



Appeal Decision

Site visit made on 25 September 2023

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2023

Appeal Ref: APP/E2734/W/23/3323566

The Haven, Dishforth, Thirsk YO7 3LP

- 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 Mr J Rose and Miss M Watson against the decision of Harrogate Borough Council.
 - The application Ref 21/03691/OUT, dated 10 September 2021, was refused by notice dated 19 December 2022.
 - The development proposed is residential development for the creation of 3 building plots.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr J Rose and Miss M Watson against Harrogate Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal was amended from 4 dwellings to 3 dwellings during the course of the application and I have considered the appeal on this basis. The application was submitted in outline with matters of access, scale, layout, appearance and landscaping being reserved for future consideration. I have dealt with the appeal on this basis, treating proposed site layout plans as illustrative.

Preliminary Matters

4. The decision notice refers to four reasons for refusal in relation to noise disturbance, highway safety, ecology, and the effect of the development on trees. The Council confirm that as access is a matter reserved for future consideration that reason for refusal 2 is not being pursued.

Main Issues

5. Taking into account the above, the main issues in this case are:
 - The effect of the proposal on the living conditions of future occupiers with specific reference to noise.
 - The effect of the proposal on European Protected Species, with particular reference to bats.

- The effect of the proposal on protected trees.

Reasons

Living conditions of future occupiers - noise

6. The appeal site is around 0.24 ha and is formed from the side and part of the rear garden of The Haven, a detached property on the Main Street at Dishforth. To the north of the appeal site is a belt of semi-mature trees which run alongside the route of the A168 dual carriageway. A grass paddock lies to the west which also shares a northern boundary with the A168. The owner of that field has erected an acoustic fence alongside the boundary of the A168.
7. An Environmental Noise Survey, Noise Break-in Assessment and Sound Insulation Scheme (the 'Noise Survey') was submitted with the application and subsequently updated. The Noise Survey notes that the A168 facilitates high traffic flow levels and that the noise profile of the area is dominated by road noise coming mainly from the A168. This was confirmed on my site visit where I observed that the A168 was very busy with a constant flow of fast-moving traffic including heavy vehicles resulting in a consistently high level of noise.
8. Paragraph 174 e) of the National Planning Policy Framework (the Framework) seeks to prevent new and existing development from being put at unacceptable risk from or being adversely affected by unacceptable levels of, amongst other things, noise pollution. Paragraph 185 goes on to say that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions ensuring that development mitigates and reduces to a minimum the potential adverse impacts resulting from noise and avoiding noise giving rise to significant adverse impacts on health and the quality of life. It cross references to the Noise Policy Statement (DEFRA 2010).
9. The Planning Practice Guidance (PPG) states that plan-making and decision making need to take account of the acoustic environment and in doing so consider whether or not an adverse or significant adverse effect is likely to occur and whether or not a good standard of amenity can be achieved. In line with the Noise Policy Statement this would include identifying whether the overall effect of the noise exposure would be above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation.
10. The significant observed adverse effect level is defined as the level of noise exposure above which significant adverse effects on health and quality of life occur. The lowest observed adverse effect level is the level of noise exposure above which adverse effects on health and quality of life can be detected. To cross the 'significant adverse effect level' the PPG advises that above this level the noise would cause a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities when the noise is present. If exposure is predicted to be above this level, appropriate mitigation should be brought into play.
11. The Noise Survey assesses noise levels taking into account a number of existing and proposed mitigation levels including the existing 2.5m acoustic fence along the northern boundary of Chapel Villa; the proposed 2.5m acoustic fence along the site perimeter; and the proposed 1.8 high willow wall. In relation to internal noise, Table 7 of the Noise Survey identifies the required glazing specifications with

16mm air gaps and glass thicknesses which vary between 4mm and 8mm in thickness. A trickle ventilation system is to be installed in accordance with Building Regulations and Table 8 of the Nova report. The Noise Survey concludes that the internal noise levels would be acceptable with the recommended thicknesses of double glazing and with an alternative ventilation system. On this basis, I consider that internal noise levels would be acceptable.

12. In relation to external noise, the Noise Survey concludes that taking account of the mitigation measures proposed, the external areas such as gardens would experience worst case noise levels of between 57dB and 59dB. BS8233:2014 'Guidance on sound insulation and noise reduction for buildings' recommends that for traditional external amenity areas such as gardens, it is desirable that external areas do not exceed 50 dB_{L_{Aeq,r,t}} and that 55 dB_{L_{Aeq,r,t}} would be acceptable in noisier environments. Consequently, the proposal would exceed the higher guideline by 2-4dB and the desirable guideline by 7-9dB.
13. The PPG notes that noise impacts may be partially offset if residents have access to one or more of a relatively quiet façade (containing windows to habitable rooms) as part of their dwelling and a relatively quiet external amenity space. Clearly, given the need for double glazing on all facades and as the guidance would be exceeded in the external amenity space, the noise impact would not be off set in this case.
14. The appellants draw attention to BS8233:2014 which states that where a development is desirable the criteria may be relaxed. They also draw attention to paragraph 7.7.3.2 which states that in higher noise levels or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors such as the convenience of living in these locations might be warranted. However, the appeal site is not within an urban area, it is within a village which has some services, but does not benefit from the convenience and accessibility of urban living. Furthermore, the Council can meet an approximately 7.3 year supply of housing land, which has not been contested by the appellant, and the proposal would only make a very modest contribution to housing land supply. Consequently, I do not consider that there is justification to take a flexible approach in this case.
15. The proposed development would result in future occupiers being subject to significant noise levels in their garden to the extent that they would not fully enjoy their external amenity space. The evidence before me does not demonstrate that the noise impact would be effectively mitigated. Given the harm identified to future occupiers it would not be reasonable to leave the acceptability of any such noise measures to be approved by way of planning condition.
16. Attention is drawn to a residential development granted planning permission for 56 dwellings on land at Topcliffe Road and subsequently built. Whilst I acknowledge the proximity of the development to the A168, full details of this case are not before me such as the Noise Assessment and the degree to which noise was attenuated. I cannot, therefore, be certain that the case is directly comparable to the appeal proposal which limits the weight I can attach to it in my decision.
17. In conclusion, the proposal would harm the living conditions of future occupiers with specific reference to noise. It would, therefore, be contrary to Policy HP4 of the Harrogate District Local Plan (2014-2035) which requires development to be designed to ensure that they will not result in significant adverse impacts on the

amenity of occupiers including the impacts of, amongst other things, noise. Conflict also arises with the Framework.

European Protected Species

18. Reason for refusal 3 relates to the potential effect of the proposed development on bats, a European Protected Species, reflecting the absence of a survey. However, a revised preliminary ecological appraisal including a bat survey now accompanies the appeal.
19. The dusk bat survey noted bat activity on the site shortly after sunset which suggests that the roost is located nearby. However, it concluded that no roosts were found on site and that no further survey was necessary. In recognition that the buildings to be demolished may act as temporary roosts appropriate mitigation measures are set out at section 8.3 of the appraisal including bat boxes within new developments. These mitigation measures could have been secured by condition had I decided to allow the appeal. Subject to conditions, I am satisfied that the proposal would not have an adverse impact on bats.
20. In conclusion, with the proposed mitigation measures, the proposal would not have an adverse impact on European Protected Species with particular regards to bats. It would not, therefore, be contrary to Policy NE3 of the Local Plan which seeks to ensure that proposals protect and enhance features of ecological and geological interest including those protected under international or national legislation.

Trees

21. In response to some clearance of trees on the appeal site the Council introduced an area Tree Preservation Order (TPO). This was subsequently replaced by a TPO (TPO 45/2023) which protects four trees individually, two sycamores and two willows and a group of trees containing 3 sycamores. With the exception of T2, all of the protected trees are situated on the boundary of the site. Taking account of the root protection zones shown on the Tree Survey and Constraints Plan, I am satisfied that the trees protected by the TPO on the boundary (T1; G1; T3 and T4) could be retained as part of any new development subject to adequate protection during the construction phase. These protection measures could have been secured by condition had I decided to allow the appeal.
22. The indicative layout plan shows two large trees to be felled to make way for the development. These are identified as T6, a weeping willow and T10, a sycamore. T6 is assessed as a Category C1 tree with a fair physiological condition and weak structure. I note that the Council has not identified the tree for protection in the TPO and has not raised concerns regarding the proposed felling in its submissions. Based on submissions and observations on my site visit; I have no reason to disagree.
23. The large sycamore situated within the site is identified as T10 in the Tree Survey and Constraints Plan and T2 in the TPO. The A Whitehead Associates Ltd Arboricultural Report determines that the tree is of category C1 quality. Category C1 is defined as 'trees of low quality with an estimated life of at least 10 years or trees of trunk diameter below 150mm' and summarised as 'unremarkable trees or trees of impaired condition that they do not qualify above'. The Survey identifies that the trunk divides into four stems at 0.6m and that the stem division is weak, with a particularly weak fork on the eastern stem. However, I noted on my site visit that the tree is a healthy, mature specimen with a full crown, showing no

signs of die back. I agree with the Council that bark unions are a common feature of trees and that healthy trees with high vitality can use adaptive growth to manage these areas. I observed no evidence of weakness; however, should a weak bark union materialise in the future then weight reduction may be undertaken. In my view there is no evident reason why the tree should not fulfil the 40+ life expectancy identified in the Survey. The tree has significant amenity value and is clearly visible from the main road through the village. Consequently, I agree with the Council that the Survey underestimates the value of the tree and that it should be a minimum of Category B1 if not higher. The tree is, therefore, worthy of retention within the development.

24. T2 is currently shown within Plot 2 of the layout; however, this plan is indicative, and I consider that there would be scope to accommodate three dwellings within the site whilst retaining the tree, subject to measures to protect the tree during the course of construction. Such protection measures could have been secured by condition, had I decided to allow the appeal. The scheme would provide a new copse of trees; however, this would take some time to establish.
25. In conclusion, I consider that subject to conditions, the proposal would not have an adverse effect on protected trees. It would not, therefore, be contrary to Policy NE7 of the Local Plan which seeks to protect existing trees, including those trees subject to a TPO.

Other matters

26. The proposed development is situated within the settlement limit of Dishforth which has some community facilities. The proposal would have economic benefits during the construction phase and future occupiers would use local services in the longer term. The proposal would make a small contribution to housing land supply. Due to the scale of the scheme, and the presence of a 7.3 supply of housing land, I only attach moderate weight to these benefits.
27. I have determined that with mitigation secured by conditions the proposal would not have an adverse effect on protected species or trees. However, this conclusion does not weigh either in favour or against the case.
28. I have determined that the proposal would have an adverse impact on the living conditions of future occupiers with specific reference to noise which brings the proposal in conflict with the development plan as a whole. There are no material considerations either individually or collectively which would indicate a decision other than in accordance with the development plan.

Conclusion

29. For the reasons stated, the appeal should be dismissed.

Caroline Mulloy

Inspector