



Appeal Decision

Site visit made on 15 October 2015

by **G D Jones BSc(Hons) DMS DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 November 2015

Appeal Ref: **APP/W3710/W/15/3026368**

Land off Triton Road, Nuneaton

- 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 Westleigh Developments Ltd against the decision of Nuneaton and Bedworth Borough Council.
 - The application Ref 032665, dated 16 April 2014, was refused by notice dated 30 October 2014.
 - The development proposed is residential development of 38 no dwellings (tenure mix to be agreed).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990, dated 15 October 2015, was submitted during the appeal process (the UU). The Council has confirmed that the provisions of the UU would address its refusal reasons B and C concerning the open space/play equipment and education respectively. I have considered the appeal on that basis.

Main Issues

3. The main issues are:
 - Whether the level of noise emanating from the business uses in the vicinity of the appeal site would result in unsatisfactory living conditions for future occupants of the proposed dwellings and whether the future occupation of the appeal development would be likely to give rise to complaints regarding noise, thereby placing unreasonable burdens on these commercial uses; and
 - Whether any harm arising is outweighed by any other considerations, including the current absence of a National Planning Policy Framework compliant supply of housing land in the area.

Reasons

Noise

4. The appeal site is an area of some 0.65ha of open, undeveloped land located on the northern side of Triton Road, close to the head of this cul-de-sac. Triton Road principally serves neighbouring business uses, including the premises of Triton Showers Ltd, which is used for manufacturing and storage/distribution and located opposite the site to the south of the street. There are also substantial industrial premise immediately to the site's eastern boundary as well as to roughly

- half of the northern boundary. On this basis, I consider the appeal site to be located primarily within a business area.
5. Nonetheless, there are also non-commercial uses nearby. For instance, the rest of the northern boundary is adjoined by residential properties. The Coventry Canal, the towpath of which forms part of the National Cycle network, runs immediately to the west of the site. There are residential properties and a school the west of the Canal and further dwellings beyond Triton Showers' premises to the south.
 6. As part of the planning application process the appellant submitted an Environmental Noise Assessment & SoundPLAN Model, dated 11 March 2014, (the Noise Assessment), as well as an Acoustic Review document, dated 17 June 2014. While the Acoustic Review was produced in light of feedback from the Council, it appears to have been primarily a response to noise reports prepared by WYG on behalf of the Triton Showers.
 7. The Noise Assessment indicates that the highest noise levels on the site were recorded around the boundary with the Thule Towing Systems delivery yard, to the northeast, and along Triton Road, to the south. It identifies that without mitigation noise levels would be such that the 'good' internal and external standards of BS8233:1999 would not be met for all of the proposed dwellings, but that with mitigation these standards could be met provided that effected windows are kept closed. In summary, the mitigation proposed consists of 2.5m high acoustic barriers/fencing, a specified standard of glazing for effected windows and ventilation of effected dwellings via an unspecified system, such that windows need not be opened for ventilation purposes.
 8. Based on current activity at the nearby commercial premises and assuming the affected windows remain closed, the Council broadly considers that the proposed mitigation would achieve an acceptable noise level for occupants of the proposed development. However, the Council has remaining concerns regarding several aspects of the proposed mitigation and also considers that the appellant has not given adequate consideration to different and/or more intensive use of these neighbouring properties given the planning controls applicable to those premises. I deal firstly with mitigation of current activity and then with the effect of potential future noise and activity.
 9. The Council raises concerns regarding several aspects of the proposed mitigation, including in respect to the detail of the proposed ventilation system and the potential failure of any aspect of the mitigation. For example, regarding ventilation, the appellant has not identified if it would be a mechanical or air cooling system. For instance, in respect to potential 'mitigation failure', occupants of the development may not keep the windows in question closed. Furthermore, mitigation measures such as the ventilation system and fencing may not be adequately maintained, and these might also be replaced with sub-standard material, for instance in the case of the glazing and/or the fencing.
 10. Any of these circumstances identified by the Council would have the potential, at least at some point in the future, to result in substandard living conditions for occupants of the development. This could also lead to pressure for restrictions to be placed on users of the existing nearby business premises such that unreasonable burdens might be placed on these commercial uses.
 11. Regarding the concerns raised in respect to the mitigation proposed, I agree that it would be necessary to establish the detail of the ventilation system to ensure that it would perform to the requisite standard. It would also be necessary to ensure that all of the mitigation measures would remain in place and continue to perform

- to the required standard. However, I can see no reason why these matters could not be secured and controlled via a suitably worded planning condition or suite of conditions in the event that planning permission were to be granted.
12. The Council's evidence indicates that the appeal development would have a different physical relationship with the neighbouring commercial premises, including in terms of its proximity, compared to the existing domestic uses in the surrounding area. I recognise that these circumstances might result in occupants of the proposed development potentially being exposed to different noise levels to those of existing local residents. However, for the reasons outlined above I consider that, subject to mitigation which could be secured by planning conditions, acceptable living conditions for future occupants of the development would be secured based on the existing use of these neighbouring commercial properties. However, I am concerned regarding potential future activity.
 13. The appellant's evidence also sets out the location of existing residential property relative to the commercial premises, including the Triton and Thule sites. It concludes that it would be as likely for any increase in operations from businesses to result in complaints from existing dwellings as it would from the proposed development. The appellant adds that in practice potential complaints from the proposed development may be less likely because occupants would be aware of their surroundings before take up residence, in contrast to existing residents who how may become accustomed to existing levels of noise, such that an increase may be more noticeable to them.
 14. However, from the information before me, I am not persuaded by the appellant on these matters. This is partly because I have no evidence to indicate that existing residents are necessarily more sensitive to changes in noise levels than new arrivals. In any event, potential changes to the noise experienced by neighbours may occur at a point, or points, in time well after the development has been fully occupied and established as a community. I am also mindful that the appeal site directly abuts commercial premises for all of its eastern and much of the northern boundary, and that its southern boundary is formed by Triton Road immediately beyond which stands the Triton site.
 15. I have not been provided with details of the planning history of the nearby commercial properties. However, the Council's largely uncontested evidence is that some of these properties, including the Triton site, have planning permission for Class B2 use, and that there is no restriction on the hours of working in and around the premises in the area and that certain alterations/extensions could be made to the existing industrial premises without having to seek planning permission.
 16. On this basis it is reasonable to assume, given the dynamic nature of commerce and industry, that over time there will be change to the use of the nearby commercial premises, including in terms of the intensity of use and hours of operation. Such potential change is illustrated in the representations by Thule and Triton made in respect to the appeal proposals. Given the location of the site relative to these neighbouring commercial premises, it is likely that residents of the proposed development would be affected by any such change. Consequently, without mitigation, it is likely that these circumstances would lead to the living conditions of residents of the proposed development being harmed.
 17. Notwithstanding the potential mitigation of existing use/activity as discussed above, there is no clear evidence assessing potential alternative use/activity at the neighbour commercial premises to indicate how the appeal development might be effected and whether this could be mitigated. For the reasons outlined above, in

the absence of any such evidence it is reasonable to conclude that occupants of the appeal scheme would at some point experience unacceptable living conditions due to noise resulting from neighbouring business uses.

18. The proposal would, therefore, be contrary to the Framework, particularly paragraph 7, which seeks to secure a good standard of amenity for existing and future occupants of land, and paragraph 123, which states that decisions should avoid noise from giving rise to significant adverse impacts on health or quality of life as a result of new development. In turn, these circumstances would also be likely to result in complaints from residents of the proposed development against these neighbouring commercial uses.
19. Paragraph 123 of the Framework also states that planning decisions should recognise that development will often create noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. This advice is reflected at paragraph 006 of the Planning Practice Guidance (the PPG) which states that the effect on an existing business of a new residential development must be carefully considered as the existing noise levels may be regarded as unacceptable by the new residents and subject to enforcement action.
20. For the foregoing reasons, therefore, the future level of noise emanating from the business uses in the vicinity of the appeal site would be likely to result in unsatisfactory living conditions for occupants of the proposed dwellings. Furthermore, as a consequence, the proposed residential use would be likely to give rise to complaints regarding noise, thereby placing unreasonable burdens on these commercial uses. In these respects the proposed development would be contrary to the Framework and the PPG.

Planning Balance and Sustainable Development

21. Paragraph 49 of the Framework dictates that housing applications should be considered in the context of the presumption in favour of sustainable development. As set out at paragraph 14, where relevant policies are out of date, this means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
22. Furthermore, the remaining refusal reason does not cite any conflict with the development plan. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
23. The Framework includes a three-stranded definition of sustainable development including economic, social and environmental roles. Based on the information before me and what I saw when I visited the area, the appeal site is in a sustainable location with a range of shops and facilities in relatively close proximity and with good access to a good alternative transport network. It is also well screened and surrounded by existing built development. Consequently, in terms of the environmental role, residents would have good access to local services and the visual impact of the proposal would be acceptable.
24. In economic terms, the proposal would bring back into use an unused piece of land which has been widely marketed for some time for employment purposes. It would also benefit the local area in the short term through construction activity and in the longer term through the introduction of an increased population to support local shops and services. However, I consider that the benefits in this regard

would be significantly off-set by the likely adverse impact upon the neighbouring industrial units resulting from conflict and potential complaints relating to noise and working practices.

25. The delivery of 36 affordable homes, in an area where there is not a Framework compliant supply of housing land and a shortage of affordable housing, weighs in favour of the proposal. While I note that there is no mechanism in place to ensure the delivery of all of the proposed dwellings as affordable units, a proportion in accordance with local policy could be secured via planning condition.
26. However, the social role also requires the creation of a high quality environment to support health and well-being. I have found that the proposal would likely to create a poor residential environment. This would be detrimental to the living conditions of any future residents and would not provide for a healthy and vibrant community. Notwithstanding the emphasis of the Framework on boosting the supply of housing, the social role of sustainable development requires that this is not at the expense of health or well-being. In this case, any social benefits relating to housing supply would be significantly and demonstrably outweighed by the harm identified.
27. Consequently, notwithstanding the absence of any identified conflict with the development plan, when viewed against the policies of the Framework taken as a whole, I consider that the proposal would not represent a sustainable form of development.

Other Matters

28. Having taken into account the contents of the UU and given due weight to the obligations herein these matters have not altered my overall decision. I have come to this view bearing in mind that the obligations are intended to respond to requirements arising from the appeal development rather than to any existing need.
29. In coming to my decision I have also taken into consideration all of the representations made in respect to the appeal proposal, including a letter of support from a Councillor. However, in view of the matters set out above these have not led me to any different overall conclusion.

Conclusion

30. Based on the information before me, the proposed scheme would not represent sustainable development. On this basis, notwithstanding that no conflict has been identified with any policies of the development plan, on balance, the appeal should be dismissed.

G D Jones

INSPECTOR