



Appeal Decision

Site visit made on 13 March 2018

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2018

Appeal Ref: APP/C4615/W/17/3189994

Bodykraft (Merry Hill) Ltd, Canal Street, Brierley Hill DY5 1JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission.
 - The appeal is made by Westleigh Partnerships Ltd and Accord Group against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P17/0865, dated 13 June 2017, was refused by notice dated 14 September 2017.
 - The development proposed is a full planning application for the residential development of 58 No. dwellings (all for use as affordable housing through a registered provider).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to outlook, noise and disturbance, and
 - the effect of the development on the future operation and viability of existing employment uses.

Reasons

3. The appeal relates to a vacant site on the corner of Dudley Road and Canal Street. The site forms part of a mixed-use area, including residential, retail, leisure and industrial.
4. The adjoining site is occupied by Hammond Chemicals (HC) with further industrial uses beyond along Canal Street. HC are an established hazardous solvent storage, blending, packing and distribution business, separated from the appeal site by a high boundary wall.
5. The dominant noise sources affecting the site are road traffic and industrial noise. There are a number of noise sources from HC that contribute to the industrial noise climate, including the movement of fork lift trucks with their associated rattles and horn usage, drum movement activities, HGV movements and two sources of fan noise, one originating at ground level and one at roof level.

6. Whilst BS 8233¹ is clearly relevant to my consideration, paragraph 6.5.2 of that document states that where industrial noise affects residential areas, as would be the case here, the methods for rating noise in BS 4142² should be applied. This has been incorporated into the appellant's updated noise assessment. The BS 4142 daytime assessment of which, indicates a 9dB difference between the noise level (with corrections) from HC and the background noise level. The appellant's assessment acknowledges that this is an indication of an adverse impact, depending on context.
7. I also note that there is a disparity to the value of +4 dB in the level of penalties accredited to the noise characteristics between that calculated by the appellant and the Council's Environmental Safety and Health Team (ESH). The Council explains that it has applied an additional penalty of 3 dB due to the intermittent noise characteristics emanating from HC. The Council also apply a 4 dB penalty to tonality, rather than the 3 dB applied by the appellant. Based on the evidence before me, I consider the penalties applied by the ESH to be appropriate. As a consequence the values applied would increase the difference to 13 dB above the background noise level. Such a difference indicates that the noise is likely to amount to a significant adverse impact. The ESH state that depending on context this may be considered as a statutory noise nuisance if occurring regularly and sufficiently often to materially affect the use of a person's property, including outdoor amenity areas.
8. In considering the context, the appellant has suggested that as the site is close to several industrial units producing industrial noise, it should not be a surprise to a new resident that industrial noise will impact to some degree on this development site. However, Paragraph 17 of the National Planning Policy Framework (the Framework) states that planning should always seek to secure good standards of amenity for all existing and future occupants of land and buildings. As such, I give this matter very limited weight as a point in favour of the appeal scheme. Moreover, whilst there may be existing properties on Canal Street where the outdoor living spaces are subject to higher noise impacts than the rear gardens of the proposed dwellings, this does not justify introducing additional dwellings into this location which would be harmful to the living conditions of future occupants and potentially to the reasonable operation of existing industrial premises. The proximity to Buckpool and Fens Pool Local Nature Reserve does offer some mitigation but doesn't overcome the reasonable day to day expectations of occupants.
9. The ESH highlight that no night-time assessment has been undertaken following the guidance of BS 4142. I recognise that HC currently operate between 0700 hours and 1730 hours Monday to Friday and occasionally on Saturday mornings. However, I have not been made aware of any restrictions to this so I am mindful that this could potentially intensify with longer working hours. Moreover, HC explain that their flammable goods stores all require ventilation by mechanical extraction fans and are required to run intermittently for 24 hours a day. A roof vent operates within their main flammable solvent store which is situated in a warehouse on their western boundary, therefore close to the appeal site. HC and ESH identify this as a significant noise source and a determinant on the noise climate.

¹ BS 8233:2014 – Guidance on sound insulation and noise reduction for buildings

² BS 4142:2014 – Methods for rating and assessing industrial and commercial sound

10. ESH further highlight this noise source as the dominant factor on the night-time noise climate for significant periods of each night-time period and that extrapolation of the results from the noise report has indicated that the final night-time rating level would be 20 dB above the background noise level. No evidence is provided by the appellant which disputes this and ESH state that such levels when taken into context would normally be considered a significant adverse impact and likely to be a demonstrable statutory nuisance that would formally require intervention to reduce noise levels from the source.
11. I recognise that the appellant proposes a site layout to reduce the effect of identified noise sources on external amenity areas, in combination with providing a ventilation and glazing scheme to protect the internal areas. However, in view of the significant difference in night-time rating levels and the background noise levels, the ESH consider that additional remedial steps are required to address this concern. Based on the evidence before me and given the sensitivity of the receptor to the prevailing acoustic environment, I agree that additional measures are required to reduce the exposure to external noise.
12. This would be best achieved by remedial works to the aforementioned fans by way of silencing at the source. However, HC object to the proposals and on the basis of the evidence before me, I am not convinced that there is a realistic prospect of this occurring. The difficulties of achieving this are also recognised by the ESH who anticipate, in lieu of a means of reducing the fan noise, substantial boundary treatment works to reduce the adverse effect of noise from these sources.
13. I therefore recognise that the ESH has recommended conditions, including the construction of a continuous acoustic barrier along the boundary with HC, on the basis of a recommendation of approval. Notwithstanding that these conditions include a requirement that the appellant enters into a Section 106 Obligation to abate at source the noise from the fans at HC, the dominant source in the prevailing night time noise climate is positioned at roof level and there also appears to be a difference in height between the two sites. As recognised by ESH, this poses significant difficulty in providing a successful form of barrier treatment. Therefore, although the appellant accepts that a noise barrier is required in order to adequately mitigate against noise levels, I cannot be reasonably sure, on the basis of the evidence before me, how effective retaining the existing wall, and repairing as necessary, would be in the particular circumstances of this case.
14. I accept that if necessary, it may be possible to erect a more effective acoustic barrier in its place. However, I have no details of how tall this would need to be to be fit for purpose. Given that the main front outlook for many of the dwellings would be towards this barrier, the visual implications should be properly considered, having regard to any restrictions posed by the nature of the HC business on tree or other planting to soften the appearance. I am not therefore satisfied, on the basis of the information before me, that the development could be made acceptable in planning terms by the use of conditions.
15. Accordingly I cannot reasonably conclude that the proposal would provide acceptable living conditions for future occupants and in turn that the proposal would not risk compromising the legitimate activities of the established neighbouring industrial business. I therefore find that the proposal would be

contrary to Black Country Core Strategy (CS) Policy DEL2 and to Dudley Borough Council Development Strategy Policies D2 and D5. These state, amongst other matters, that where development would be subject to high noise levels, the Council will require the proposal to include measures to reduce noise intrusion to an agreed, appropriate level.

Other matters

16. I acknowledge that the site is not in active employment use and that the loss of employment land does not form part of the Council's reason for refusal. Indeed I note from the Council's Committee report that within the Brierley Hill Area Action Plan (AAP), the site is identified as Development Opportunity Block H11 within the Harts Hill Urban Quarter, the preferred use for which is residential. However, as acknowledged by the appellant, this allocation is subject to a proviso relating to the need for appropriate safeguards to protect residential amenity. For the reasons explained, I do not consider that such safeguards have been adequately demonstrated in this case.
17. I note that the site was previously identified within the Strategic Housing Land Availability Assessment (SHLAA) as part of the Council's 5 year housing land supply. However, the Council's Committee report explains that it has been removed from the SHLAA because the site was considered to be more appropriate as potential employment site. Nevertheless, the proposal would significantly boost the supply of affordable housing, secured by a Section 106 Obligation, in a sustainable location.
18. I appreciate that the site has been assessed in terms of land contamination, air quality, trees, flood risk and drainage and that the proposal offers opportunity to decontaminate the site, make effective use of previously developed land and would result in a substantial improvement to the character and appearance of the area. I also fully acknowledge the economic benefits arising from the construction phase of the development as well as the contributions future occupants would make to supporting local services and facilities.
19. The above are matters which weigh significantly in favour of the appeal proposal and contribute to the social and economic dimensions of sustainable development.
20. However, I have not found the proposal would accord, in overall terms, with the development plan. Moreover, the development plan is not absent, silent and relevant policies are not deemed to be out-of-date. The tilted planning balance of paragraph 14 of the Framework does not therefore apply. Moreover, the purpose of the first sentence of paragraph 49 of the Framework is to draw the reader's attention to paragraph 14. It does not mean that the presumption in favour of sustainable development applies to all housing proposals.
21. Therefore, for the reasons explained I am not convinced on the evidence before me that the proposal would secure a good standard of amenity for future occupants or that existing businesses would not have unreasonable restrictions placed on them by such a change in land use. For these reasons the proposal would not, in overall terms, meet the social and economic dimensions of sustainable development.

Conclusion

22. For the reasons explained, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR

Richborough Estates