



Appeal Decision

Site visit made on 10 May 2022

by Mrs C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2022

Appeal Ref: APP/W4515/W/22/3294128

Former site and associated land of Point Pleasant House, off Point Pleasant Terrace, Wallsend NE28 6QQ

- 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 Mr Gill on behalf of Montagu Hotels Limited against the decision of North Tyneside Council.
 - The application Ref 21/00561/FUL, dated 25 February 2021, was refused by notice dated 14 December 2021.
 - The development proposed is described as development of a vacant site to provide 10 no residential dwellings with ancillary car parking, using existing access from Meadow Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the absence of the postal address being cited on the planning application form, I have relied upon that used on the decision notice and appeal form which reflect the site as shown on the submitted site location plan. The description of development contained on the decision notice and heading above differs to that stated on the planning application form as it reflects subsequent changes made to the scheme during the determination period.

Main Issues

3. The main issues are:
 - whether or not the proposal would provide suitable living conditions for its future occupiers by way of noise and the related effect on the operation of nearby commercial premises;
 - the effect of the appeal proposal on necessary local infrastructure; and
 - the effect of the appeal proposal on local ecological and biodiversity interests.

Reasons

Noise

4. The appeal site is a vacant, previously developed parcel of land situated between existing dwellings and industrial units, including a large operation occupied by Smulders Projects and Point Pleasant Industrial Estate. The Tyne and Wear Metro line is located nearby. During my visit many of the business

premises were closed. However, noise generating activities associated with some of these uses were intermittently audible above the area's otherwise low background noise climate.

5. The Council has confirmed that the Smulders Projects operation has been the subject of noise abatement notices in the past, including disturbance occurring during unsocial hours. Although the appellant has given reasons why the submitted noise assessment does not assess that business operation, noise levels and noise character associated with grinding, shot blasting and hammering activities could have been modelled from a typical fabrication business to evidence the appellant's assertion about the area's noise climate, but were not.
6. Paragraph 185 of the National Planning Policy Framework ("the Framework") states that planning decisions should avoid noise giving rise to significant adverse impacts on health and the quality of life. However, it has not been demonstrated that the occupants of the appeal scheme would be subjected to acceptable levels and types of noise breakout from the neighbouring business premises, including Smulders Projects.
7. Furthermore, in the context of paragraph 187 of the Framework, the appellant being the 'agent of change', is required to provide suitable mitigation before the development is completed. The appellant's proposal largely relies on residents of the appeal scheme keeping their windows closed in order to mitigate noise breakout from the surrounding business uses. However, glazing mitigation alone would be insufficiently reliable to safeguard internal living conditions. This is because it is not possible to secure adequate controls to ensure that occupants of the appeal scheme oblige. It is a reasonable expectation for residents to be able to enjoy natural ventilation and cooling by opening windows. My attention has been drawn to a recent Decision APP/W4515/W/21/3269100 relating to a proposal falling within the Council's jurisdiction which supports that view, and this weighs considerably against the appeal scheme.
8. Consequently, the submitted evidence does not demonstrate that the appeal scheme would not give rise to significant adverse impacts on health and the quality of life. Therefore, it conflicts with paragraph 185 of the Framework. Furthermore, it would be unreasonable for the existing business units to be unduly fettered or expected to provide additional measures as a consequence of any subsequent substantiated noise nuisance complaints from residents of the appeal scheme. Therefore, the appeal proposal also conflicts with paragraph 187 of the Framework. These matters represent considerable harm.
9. For the reasons given, the appeal proposal would not provide suitable living conditions for its future occupiers by way of noise and would have a harmful effect on the operation of nearby commercial premises. Consequently, the particular appeal scheme is in conflict with Policies S1.4 and DM5.19 of the North Tyneside Local Plan (2017) ("the Local Plan") which requires that proposals are acceptable in terms of their impact upon local amenity for new and existing residents and businesses, adjoining premises and land use; the use of mitigation measures to provide satisfactory living environment; and that development that may be sensitive will not be sited in proximity to polluting sources. These policies are consistent with the Framework and remain up to date.

Local infrastructure

10. The Council has confirmed the necessary levels of contribution to local infrastructure to support this development in respect of the provision of equipped play facilities, primary school and training and skills places. The appellant has disputed that these policy requirements are necessary to make the appeal scheme acceptable. However, the Council has a clear planning policy and supplementary guidance context to justify them. The appeal relates to a residential scheme which has the potential to accommodate families and place demands on these aspects of local infrastructure. Furthermore, the appellant has not sufficiently demonstrated that these obligations would render the appeal proposal unviable. I am satisfied that these requirements meet the tests for planning obligations and Regulation 122 of the Community Infrastructure Levy ("CIL") Regulations 2010 (as amended).
11. The appellant has indicated that in the absence of a legal agreement any necessary contributions could be secured by way of a negatively worded planning condition, drawing attention to Decision APP/C4235/W/20/3259867. Nonetheless, whilst the type and level of contributions are clearly stated, circumstances which amount to being sufficiently exceptional to justify such an extraordinary course of action have not been substantiated in this particular instance. Moreover, the circumstances of that case are materially different, including the fact that the appellant no longer had an interest in the appeal site and therefore there was no certainty about what could be agreed through a legal obligation at that time. This put that proposal at risk. This is not the position here.
12. For these reasons, the appeal proposal would not be adequately supported by necessary local infrastructure. The absence of a mechanism before me to secure the necessary planning obligations causes a moderate level of harm to the capacity of necessary local infrastructure to support the appeal proposal.
13. Paragraph 92 of the Framework states that decisions should aim to achieve healthy, inclusive places which enable and support healthy lifestyles through a range of local infrastructure. Paragraph 124 of the Framework states that decisions should support development that makes efficient use of land, taking into account the availability and capacity of infrastructure and services. In view of my findings, the appeal proposal does not accord with the Framework's approach to necessary infrastructure.
14. Policy S7.1 of the Local Plan states that new development may be required to contribute to infrastructure provision to meet the impact of that growth, through the use of planning obligations or other means including CIL. Planning obligations will be sought where it is not possible to address unacceptable impacts through the use of a condition; and the contributions are fair, reasonable, directly related to the development and necessary to make the proposal acceptable. Policy DM7.2 of the Local Plan states that if the economic viability of a new development means that it is not reasonably possible to make payments to fund all or part of the infrastructure required to support it, applicants will need to provide robust evidence of the viability of the proposal to demonstrate this. Policy DM7.5 of the Local Plan states that the Council will seek contributions towards the creation of local employment opportunities and growth in skills. In the absence of an appropriate mechanism to secure all of these obligations or clear viability evidence, the appeal proposal conflicts with

all of these policies. These policies are consistent with the Framework and remain up to date.

Ecology and biodiversity

15. The appeal site comprises previously developed land where fly-tipping activity is evident. Nonetheless, there are a number of established trees and other vegetation providing habitat on land which forms part of a designated wildlife corridor. The submitted evidence demonstrates that the appeal proposal would result in the loss of UK priority habitat and part of a designated wildlife corridor. A substantial net loss has been calculated which, without appropriate mitigation, constitutes significant harm. Whilst the appellant's ecological study recommends on-site and off-site habitat creation, no such details have been submitted.
16. The necessary mitigation hierarchy principles of the Framework have not been demonstrated by the appellant. The appeal proposal would therefore conflict with paragraph 180 of the Framework which states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
17. The site comprises a "limb" because the wildlife corridor is severed by other development. However, this does not justify the further erosion of this corridor and the subsequent harm to local biodiversity interests in the absence of appropriate mitigation. Moreover, circumstances which amount to being sufficiently exceptional to justify the use of a negatively worded planning condition have not been substantiated in this particular instance. In any event, there is no certainty in the evidence before me that appropriate mitigation could be secured by way of a planning condition either within the development or off-site.
18. For these reasons, the particular appeal proposal would cause significant harm to local ecological and biodiversity interests.
19. Policy S5.4 of the Local Plan states that biodiversity will be protected, created, enhanced and managed having regard to their relative significance, including conserving, enhancing and managing the Borough-wide network of local sites and wildlife corridors. Policy DM5.5 of the Local Plan states, amongst other things, that all development proposals should incorporate beneficial biodiversity conservation features providing net gains to biodiversity, unless otherwise shown to be inappropriate. Appropriate onsite mitigation measures, reinstatement of features, or, as a last resort, off site compensation to enhance or create habitats must form part of the proposals. Policy DM5.2 of the Local Plan states that loss of the green infrastructure network will only be considered where, amongst other things, it does not provide important biodiversity value. Policy DM5.7 of the Local Plan states that proposals within a designated wildlife corridor must protect and enhance its quality and connectivity. Developments should seek to create new links and habitats to reconnect isolated sites and facilitate species movement. Given the harm identified, the appeal proposal conflicts with all of these policies. These policies are consistent with the Framework and remain up to date.

Other Matters

20. The main parties agree that the Council cannot currently demonstrate a 5 year housing land supply. The appeal scheme will make a valuable contribution to the 1 year shortfall. This is a significant benefit that weighs in favour of the appeal proposal. The appeal proposal will bring a previously developed site which is prone to fly-tipping back into use. This is a benefit which weighs moderately in favour of the appeal scheme. The appeal scheme will provide economic benefits associated with its construction and occupation phases. However, given the limited yield and, in the absence of substantive evidence to the contrary, I attach limited weight to this. No other benefits have been drawn to my attention.

Planning Balance

21. In terms of adverse impacts, the appeal scheme will cause considerable harm to the living conditions of residents of the appeal scheme as well as the future operation of neighbouring business. I have identified conflict with paragraphs 185 and 187 of the Framework in this regard. There will be moderate harm arising from the pressures that would be placed on the capacity of necessary local infrastructure required to support the appeal proposal. This conflicts with paragraphs 92 and 124 of the Framework. Furthermore, there will be significant harm to local biodiversity and ecological interests which conflicts with paragraph 180 of the Framework. The appeal scheme will contribute to the agreed housing land supply shortfall, which is a significant benefit. The appeal scheme will provide moderate benefit of bringing previously developed land back into use and also limited economic benefits associated with the construction and occupation phases of the scheme.
22. Nonetheless, the adverse impacts of allowing this appeal will significantly and demonstrably outweigh these benefits, when assessed against the policies of the Framework taken as a whole. Consequently, having regard to the submitted evidence there are no matters which weigh in favour of the appeal proposal, including the significant contribution to the current shortfall in the area's housing land supply, that outweigh the identified harm and subsequent identified conflict with the development plan when taken as a whole.

Habitat Regulations

23. The appeal site falls within the zone of influence of a European designated site relating to the North East Coast. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 requires an Appropriate Assessment to be carried out where the competent authority is minded to give consent for the development. As the appeal proposal is unacceptable for other reasons, it is unnecessary for me to carry out an Appropriate Assessment in this instance and consider how any required mitigation could be secured in the absence of a legal agreement.

Conclusion

24. For the reasons given, the appeal should be dismissed.

C Dillon

INSPECTOR