



Appeal Decision

Site visit made on 2 November 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/Y2620/W/23/3315229

Bacton Road, North Walsham NR28 0RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant technical details consent.
 - The appeal is made by Mr David Taylor of Cincomas Ltd. against the decision of North Norfolk District Council.
 - The application Ref PPTDC/21/2650, dated 1 October 2021, was refused by notice dated 27 October 2022.
 - The development proposed is Technical Details Consent following from Permission in Principle (PP/20/0160) for the demolition of the existing buildings on site and the erection of four dwellings with associated parking and gardens.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is for technical details consent following the grant of permission in principle. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle has established that the location, land use, and amount of development is suitable in principle. The technical details consent that is the subject of this appeal can consider the remaining detailed matters but cannot reopen what has been agreed at the permission in principle stage. Permission in principle was granted on appeal¹. That decision was clear at paragraph 14 that other areas of concern had been raised by the Council, including matters associated with residential amenity but that detailed matters would be considered at the technical details consent stage. I have determined this appeal on that basis.
3. The appellant has put forward an alternative layout in their evidence. The Procedural Guide: Planning Appeals – England advises that if an appeal is made, the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the LPA and interested parties at the application stage. I cannot be certain that no parties would be prejudiced were I to take the amendments into account. Therefore, this appeal has been determined based on the plans submitted in support of the application and upon which the Council's decision was made.
4. Since permission in principle was granted, the site has become subject to the requirements of the Norfolk Green Infrastructure and Recreational Impact

¹ APP/Y2620/W/21/3268526 allowed 24 August 2021

Avoidance Mitigation Strategy. As I am dismissing the appeal, and this matter would at best be neutral, I have not considered it further.

Main Issue

5. The main issue is whether the proposed development would be acceptable with respect to the living conditions of future occupiers with regard to odour, noise, dust, lighting, pests and private amenity space, and the effect on the operation of the existing poultry unit.

Reasons

6. The appeal site lies immediately adjacent to an intensive poultry unit with the capacity to hold 150,000 broilers. It is subject to an Environmental Permit (EP) which is regulated by the Environment Agency (EA). The EA, in their original response to the application, highlighted that new development within 400m of an existing intensive poultry farm could result in the nearby community being exposed to impacts including odour, noise, dust and flies and that the operation of the EP regime is unlikely to eliminate all emissions. There is therefore the potential for the existing business to have a significant adverse effect on the proposed development.
7. The appellant has submitted a number of assessments to support the appeal, including an Ammonia, Dust and Odour Assessment and Addendum, Lighting Assessment and a Noise Impact Assessment. I am not satisfied the results of these surveys fully assess the effects the poultry farm may have on the living conditions of occupiers of the proposed dwellings. Different effects may arise at each of the stages of the rearing process, at different times of day and evening, and at of the year when temperature and weather conditions may affect the need for machinery to be in operation, creation of odours and transmission of dust. The lighting assessment does not consider the use of any mobile lighting that may be necessary for works during the hours of darkness. There is no robust assessment of the effects of pests. As such, I cannot be certain that the proposed mitigation measures would be effective in ensuring acceptable living conditions for future occupiers of the proposed dwellings with respect to these issues.
8. I note the appellant is not concerned by the effects of the poultry unit but I do not have full details of their on the ground experience with the site, or how this would demonstrate the proposed mitigation would be effective. Furthermore, both the Council and the EA, given the nature of their respective responsibilities and the history of recent complaints, have experience of the poultry unit and more generally the issues that often arise from such units. Their comments add weight to the concerns I have identified with respect to the submitted surveys and any need for mitigation.
9. The corollary of this is that were these adverse effects to occur, there could be unreasonable restrictions placed on the existing poultry unit in order to mitigate for them. Paragraph 187 of the National Planning Policy Framework (the Framework) is clear that it is for the agent of change to ensure that suitable mitigation is in place before a development is completed. As I cannot be certain that the proposed mitigation measures would be effective in all conditions, I cannot be certain there would not be subsequent unreasonable restrictions placed on the operation of the poultry unit.

10. I do not have full details of the circumstances that led to the grant of planning permission for the other dwellings and holiday accommodation in the surrounding area. Nor do I have details of any mitigation measures that may have been required as part of those schemes. However, the fact other permissions have been granted in the area would not justify allowing this appeal in the absence of certainty that the mitigation proposed would be effective.
11. I have been referred to another appeal decision² in which the effect of a poultry unit on a proposed dwelling was found to be acceptable. However, that decision refers to the proposed dwelling being somewhat further from the operations of the poultry farm than that proposed here. The evidence of complaints was largely historic and the supporting technical documentation with respect to noise had been accepted by the Council's Environmental Health Officer. These factors all serve to distinguish that decision from the case before me.
12. The appellant has directed me to the decision in *Coventry v Lawrence*³ regarding the interaction of the planning system and the law of nuisance. They have also directed me to the administrative law principles of proportionality and rationality. However, the *Coventry* judgement pre-dates the introduction of (now) paragraph 187 of the Framework which explicitly requires that existing businesses should not have unreasonable restrictions placed on them as a result of new development and makes clear that it is the agent of change who is responsible for the provision of suitable mitigation. There is no requirement in the Framework for it to be demonstrated that unreasonable restrictions would be placed on the existing business. The provision of mitigation falls within the remit of the technical details consent stage and it is proportionate and rational to ensure that such mitigation would be effective against the potential harms.
13. The appellant has explored the concepts of nuisance, the ability of the Council to serve abatement notices on development that causes a statutory nuisance and consideration of best practicable means. However, these refer to separate regimes to the planning system in the circumstances of this appeal. Paragraph 188 of the Framework is clear that planning decisions should be focussed on the use of land rather than the control of processes and emissions and should assume that separate pollution control regimes will operate effectively. While I acknowledge the PPG uses the terms nuisance and statutory nuisance, this is in the context of providing guidance on how to address the risk of conflict between existing and proposed uses. It is not providing advice on the tests to be used when assessing development proposals through the planning process.
14. It may be that there is no right for an existing business to continue or create a nuisance or not to have reasonable restrictions placed upon them. However, it is not within the scope of this appeal to control existing effects of development on land outwith the appeal site. Nor do I consider this to provide a compelling reason for me to depart from the approach set out in paragraph 187 of the Framework.
15. North Norfolk Core Strategy (2008) (CS) Policy EN 4 requires that new dwellings should provide acceptable residential amenity. Paragraph 187 of the Framework refers to circumstances where there would be a significant adverse

² APP/Y2620/W/18/3196571 allowed 17 September 2018

³ *Coventry v Lawrence* (Coventry (t/a RDC Promotions) & Anor v Lawrence & Ors (Rev 1) [2012] EWCA Civ 26)

effect on new development. There is no requirement to interpret the advice in the Framework or the PPG in accordance with definitions contained within other legislation. What constitutes acceptable residential amenity and a significant adverse impact are matters of planning judgement and I have exercised such judgement above.

16. I have had regard to the advice in the North Norfolk Design Guide that private amenity space should normally be no less than the footprint of the dwelling. Plots 2 and 3 are somewhat below that figure but would nonetheless provide acceptable private amenity spaces. The outdoor private amenity space proposed for plot 4 is notably more compact than that of the other units, and some of its area appears to consist of a narrow strip to the side of the dwelling which would not be particularly usable. However, plot 4 is shown to be a two bedroom dwelling, of which one is shown to be a single person room. Sufficient outdoor amenity space to allow for the purposes of private enjoyment such as unencumbered sitting out would be provided. The amount of private amenity space to be provided for each dwelling would be acceptable in this case. However, this would not outweigh the harms I have identified above.
17. The proposed development would therefore not be acceptable with respect to the living conditions of future occupiers with regard to odour, noise, dust, lighting and pests. It would therefore be contrary to CS Policy EN 4 which requires that new dwellings should provide acceptable residential amenity. It would also be contrary to the advice in chapters 12 and 15 of the Framework which, insofar as they relate to this appeal, require development to provide a high standard of amenity for future users and prevent new development from being put at an unacceptable risk from pollution. It would also have an unacceptable effect on the operation of the existing poultry unit as it could result in the imposition of unreasonable restrictions on that existing business contrary to the advice in paragraph 187 of the Framework.
18. The Council has referred to CS Policy EN 14 in their reason for refusal. However, this policy is concerned with pollution and hazard prevention and minimisation, and the supporting text confirms it is intended to restrict polluting development. As such, I do not find the proposed development itself would be contrary to this policy as it would not, in and of itself, cause pollution.

Other Matters

19. Melbourne House is a Grade II Listed Building. The Inspector in the previous appeal decision found that the appeal site formed part of a grouping of buildings that formed part of its setting. He also found that the significance of the listed building was derived from its evidential, historic and aesthetic value found in the authenticity of its architecture and appearance. I concur with this assessment.
20. The proposed dwellings would be separated from Melbourne House by intervening development, would be single storey and designed to integrate with the character of the surrounding area. I consider there would be a neutral effect on the setting of the listed building which consequently would be preserved.
21. There would be the benefit from the delivery of additional dwellings to the supply of housing, and the associated economic benefits during the

construction and occupation stages. However these benefits would be limited due to the small scale of the proposed development.

22. No concerns have been raised in relation to highways issues, waste collection, energy efficiency, design or flood risk and drainage subject to conditions. However these would be expected of any well designed development and would therefore be neutral.
23. The fact that the existence of a permission in principle can inform the assessment of the deliverability of a site does not fetter the discretion of the Council in determining the technical details consent.
24. Concerns about the information provided by the Council during the application process do not fall within the remit of this appeal which has been determined on its planning merits.

Conclusion

25. For the reasons given above I conclude that the appeal should be dismissed.

J Downs

INSPECTOR