that on the appeal form which is "full application for 14 (8 x 1 bed and 6 x 2 bed) apartments and associated parking and amenity space." My decision is based on this description from the appeal form since it more accurately describes the proposal. It also appears in the Council's statement, as such none of the parties would be prejudiced by my use of it.
4. The appeal follows the Council's failure to determine the application (20/1001) within the prescribed period. However, the Council has indicated in its statement, that had it been in a position to determine the application, it would have refused planning permission. The substance of the Council's statement has informed the main issues of the appeal.

Main Issues

5. The main issues in the appeal are:
 - Whether the relationship between the proposal and the adjacent employment use would be acceptable, with particular regard to the effect of noise and disturbance on living conditions for future occupiers of the proposed residential development.

- Whether it has been demonstrated that the proposal would secure the provision of an off-site open space improvements contribution.

Reasons

6. The appeal site is located on the corner of Gomer Street and Gomer Street West. The site itself is a parcel of land that forms part of a wider employment site. The appeal site consists of an industrial building and a storage yard that adjoins industrial buildings on its north and west boundaries. Directly opposite the site is a 14-storey residential block and a community centre. There are also residential properties located near to the site along Gomer Street. The surrounding area consists predominantly of industrial and residential buildings.

Living Conditions

7. Policy IND4 of the Walsall Site Allocation Document (2019) states that the appeal site is safeguarded as Local Quality Industry and its release to other uses, such as residential development, should not unacceptably constrain any existing industry. The Council states that the established industrial uses operating within the industrial block are currently unconstrained by noise, vibration, odour and gaseous emissions, particulate emissions, or hours of operation limitations.
8. Furthermore, paragraph 187 of the National Planning Policy Framework (Framework) states that decisions should ensure new development can be integrated effectively with existing businesses and community facilities. Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. 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') should be required to provide suitable mitigation before the development has been completed.
9. Consequently, these unconstrained industrial uses would be likely to create a tension between the proposed residential development and the adjoining industrial occupiers, relating to noise, vibration and release of emissions from the operation of industrial equipment and heavy goods vehicles. In addition, the associated comings and goings of staff, visitors and vehicles from the industrial buildings, particularly late at night and early morning, has the potential to generate noise and disturbance. This noise would also be occurring at unsociable hours.
10. This could lead to noise and disturbance to the future occupiers of the proposal. The proposed residential development therefore has the potential to constrain industrial operations in premises to the north and west of the appeal site.
11. The noise assessment (Nova Acoustics, dated 10/02/2022) undertaken by the appellant is not representative of a normal working week, as it was undertaken Friday to Monday (21/05/21-24/05/21), with further short-term monitoring undertaken on a Wednesday (02/02/2022). I am therefore not satisfied that the noise assessment reflects a typical working week. Nonetheless, the assessment concludes that the appeal site falls into Noise Risk Category 2 and that the potential effect if unmitigated would be a significant adverse effect on health and quality of life.

12. To minimise external noise entering the building, the proposal would include appropriate double glazing and a mechanical ventilation system to reduce the need to open windows. Nevertheless, the proposal would have habitable windows on all four sides of the building, and it is likely that future occupiers would open their windows, and indeed their doors, on fine weather days (or would wish to do so). Due to the close proximity of the proposal to the industrial buildings, there is a risk that noise could enter the proposed building. It would be unreasonable to impose a condition to prevent future occupiers of the building opening their doors/windows on fine/hot weather days.
13. Furthermore, the proposal is for a four-storey building with private balcony areas. The noise survey submitted does not provide any evidence to show what the level of noise disturbance would be for the balcony areas. Whilst acoustic fencing could be installed on the site's perimeter, due to the height of the proposed building, there is a risk that noise could rise above the fencing and penetrate the balcony areas. This would mean that future occupiers are less likely to use their private balcony areas or open their sliding glazed windows/doors to balcony areas, which would be unacceptably harmful to their living conditions.
14. The proposal would include private garden areas at ground floor and communal outdoor amenity spaces, which would be located adjacent to the industrial premises. Although acoustic fencing would help to alleviate noise levels at ground level, there is no evidence before me to show how the proposal would mitigate potential odours arising from the surrounding industrial activities. As such, there is a risk that future occupiers would not be able to use their private garden areas or communal outdoor amenity spaces due to potential disturbance from odours. Odours could also penetrate through open windows and balcony areas.
15. The appellant argues that the Council have not provided any evidence of noise or odours being emitted from the existing industrial processes. However, whilst the appellant has provided me with a noise assessment, they have not submitted any substantive evidence to refute the concerns regarding odours. As a result, a condition relating to odours would not be reasonable as I cannot be certain a suitable solution could be achieved.
16. Therefore, I am not sufficiently convinced that the proposed mitigation measures would successfully prevent noise and disturbance from causing harm to the living conditions of future residents. Consequently, the proposal has the potential to curtail future industrial activities and potential expansion plans, which factory owners may wish to undertake.
17. Whilst the current industrial activities have not been the subject of complaints from the existing nearby residential properties, these are generally sited further away than the appeal site. In comparison, the degree of separation distance between the proposal and the existing industrial premises would be significantly close. Furthermore, the lack of complaint is a neutral matter and does not weigh in favour of the proposal.
18. For the reasons given above, the proposal does not incorporate suitable mitigation measures in terms of noise and disturbance. Thus, the proposed residential development would unacceptably constrain the functioning of the adjacent existing industry. Moreover, the industrial activities adjacent to the

appeal site would have an adverse impact on the living conditions of the future occupiers, with regard to noise and disturbance.

19. Consequently, the proposal would fail to accord with Policy IND4 of the Walsall Site Allocation Document (2019) (SAD), for the reasons set out above.
20. There would also be conflict with Saved Policy GP2 of the Walsall Unitary Development Plan (2005) (UDP) which, amongst other things, seeks to ensure developments make a positive contribution and will not be susceptible to pollution. The proposal would conflict with Policies ENV14 and ENV32 of the UDP. These policies, amongst other things, seek to ensure proposals take account of their context and surroundings and encourage the reclamation of previously developed land as long as it is technically feasible and in accordance with other policies of the Plan.
21. In addition, the proposal would fail to accord with paragraph 187 of the Framework.

The provision of an off-site open space improvements contribution

22. Based on the number of bedrooms proposed, were the proposal to be granted planning permission, a financial contribution towards open space improvements would need to be made. The appellant has referred to a Section 106 legal agreement to secure the provision of an off-site open space improvements contribution. However, I do not have a Section 106 legal agreement before me. In the absence of such an agreement I am unable to conclude whether the provision of an off-site open space improvements contribution can be secured. Therefore, the proposal fails to accord with Policy GP3 of the UDP, where they seek to ensure new development meets the objectives of sustainable development. In reaching this conclusion I have had regard to the guidance contained within the Council's Urban Open Space Supplementary Planning Document (2006) (SPD), which seeks to ensure the delivery of open space improvements.
23. The Council's decision notice makes reference to Policy OS1 of the SAD. However, I do not consider this policy to be relevant to this main issue.

Other Matters

24. My attention has been drawn to a previous appeal where residential development was permitted (APP/P0240/W/20/3260426). However, in this case the noise report concluded that the background noise levels were not excessive and advised that relevant guideline standards for internal noise levels would be achievable within dwellings with windows open for both daytime and night-time periods. It recommended that standard double-glazed units could be used to meet noise criteria and that any trickle vents should be capable of meeting the same standard, but no requirement for other mitigation was identified. Therefore, there are significant differences between this approval and the proposal before me, which requires appropriate glazing with a suitable sound reduction specification, mechanical ventilation system, and acoustic fencing. Furthermore, I do not know the planning circumstances that led to this approval or its specific site context and relationship with neighbouring uses. As such, this carries limited weight in any decision. In any event, I have determined the appeal on its own merits based on the information before me and my own observations of the area.

25. As there is an identified shortfall in housing supply the 14 apartments would contribute to meeting that shortfall. However, the contribution would be a modest one to which I attach limited weight.
26. The appellant suggests that the proposal would visually improve the street scene by developing an underused site that is considered to be an eyesore. The proposal would also make use of a brownfield site that is accessible to a range of services, facilities and sustainable modes of transport. However, this modest benefit would not be sufficient to overcome my concern regarding the harm arising from the proposal. I therefore attach limited weight to it.
27. The proposal would lead to construction work and other economic and social benefits arising from future household spending on services and facilities in the local area. It would also help to support local health facilities. However, given the proposal is for 14 apartments it would have a modest impact in this regard, and is a matter of insufficient weight to change my conclusion.
28. The appellant claims that the proposal would utilise modern high-quality materials and sustainable building techniques to provide spacious, liveable homes that exceed the Nationally Described Space Standards. Whilst this would be a laudable approach, it would not be sufficient to make the proposal acceptable in light of the harms I have identified. I therefore attach limited weight to it.
29. The Council has raised no objection in respect of the proposal's effect on the nearby Willenhall Conservation Area and the non-designated heritage asset known as Midland Engineering Works. Based on the evidence before me and the observations I made during my site visit, I find that it would have a neutral effect on the significance of these heritage assets and therefore would preserve their setting. However, this is a neutral effect and does not weigh in favour of the proposal.
30. The proposal would not cause harm to the living conditions of neighbouring residential occupiers, highway safety, or environmental quality. Nevertheless, these are neutral factors that do not weigh in favour of the proposal.

Planning Balance

31. Although there would be some benefits to the proposal, as set out above, these benefits would attract only limited weight and would not outweigh the harm identified.
32. The lack of a 5-year housing land supply means that the policies which are most important for determining the proposal are out-of-date in accordance with paragraph 11d) of the Framework. However, part ii. of paragraph 11d) clarifies that permission should not be granted if any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As I have explained, the harm I have found arising from this proposal is so significant that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies and the Framework taken as a whole. This provides a clear reason for refusing the development. Therefore, the proposal would not benefit from the presumption in favour of sustainable development in this instance.

Conclusion

33. The proposal would conflict with the development plan as a whole, and there are no other considerations worthy of sufficient weight, including the provisions of the Framework, which would outweigh this finding. Therefore, I conclude that the appeal is dismissed and planning permission refused.

Helen Smith

INSPECTOR