



Appeal Decision

Site visit made on 3 August 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2023

Appeal Ref: APP/V2255/W/22/3305818

Land Adjoining Checkmate Ltd, New Road, Sheerness, Kent ME12 1PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Checkmate Ltd against the decision of Swale Borough Council.
 - The application Ref 22/502499/OUT, dated 17 May 2022, was refused by notice dated 20 July 2022.
 - The development proposed is described as a two storey residential building with associated residential accommodation within the roofslope, associated access, underground parking, amenity provision and refuse/ cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal seeks outline permission with all matters reserved except for access. The appeal is accompanied by detailed drawings and the appellant's documents describe these as indicative. I have therefore treated them as such.
3. A Unilateral Undertaking has been submitted with the appeal, dated 23 August 2022. This relates to mitigation for impacts on bird species and I have taken this document into account in the determination of the appeal.

Main Issues

4. The main issues are: (i) whether the proposal would provide an acceptable standard of accommodation for future occupiers, with particular regard to noise disturbance, and; (ii) the effect of the proposal on the character and appearance of the area.

Reasons

Standard of Accommodation

5. The appeal site immediately adjoins a railway line to the north and the road of Brielle Way beyond, which is a busy route serving the nearby town and port. An industrial area exists to the north east of the site and a cluster of residential properties exist opposite, of which some front onto New Road.
6. The appellant has submitted a Noise Impact Assessment (NIA) which considers the effects of nearby noise sources on the residential accommodation proposed. This identifies the main sources of noise at the appeal site to be the constant road traffic and noise from passing trains, which it describes as louder

- than the road but infrequent, albeit recording 15 trains within the 5 hour survey period.
7. The NIA identifies that with windows open, the internal maximum noise levels at night resulting from passing trains would exceed the recommended guidelines. It assumes that 10 passenger trains would pass the site between the hours of 23:00 and 07:00 and, in the absence of evidence to the contrary, it is likely this would occur repeatedly and throughout the year. On this basis the NIA states that mitigation is required. It states that opening the windows would reduce the sound insulation of the building envelope and that acoustically treated ventilation will be required for all living rooms, dining rooms and bedrooms throughout the development. This would allow the development to meet the recommended internal noise limits without the need to open windows for ventilation and cooling.
 8. The need to keep these windows closed throughout the development would not be conducive to a healthy living environment. It would result in uncomfortable and oppressive conditions for future occupiers with no relief by opening windows, even during clement weather. Based on the evidence, these effects would be frequent and long lasting. While future occupants could still have an option to open their windows, to do so would expose their internal living spaces to unacceptable noise levels. Together these factors would result in an unacceptable standard of accommodation.
 9. The appellant suggests that windows could be openable where they face New Road or are within 90 degrees of the noise sources. However, the effects of this have not been demonstrated in the NIA, and this would appear to be contrary to its recommendations. The fact that other properties on New Road have opening windows does not satisfy me that this would be acceptable, given they are a greater distance from the railway and likely received planning permission some time ago. As such I cannot be satisfied that their circumstances are similar to the appeal scheme.
 10. In terms of the effects of noise from the industrial uses to the north, the NIA found no noise from the nearest use to be audible over the ambient background noise. At the time of my site visit I found New Road itself to be very lightly trafficked, and I have no strong reason to believe that the proximity of the proposal to New Road would cause harm. The effects of these other noise sources would therefore be acceptable.
 11. The NIA recommends the installation of acoustic fencing to two of the site boundaries to reduce noise disturbance in the proposed ground level amenity spaces. Given their location, these would not impede the access to the site and could be secured by condition if the appeal were otherwise allowed. As such the effects on the ground floor outdoor spaces would be acceptable.
 12. In conclusion on this main issue, due to the effects of the proximity to the railway line, and the noise mitigation required as a result, the proposal would create unacceptable living conditions for future occupiers. The proposal would conflict with policies CP4 and DM14 of The Swale Borough Local Plan: Bearing Fruits 2031, adopted 2017 (the LP), insofar as they relate to amenity and the need to create comfortable places. The proposal would also conflict with the objectives of the National Planning Policy Framework (the Framework) relating to creation of healthy communities, including at paragraphs 119 and 124 which

relate to the efficient use of land while ensuring, among other things, healthy living conditions and securing healthy places.

Character and Appearance

13. The appeal site comprises overgrown grassland and small trees, and is triangular in its shape, reducing in depth to its south western side. The other buildings on this side of New Road vary significantly in their scale, design and appearance. Buildings in the wider area also vary in their distance from the edge of the street. Given this varied character, I consider that an acceptable solution could reasonably be achieved at the reserved matters stage, which would reflect the prevailing character of the surrounding area. While the appeal site is more shallow than the other plots to the north east, I do not find that proximity to the site boundaries would necessarily cause visual harm, depending on the final design.
14. The proposal, as it is before me, would have an acceptable impact on the character and appearance of the area. It would comply with policies CP4 and DM14 of the LP insofar as they relate to design principles and the need to respect local distinctiveness.

Other Matters

15. The site lies within 6km of the Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar Site. As the proposal would entail a net increase in residential units, it could have effects on these sites. However, Regulation 63(1) of the Habitats Regulations¹ indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal. As the appeal is being dismissed on other grounds it is not therefore necessary to address this in any further detail.

Planning Balance

16. The Council accept that it cannot demonstrate a 5 year land supply for housing. There is dispute regarding the scale of the shortfall, varying between 4 and 4.8 years. In any event, the provisions of paragraph 11d) of the Framework apply to the appeal. This states that planning permission should be granted unless 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.
17. As above, the proposal would create adverse impacts through failing to provide an acceptable standard of accommodation for its future occupiers. The effects would be significant and long lasting, and present conflict with the Framework. I give this harm substantial weight.
18. In terms of benefits, the proposal would provide 5 additional housing units which would contribute to the national objective to boost the supply of homes as well as the local housing stock. These would be on a small site, which the Framework acknowledges to be of a size which can make an important contribution to meeting the housing requirement of an area, and often built out relatively quickly. It would also be a windfall site within an existing settlement with access to services and facilities including public transport. However given

¹ The Conservation of Habitats and Species Regulations 2017

the concerns above, I am not satisfied that the site could be described as suitable for the purposes of paragraph 69c) of the Framework.

19. The proposal would also give the opportunity to tidy the existing overgrown site and could deliver ecological benefits through new landscaping. In addition, the proposal would generate some economic benefits through the creation of construction jobs as well as ongoing expenditure into the local economy by future residents. Cumulatively, I ascribe these benefits moderate weight, given the scale of the proposal.
20. There is not substantive evidence that other properties on New Road would experience an improvement in noise conditions as a result of the proposal. As such I ascribe this minimal weight as a benefit. Where the proposal may be policy compliant in other respects, these matters are neutral and do not weigh in favour of the development.
21. For the reasons given, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Consequently, the proposal does not benefit from the presumption in favour of sustainable development.

Conclusion

22. With the above in mind, there are no material considerations, including the approach of the Framework, that are worthy of sufficient weight that would indicate a decision other than in accordance with the development plan. The appeal is therefore dismissed.

C Shearing

INSPECTOR