



Appeal Decision

Site visit made on 6 June 2023

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2023

Appeal Ref: APP/M4510/W/23/3314580

**Former Newcastle Premier Ice Cream Company, Denton Grove,
Westerhope, Newcastle Upon Tyne NE5 2LS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Mohammed of Home Developments Ltd against the decision of Newcastle Upon Tyne City Council.
 - The application Ref 2021/1940/01/DET, dated 29 September 2021, was refused by notice dated 7 November 2022.
 - The development proposed is Erection of two blocks of terraced houses comprising 9 units in total (C3 use) plus associated parking.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The first two reasons for refusal as cited on the decision notice are the same reason for refusal. I am however aware that the reasons for refusal as set out in the officer's report include for a separate issue regarding insufficient information to demonstrate that an adequate, safe and convenient pedestrian access can be provided into the site. As this did not form part of the reasons for refusal in the decision notice and I am dismissing the appeal on other grounds, I do not find it necessary for me to consider this matter further. The officer's report also sets out a number of other issues such as vehicle tracking information and service/refuse matters. For the same reasons as above, I do not find it necessary to consider such matters further.

Main Issues

3. The main issues are:
 - Whether the proposed development would provide an adequate standard of residential accommodation for future occupiers with particular regard to noise, external amenity space and outlook; and
 - Whether the proposed development would provide disabled parking and cycle storage space to meet the needs of the development.

Reasons

Adequate standard of residential accommodation

4. The appeal site relates to a vacant parcel of land accessed from Denton Grove and is enclosed by a mixture of metal/timber fencing and brick walls. The surrounding area is characterised by both residential and commercial uses including the Asda store which is located in close proximity to the east and south of the site with the loading bay/service yard located directly adjacent to the eastern edge of the site, separated by a brick wall and metal fencing.
5. The proposed development is for the erection of two blocks of terraced houses comprising 9 units in total. A large proportion of the dwellings would be located along the eastern boundary of the site where their rear elevations and garden areas would be within close proximity of the loading bay. This area is used by delivery vehicles as well as members of staff and there is a range of plant and equipment housed along the boundary wall separating the two sites. A number of cages and trolleys were evident onsite as well as a large number of empty pallets. The activities associated with the loading bay is an emitter of noise and therefore has the potential to impact the living conditions of those located nearby.
6. At my site visit, the store had a delivery which whilst only a snapshot in time, enabled me to listen to and observe the noise and activities associated with the loading bay. This included, access and egress, opening and closing of doors, loading and unloading of products including several vehicle hoist movements, staff conversing, music playing from inside the store, movements of cages etc. This noise was clearly audible from the appeal site.
7. I acknowledge that most of the noise associated with the loading bay is created by the loading and unloading of vehicles during the period between 07:30 and 09:30 when deliveries are being made. However, it can also not be assumed that for the remainder of the time there would be very little noise particularly given that it is undisputed that the store is able to receive deliveries throughout the day and I observed a delivery outside of these hours at 10:15. Moreover, noise does not just come from the deliveries taking into account the other activities associated with the loading bay as identified during the appellants noise survey such as; refuse provision, staff conversing, use of staff vehicles, movement of cages, opening and closing of doors etc. There are no restrictions over these uses and the level of noise and disturbance created by such uses would be difficult to control.
8. I have had regard to the mitigation measures proposed including ventilation and glazing and appreciate that such systems have been approved elsewhere. However, the Acoustic Design Statement prepared for the site acknowledges that when windows are open, internal sound levels within habitable rooms on the rear façade could rise above the 'desirable' level particularly when they coincide with delivery periods. As a result, it suggests that the most noise sensitive rooms such as master bedrooms and living rooms for the dwellings closest to the Asda store are located to the front façade allowing them to be naturally ventilated with the less noise

sensitive rooms such as kitchens, bathrooms, and box rooms located on the rear façade. The submitted plans show three storey dwellings with two reasonably sized bedrooms located towards the rear elevation on both the first and second floor which is contrary to the suggestions made.

9. Additionally, the appellant already accepts that for short periods during the morning, noise from the delivery yard would be audible in gardens backing onto the boundary wall. It cannot be assumed that the average family would not utilise the garden space at that time of the day. Whilst deliveries may typically be during the hours of 07:30 and 09:30, I observed a delivery at 10:15 and although only a snapshot in time, residents would likely be using their garden areas at these times.
10. My attention has been drawn to an application under reference 2012/1277/01/DET where this particular project had similar external amenity areas between the façade and noise source. I have very limited details regarding this scheme and in any event, I am considering the scheme that is in front of me and it would not justify further development which would result in amenity issues.
11. Concern has been raised regarding the night-time operation of the air coolers. However, the Acoustic Design Statement explains that this equipment operates according to demand at any time of day or night. The rating level has been assessed as low impact and I am persuaded by the appellants case that the normal family will be indoors sleeping between the hours of 23:00 to 07:00. I therefore have no reason to question the approach taken in this respect although this would not overcome the other harm identified in relation to noise.
12. The appeal site wraps around the northern side and part of the eastern side of Serin House and as a result, it has an irregular shape which constraints the overall size and layout of the plot. This would mean that the proposed dwellings along with parking provision and other associated works, would occupy a substantial section of the site leaving only small and contrived areas for amenity space. This would result in a cramped form of development.
13. Although there is no specific standard for the amount to be provided, from the details before me, the amenity spaces to the rear would be limited with no provision at the front or elsewhere within the site. The properties would provide three bedrooms and it is not disputed that these would be for families who are likely to require more usable spaces to meet their needs. Moreover, the garden areas serving plots 1-6 would also be likely to be subject to levels of noise and disturbance which would further restrict their usability.
14. A brick wall currently separates the appeal site from the adjacent Asda store and the submitted plans show a 2metre high timber fence. It is unclear if the brick wall would be retained as part of the proposals and the Council raise concern that if retained, this would impact on the outlook of the ground floor rear windows on the plots located to the east and thus would not comply with Policy DM23 of the DAP which amongst other

matters, ensures development maintains a good standard of outlook and privacy for all existing and future occupants of buildings.

15. I am satisfied however that such matters could be dealt with via a planning condition requiring full details to be provided. Such a condition could be imposed were the appeal to be allowed.
16. For the reasons given above, I conclude that, although the matter relating to outlook could be overcome by a suitably worded condition, the proposed development would not provide an adequate standard of residential accommodation for future occupiers with particular regard to noise and the provision of external amenity space.
17. It would therefore be contrary to Policy CS14 of the Planning for the Future Core Strategy and Urban Core Plan for Gateshead & Newcastle Upon Tyne 2010-2030 (2015) (CSUCP) and Policies DM20 and DM23 of the Newcastle Upon Tyne Development and Allocations Plan 2015-2030 (2020) (DAP) which together, amongst other matters, seek to prevent negative impacts on residential amenity and wider public safety from noise whilst requiring development to provide high quality inclusive spaces and buildings which promote active and healthy lifestyles whilst also promoting allotments and gardens for exercise, recreation and for healthy, locally produced food. The proposed development would also be contrary with the aspirations of the National Planning Policy Framework (the Framework) relating to achieving well-designed places.

Disabled parking and cycle storage space

18. Policy DM12 of the DAP relates to parking and servicing explaining amongst other matters that, development will be required to provide safe, secure and useable vehicle and cycle parking that satisfies its operational requirements and is generally in accordance with the parking levels set out in Appendix 6. Appendix 6 explains that proposals should demonstrate how the parking needs of disabled people have been considered and that dwellings without garages must contain adequate internal storage for cycles.
19. It is undisputed that the number of car parking and cycle parking spaces are considered acceptable. However, the development does not demonstrate how the parking needs of disabled people have been considered and whilst provision is made for cycle parking, such provision is in the form of Sheffield Stands which are grouped together towards the western side of the appeal site and thus are not conveniently located for the majority of residents. Additionally, such provision should be secure and covered to provide weather protection as required by Policy DM12 of the DAP.
20. For the above reasons, I conclude that the proposed development would not provide disabled parking and cycle storage space to meet the needs of the development. It would therefore be contrary to Policies CS13 and CS15 of the CSUCP and Policy DM12 of the DAP which together, amongst other matters ensures connectivity, accessibility, and legibility. The proposed

development would also be contrary with the aspirations of the Framework relating to promoting sustainable transport.

Other Matters

21. I acknowledge the planning history associated with the site and that the Council previously accepted an identical form of development under reference 2002/0060/01/DET. However, this decision was made in 2002 under a different planning policy environment and has now expired. I have also had regard to the previous appeal under reference APP/M4510/W/16/3162160 which assessed a number of other matters in dispute. Nevertheless, I have determined the current appeal based on its own merits and evidence in front of me.
22. I appreciate that the appellant is keen to redevelop this previously developed land that has been vacant for decades and is continuing to fall into dilapidation and I note the issues regarding anti-social behaviour. I am also aware of the sustainable location of the site and that the design/materials would be similar to other nearby properties as well as the there being no significant traffic increase to the road network. However, such matters would not outweigh the harm identified in relation to the main issues.

Conclusion

23. The proposed development would conflict with the development plan when considered as a whole. There are no material considerations, either individually or in combination, that outweighs the identified harm and associated plan conflict. I conclude that the appeal should therefore be dismissed.

N Teasdale

INSPECTOR