



Appeal Decision

Site visit made on 3 October 2018

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th November 2018.

Appeal Ref: APP/D0840/W/18/3197752

Higher Newham Lane, Truro, Cornwall TR1 2ST

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Oceans Reach (Truro) Ltd against the decision of Cornwall Council.
 - The application Ref PA17/05454, dated 9 June 2017, was refused by notice dated 19 December 2017.
 - The development proposed is the construction of 18 no. two bedroom residential apartments, including upgrade to access lane.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Oceans Reach (Truro) Ltd against Cornwall Council. This application is the subject of a separate Decision.

Main Issues

3. The reason for refusal relates to an incompatibility of the proposed and adjoining uses. It is clear from the evidence that this relates to two linked issues which form the main issues for the appeal. These are the effect on the living conditions of future residents with particular regard to noise; and the potential effect on businesses at the Newham Industrial Estate arising from the development of residential property in proximity to them.

Reasons

4. The appeal site is located at the edge of the Newham Industrial Estate. The topography is such that the site is significantly elevated above the adjoining industrial uses. There are a wide range of businesses nearby, including (but not limited to) a brewery and associated storage, vehicle repairs, tyre fitting and repairs, postal storage and distribution and car hire. The Council has suggested that the various industrial uses in the area are not regulated by planning conditions controlling matters such as noise emissions, operating hours or the particular activities that may be carried on. This position is not disputed.

5. A noise assessment¹ (NA) has been provided, based upon a survey carried out between 5th and 7th October 2016. In describing the measurement position, the NA indicates that the existing ambient sound climate in the area is subject to noise arising from road traffic movements on the nearby A39. It goes on to say that no significant industrial sounds were noted whilst on site. This does not accord with my own observations whilst on site, when industrial sounds were noticeable.
6. Whilst the Council's Environmental Health Officer (EHO) raised no objection to the proposal, I note that the NA and EHO comments were made around two years before my site visit. Therefore, they are not necessarily representative of the current situation. A key component of the Council's case is that businesses and activities change. Indeed, there is evidence in the representations that at least one business, Metal Art and Fabrication, not accounted for in the appellant's summary of adjoining uses, may have moved to the area since the survey was carried out. The passage of time and potential that not all current uses were accounted for significantly reduces the weight that I can attach to the NA.
7. I note that there are other residential uses in and around the wider industrial estate. Whilst some seem to enjoy a harmonious relationship, I also note some evidence of previous conflict, although most are some distance from the appeal site. I also note that prior approval has been given for the change of use of some office uses to residential within the area. However, whilst they are close to some of the potential noise generating uses referred to by the Council, I must have regard to the particular circumstances at the appeal site. I therefore attach only limited weight to the presence of these other residential uses and permissions and also to previous complaints at other sites.
8. I have also been made aware of other examples where residential uses have been permitted close to tyre-fitting and car repair establishments. However, I have no evidence as to the pre-existing situation or the particular characteristics of their local noise environments, which do not appear to be part of a wider industrial area. I therefore attach only limited weight to these examples.
9. Policy EJ4 of the Truro & Kenwyn Neighbourhood Plan 2015-2030 (NP) relates specifically to the Newham Industrial Estate. It provides specific support for the development of B1 (offices) and high quality employment space. Whilst the policy may indicate a general desire to re-focus uses in the area to other, potentially quieter uses, it does not specifically seek to redevelop sites occupied by existing businesses. It may well be that residential development is compatible with the aspirational uses of the policy, but this does not make it compatible with the existing uses around the site. Furthermore, the proposal is in conflict with the policy insofar as it does not specifically allow residential uses in the area.
10. Whilst the Council's concerns are not based upon empirical evidence, there is equally no substantive up-to-date evidence to show that future residents would not be subject to undue noise. By definition in the Town and Country Planning (Use Classes) Order 1987 (as amended), only Class B1 uses can comfortably co-exist with residential accommodation. Some of the businesses around the

¹ Inacoustic (October 2016): Land at Higher Newham Lane, Truro, Cornwall, TR1 2ST: BS8233:2014 Noise Assessment for Planning Application

appeal site may display the characteristics of B1, but not all fall within this class. By implication, they are not suitable residential neighbours.

11. There may be circumstances where technical evidence can demonstrate that the actual uses carried on or their separation, by distance or topography, is sufficient to prevent harm arising. However, there is no detailed evidence relating to the effect of either the change in level or distance on reducing the potential impact. As I can only attach limited weight to the NA, I am not satisfied that unacceptable noise and disturbance would not occur. The proposal would, therefore, be in conflict with Policies 12 and 13 of the Cornwall Local Plan 2010-2030 (LP) which, amongst other things, seek to ensure that residents enjoy appropriate living conditions free from unreasonable noise and disturbance.
12. It follows from this that to remedy any harm, existing businesses could be required to review their business practices or invest in measures to address disturbance. This would have a harmful effect on the businesses in the area and, by extension, the local economy by not creating conditions in which business can adapt as required by paragraph 80 of the National Planning Policy Framework (the Framework). This would lead to an overall conflict with the economic dimension of sustainable development outlined in the Framework. As such, the proposal would also be in conflict with LP Policy 1 which gives broad support for proposals that comply with policies of the development plan, or, in their absence, the Framework.

Other matters

13. It is common ground between the main parties that the site is in an appropriate location for housing with regard its accessibility to services and facilities. As acknowledged by the Framework, there are also benefits to be gained from the development of mixed use neighbourhoods and the co-location of housing and employment uses. There is equally no dispute that, in light of the extensive marketing that has been carried out, the loss of the employment land in itself would not result in harm to the local economy. In that regard the proposal would comply with that aspect of LP Policy 5 which requires that a proposal that would result in a loss of business space must justify that there is no market demand for the site.
14. Given the difficulties that have been experienced in developing the site for employment or business purposes, the weight to be attributed to policies seeking to make the best use of previously developed land increases. However, this cannot be at the expense of poor living conditions or other potential negative effects on existing surrounding businesses.
15. The reason for refusal cites a conflict with NP Policy H1. This policy seeks to ensure that new housing development meets local housing need, including for affordable housing, that it is provided in appropriate locations and protects open spaces. Given my findings above, I do not find any conflict with the aims of this policy. I note that some benefits would arise from the development, including through the creation of construction jobs and the provision of high quality, energy efficient homes, including affordable housing.
16. There would also be a benefit arising from the simple contribution to housing supply in the area. In this regard, whilst windfall sites make an important contribution to housing supply, and the housing targets of the LP should not be

seen as a ceiling, I note that the Council claim that they can demonstrate a 5 year supply of deliverable housing land, with the appropriate buffer. The Council's housing land supply figures for 2018 have not yet been published. However, whilst the appellant highlights concerns over the delivery of some sites and a consequential dent in the Council's housing land supply, there is no substantive evidence that a 5 year supply does not exist.

17. In light of the above and in the absence of any other evidence suggesting otherwise, I find that the housing policies of the development plan are up to date. As such the presumption in favour of sustainable development outlined at paragraph 11 of the Framework is not engaged for this or any other reason.
18. A Section 106 Agreement has been submitted securing the affordable housing provision and public open space to meet the needs of future occupiers of the site. It would also secure mitigation against effects on education provision and the Fal and Helford Special Area of Conservation, but as I am dismissing the appeal the effects requiring mitigation will not arise.
19. I note that the appellant feels aggrieved that the Council's planning committee did not follow their Planning and Environmental Health Officer's advice. However, whilst it is important to consider the expert advice of specialists on technical issues such as noise, for the reasons that I have given, I have found their concerns to be justified.

Conclusion

20. Overall, there would be negative environmental and economic effects arising from the harm that I have found in respect of the main issues. Despite the benefits that have been identified, the proposal would be in conflict with the Framework when considered as a whole. The proposal would also be in conflict with the development plan taken as a whole and there are no material considerations sufficient to outweigh this conflict.
21. For the reasons given above I conclude that the appeal should be dismissed.

M Bale

INSPECTOR