



Appeal Decision

Site visit made on 5 November 2024

by **C Skelly BA (Hons) MSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th December 2024

Appeal Ref: APP/E2001/W/24/3346493

Land West Of Craig House, 56 Station Road, Gilberdyke, East Riding of Yorkshire HU15 2SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Orion Homes Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref is 24/00047/VAR.
 - The application sought planning permission for the erection of 29 dwellings and associated access road, without complying with a condition attached to planning permission reference 20/00937/VAR dated 25 September 2020.
 - The condition in dispute is No 18 which states that: no dwelling shall be occupied until a 2m high Jakoustic Barrier System fence has been installed along the southern boundary of the site in accordance with the details shown on drawing 6293/002 by Orion Homes received 18/07/2018 and approved under application 17/30062/CONDET, and the fence shall thereafter be so retained.
 - The reason given for the conditions is: this condition is imposed in accordance with policy ENV1 of the East Riding Local Plan and to ensure reasonable noise levels in open spaces and habitable rooms.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 29 dwellings and associated access road at Land West Of Craig House, 56 Station Road, Gilberdyke, HU15 2SU in accordance with the terms of the application, Ref 24/00047/VAR, without compliance with condition number 18 previously imposed on planning permission Ref 20/00937/VAR dated 25 September 2020 and subject to the conditions in the attached schedule.

Background and Main Issue

2. Permission for 29 dwellings and associated access road was granted in 2014, subject to various conditions, including one which required the installation of an acoustic fence along the southern boundary in accordance with a specified plan, prior to the occupation of any of the dwellings.
3. A number of applications concerning the conditions of the original permission were subsequently approved, and whilst the substance of the acoustic fence condition was retained, its number changed. The details contained in the banner heading above relate to the acoustic fence condition for planning permission 20/00937/VAR dated 25 September 2020.

4. An alternative fence has been installed which comprises 2m high 100mm x 19mm boards, butt jointed, with another layer of 2m high 100mm x 19mm board butt jointed, with staggered joints. The boards originally had a gap at the bottom which has now been covered.
5. Taking the above background into account the main issue is whether the installed fence reduces noise from the railway line to a level that results in acceptable living conditions for residents of Harrison Croft.

Reasons

6. The appeal site is an area of land which adjoins the Hull to York Railway line, in close proximity to Gilberdyke station. The line is used regularly by commercial passenger and freight trains. The railway line sits on a bank, which is above that of the fence which has been installed to the rear of the development.
7. Drawing number 6293/002 shows a cross section photograph of the Jakoustic barrier system. This includes 125mm interlocking boards coupled with tongue and groove, to eliminate gaps when boards shrink and expand due to changes in the weather. It is also finished with a capping and counter rail. The submitted information includes the sound reduction achieved in tests on the system. With a fence height of 2m and a distance of 5m from the barrier, noise levels of 67.2dB should be reduced to 53.6dB.
8. Condition 18 requires the installation of a 2m high fence. The fence which has been installed has met this requirement albeit it is lower than the height of the railway line. The installed fence does not have interlocking boards nor is it finished with capping as shown on drawing 6293/002. The appellant agrees that the installed fence is not an acoustic fence but contends that it has acoustic like qualities.
9. The appellant puts forward that the approved details did not specify the noise levels that would be achieved by the fence. However, the Committee report of the original permission states that gardens should achieve a noise level of no more than 55dBA although a preferable standard is 50dBA. The 'British Standard 8233:2014 Sound Insulation and Noise Reduction for Buildings' provides guidance for suitable internal and external noise levels for residential buildings. For external areas the guidance says that it is desirable that noise levels do not exceed 50dB LAeq, T with an upper guideline value of 55dB LAeq, T.
10. In support of the application the appellant submitted an Acoustic Report undertaken by Paul Horsley Acoustics Ltd. Noise monitoring was undertaken for one day during a weekday in the gardens of Nos 12,15, 17 and 18 Harrison Croft. Each assessment lasted for one hour with equipment installed on a tripod at a height of 1.6m above the ground 2m from the fence.
11. Concerns have been raised by third parties that readings were only taken directly in front of the fence. However, I note that the methodology for the monitoring was agreed in advance with the Council's Public Protection Team. I have no information before me which suggests that the locations for the monitoring were not an appropriate representative sample and that more suitable locations should have been assessed. Drawing 6293/002 shows that the greater the distance from the fence the lower the sound level. There is no

evidence before me that would show a similar reduction in noise with distance from the fence would not be likely in terms of the installed fence.

12. According to the report the prevailing weather was dry on the day that the monitoring was carried out. I note that a third party contends that it was wet on the day before the assessment. However, I have not been provided with conclusive information that this meant that the rails were wet when the assessment was carried out, nor the effect this would have on noise.
13. The Acoustic Report states that the data recorded has allowed for a valid Calculation of Railway Noise 1995 assessment (CRN) to be undertaken with a result of 60.9LAeq 18 hour dB for daytime periods. The testing demonstrated that the installed fence resulted in an overall sound reduction value ranging between 26.0 to 28.2 LAeq dB dependent on location. This concludes that the noise level within the gardens was 54 LAeq 18 - Hour dB which achieves the design intent of the fence. The Council's Public Protection team did not object to the proposal on the basis of the information submitted by the appellant.
14. The installed fence is of a similar height, but different construction to the approved fencing. Unlike the approved fencing system, there are no long-term guarantees. Therefore, without regular maintenance, its effectiveness could deteriorate over time. The Council has suggested that this could be dealt with through condition, which would ensure that the fence is maintained for a period of not less than 25 years and retained. I am satisfied that the imposition of this condition will ensure that the fence is maintained over a long-term period.
15. Despite the clear differences in construction compared with the approved fence, it has been demonstrated through the Acoustic Report that noise is reduced to a level of no more than 54dBA as set out in the British Standard. I have no alternative technical evidence before me which demonstrates that the installed fence does not achieve the reduction of noise from the railway line as intended by the original condition.
16. In conclusion, the installed fence reduces noise from the railway line to a level that results in acceptable living conditions for residents of Harrison Croft. The proposal therefore complies with policy ENV1 (B.4) of the East Riding Local Plan Strategy Document (2016) which seeks amongst other things to ensure that development achieves high quality design which has regard to the amenity of existing or proposed properties.

Conditions

17. By allowing this appeal a new planning permission is granted. The national Planning Practice Guidance advises that, for clarity, decision notices for the grant of planning permission under section 73a should restate the conditions imposed on earlier permissions that continue to have effect unless they have already been discharged.
18. The Council has provided a list of conditions and reasons given, which reflect subsequent discharges of conditions. I have replaced condition 18 with a condition (9) which requires the installation of a 2m fence which shall be maintained at all times to ensure that the living conditions of residents are not harmed by railway noise.

19. As the development is substantially complete it has not been necessary to impose a commencement of development condition. I have imposed a condition relating to approved plans for the avoidance of doubt (1).
20. A condition is necessary to ensure that the development provides sustainable drainage of the site (2).
21. In the interests of highway and railway safety, conditions are necessary to ensure development is carried out in accordance with approved plans (3, 4, 5 and 6).
22. In order to protect the character and appearance of the area and the living conditions of existing and future residents, I have imposed conditions to ensure the implementation of approved plans relating to landscaping, ventilation system and windows (7, 10 and 11).
23. In order to ensure that the development can be safely occupied and to protect the environment, a condition is necessary requiring the investigation and remediation of any contamination that may be encountered during construction is required to ensure risks are minimised and that the development is carried out safely (8).

Conclusion

24. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

C Skelly

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans received by the Council:
9300/100 Revision Q – Site Layout – received 16.04.2020
9300/104 Revision B – Site Management Plan – received 16.05.2018
9300/105 Revision C – Street Scenes – received 16.04.2020
6293/002 Revision G – Acoustic Treatment Plan – received 16.04.2020
6293/003 Revision F – Materials Layout – received 16.04.2020
01/2017/06 – Proposed Elevations and Floor Plans for The Preston – received 01.08.2017
01/2017/06 – Proposed Elevations and Floor Plans for The Preston (handed) – 08.08.2017
01/2017/00 – Proposed Elevations and Floor Plans for The Arundel received 07.08.2017
01/2017/00 – Proposed Elevations and Floor Plans for The Arundel (handed) – received 07.08.2017
2019/03/14 Rev A - Proposed Elevations and Floor Plans for The Wharfedale (AS) – received 16.04.2020
2019/03/15 REV A – Proposed Elevations and Floor Plans for The Wharfedale (OP) – received 16.04.2020
Proposed Elevations and Floor Plans for The Rushford – received 07.08.2017
Proposed Elevations and Floor Plans for The Rushford (handed) – received 07.07.2017
119/172/03 Rev N – Drainage Layout – received 16 September 2019
- 2) The approved foul and surface water drainage shown on drawing 119/172/03 Rev N proposed drainage layout received by the Council on 16.09.2019 shall be managed and maintained in accordance with the approved details.
- 3) Notwithstanding the provisions of Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking and subsequently re-enacting that Order, no gates, fences, walls or other means of enclosure shall be erected or constructed within any service strip so identified in the approved plans without the prior written approval of the local planning authority.
- 4) The vehicle parking and turning facilities, as shown on drawing 9300/104 Rev B shall be retained throughout the lifetime of the development.
- 5) No dwelling shall be occupied until an Armco or similar barrier has been erected at the south eastern end of the car parking spaces between the dwellings on plots 13 and 16 as shown on the proposed site plan drawing number 9300/104 Rev B, where vehicles may be in a position to drive into or roll onto the railway or damage the line side fencing. Network Rail's existing fencing/wall must not be removed or damaged. Given the considerable number of vehicle movements likely provision should be made at each turning area/ roadway/ car parking area adjacent to the railway.
- 6) Before any new lighting is first erected adjacent to the operational railway, details (including location and colour) shall be submitted to, and approved in writing by, the local planning authority. Development shall be undertaken in accordance with the approved details. The potential for train drivers to be dazzled must be eliminated. In addition, the location and colour of lights

must not give rise to the potential for confusion with the signalling arrangements on the railway.

- 7) The development shall be carried out in accordance with the submitted landscape details as shown on Drawing No. H2 17010/1 Rev A received by the Council on 31.01.2017 and discharged under application reference 17/30062/CONDET.
- 8) In the event that contamination is found at any time when carrying out the approved development, it must be reported immediately to the local planning authority. An appropriate investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared by competent persons and submitted to the local planning authority for approval. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to, and approved in writing by, the local planning authority.
- 9) The fencing installed to the southern boundary of the development, comprising a 2.0m high fence between 3.0m 100mm x 100mm posts, 4no 88mm x 37mm rails, 1 layer of 2.0m high 100mm x 19mm boards butt jointed and a further layer of 2.0m high 100mm x 19mm boards butt jointed with staggered joints shall be maintained at all times and any replacement fencing shall meet the requirements of the WHO guidelines and BS8233:2014 in regard to noise reduction.
- 10) The whole house ventilation system as detailed on drawing number 6293/002 REV G and the supporting documents entitled 'Ryton Broch Acoustic Wall Vents' (or similar approved in writing by the Local Planning Authority prior to installation) and 'Nuaire Dri-Eco3storey Technical Information', both received by the Council on 15 July 2020 shall be retained throughout the lifetime of the development.
- 11) The windows to be created in the first floor side elevation of the dwelling on plot 29 shall be glazed in obscure glass and shall be non-opening below a height of 1.7 metres measured from the internal finished floor level before this dwelling is first occupied, and shall not thereafter be altered without the prior express consent in writing of the Local Planning Authority.
(Replacement of the glass with glass of an identical type would not necessitate the Council being notified.)

End of schedule