



Appeal Decision

Site visit made on 9 February 2018

by Helen Heward BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th February 2018

Appeal Ref: APP/Z2505/W/17/3188087

**Cherry Tree Lodge, Swineshead Road, Frampton Fen, Boston, Lincolnshire
PE20 1SF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs G Grace against the decision of Boston Borough Council.
 - The application Ref B/17/0132, dated 7 March 2017, was refused by notice dated 29 June 2017.
 - The development proposed is residential development (up to 13 dwellings) including access.
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Procedural Matters

1. The application is in outline with only access details before me. Appearance, landscaping, layout and scale are all reserved matters.
2. The application includes DWG No PL-103 Indicative Site Massing Arrangement prepared by Misura Architecture Design, November 2016 and a revised illustrative layout is also indicated in the Noise Impact Assessment Report, Accon UK, October 2016, (Noise Report). I consider these plans, or relevant parts of them, solely on the basis that they have been submitted for illustrative/indicative purposes.

Decision

3. The appeal is dismissed.

Application for costs

4. An application for costs was made by Mr and Mrs G Grace against Boston Borough Council. This application is the subject of a separate Decision.

Main Issue

5. The site's southern boundary adjoins an adjacent concrete batching plant for which planning permission was granted in 1958. Aggregates, sand and cement are delivered to the site. There is fixed plant and high level elevators on the site. The use is not restricted by any planning conditions in relation to hours of operation or noise. Breedon Aggregates advise that at times the concrete batching plant manufactures, batches and despatches concrete at night time and during the early morning.

6. Therefore the main issue in this case is whether or not the living conditions of future occupants of the proposed dwellings would be adversely affected by noise and dust.

Reasons

Noise

7. The Noise Report Tables 5.1 and 5.2 Assessment of Activity Noise, indicate that specific noise levels associated with activities at the concrete batching plant, and adjusted for tonality, impulsivity and intermittency, would have a significant adverse effect upon noise sensitive receptors at most locations on the site during the daytime and night time. These represent worst case outside scenarios with only a 1.8m noise barrier surrounding the south of the site.
8. The report advises that, with the provision of a certain specification of double glazing and through wall acoustic ventilators for all habitable rooms, day time and night time internal noise levels would be compliant with the WHO Community Noise Guidelines and advice in BS 8233¹. However, Table 6.2 column 6 indicates that, at some locations close to the southern boundary, even with mitigation and windows shut internal night time noise levels would be likely to be at the maximum WHO guideline noise level to avoid sleep disturbance inside bedrooms. And Column 2 indicates that at all locations the external night time noise levels would exceed the WHO guideline for the maximum noise levels outside bedrooms, window open, to avoid sleep disturbance.
9. Residents are not likely to be outside at night but for the mitigation measures to be effective windows would need to be kept closed and the report advises that through wall acoustic ventilators should be used. However, in this semi rural location I think residents would be likely to want to open their windows at night in fine weather (or would wish to do so at least occasionally) and if they did so they would be likely to suffer significant adverse effects.
10. Table 6.2 records the likely equivalent steady internal sound levels over the night time period, but there is scant evidence to say whether or not the level and frequency of maximum indoor sound pressure levels at night would be likely to impede good sleep. Given the activity noise levels recorded and the unrestricted nature of the use this adds to my concerns.
11. Table 6.1 indicates that at all of the measured external amenity locations, the likely noise levels would exceed BS 8233 advice that for traditional external areas used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50 dB $L_{Aeq T}$. They would also exceed the WHO guideline for the maximum level for outdoor living areas to avoid moderate annoyance during the daytime and evening, and at three locations would exceed the WHO guideline maximum level to avoid a serious annoyance.
12. Whilst BS 8233 recognises that an upper guideline of 55dB $L_{Aeq T}$ would be acceptable in noisier environments, the Noise Report acknowledges that the nature of the noise from the concrete batching plant is of an industrial nature which is more noticeable than 'anonymous' noise such as road traffic noise, and

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

where the tonality, impulsivity and intermittency character of the noise all impact upon a receptor's experience.

13. On my visit I observed a repetitive noise and a short-term high pitch pulsating noise from the concrete batching plant. Both were clearly audible above road traffic noise. I found that the semi-rural character of this edge of settlement locality did not feel like a location such as a noisy town/city centre or close to a strategic road network, where residents may be more likely to find a noisy environment acceptable.
14. Section 7 of the Noise Report advises that additional good acoustic design measures could mitigate likely impacts further. It recommends that the site access be relocated to the south of the site to allow greater separation distances, and positioning of external amenity areas so that they are shielded from the batching plant by intervening built form.
15. Access is for consideration at this stage. Section 10.1 of the Design and Access Statement advises that it is not possible to relocate the access in this way due to the existence of a large diameter mains sewer that crosses the appeal site. Therefore there is no certainty that dwellings could be located away from the southwest corner of the site where specific noise levels from the concrete batching plant activities would be likely to cause significant adverse effects.
16. The report also recommends a 3m high noise barrier and bank along the southern boundary. However, it is not clear if the Noise Report takes into account the raised habitable floor levels that would be required by the Environment Agency. Moreover Table 7.2 and Table 7.4 indicate that even if these measures were achievable, specific and continuous noise levels at all locations would still be likely to cause significant adverse effects outside at night time, and sleep disturbance if windows are open. I have already found it likely that occupiers would, at least occasionally, want to open windows at night. I attach little weight to the reassessed likely impacts reported in Section 7.
17. I conclude that the overall effect of noise exposure would significantly adversely affect the living conditions of future occupants of the proposed housing.

Dust

18. The site has a boundary directly adjoining the concrete batching plant and at times wind blows across the concrete batching plant toward the site. A Dust Impact Assessment Report, Accon UK, October 2016, found no instances of potential dust soiling at or exceeding a level that the Environment Agency consider complaints are likely, (25 soiling units). However, the survey did report some results of 22 soiling units. Therefore I conclude that there is a likelihood that at times dust from the concrete batching plant could cause environmental problems for future residents of housing on the appeal site.
19. I conclude that the living conditions of future occupants of the proposed housing would be likely to be adversely affected by dust at times.

Other Matters

20. The Council does not have a five year supply of deliverable housing sites. Paragraph 49 of the Framework advises that in such circumstances

development plan policies relevant to the supply of housing are to be considered out of date. Paragraph 14 provides that where the development plan is absent, silent or relevant policies are out of date the presumption in favour of sustainable development means that permission should be granted unless *“any adverse impacts would significantly and demonstrably outweigh the benefits”* or *“specific policies in [the] Framework indicate development should be restricted”*.

21. The Council accepts that the proposal would deliver housing and that the site is near to the edge of the town and not in an isolated location. I agree and I attach a moderate amount of weight in favour of the delivery of 13 dwellings including five affordable homes.
22. There is little evidence to say that the site is designated as recreational open space. Policy H2 of the Local Plan relates to development within settlement boundaries and Policy G1 seeks to resist development that will harm the amenity of nearby residents. Therefore I attach little weight to these policies.
23. My attention is drawn to planning permissions granted in the locality. I found none to be directly comparable to the appeal site and its relationship to the concrete batching plant. I have assessed this proposal on its own merits. I also attach little weight to a Freedom of Information request, which shows no complaints in the previous 5 years because there were no dwellings on the appeal site during that time.

Conclusions

24. The living conditions of future occupants of the proposed dwellings would be significantly adversely affected by noise. At times dust from the concrete batching plant would be likely to adversely impact upon the living conditions of the future occupants. The proposal would therefore be contrary to advice at paragraphs 17 and 109 of the National Planning Policy Framework (Framework) that planning should always seek to ensure a good standard of amenity and prevent new development from being put at unacceptable risk from, or being adversely affected by, unacceptable levels of pollution.
25. These adverse impacts would significantly and demonstrably outweigh the benefits of the delivery of thirteen dwellings including five affordable homes.
26. The proposal would also be contrary to aims of Policy H3 of the adopted Boston Borough Local Plan that include seeking to ensure that new housing developments provide a pleasant environment for residents, and are not close to an existing use that is likely to cause environmental problems for future residents. However, for reasons given in paragraph 20, the weight I attach to this conflict is limited in this case.
27. Therefore, and having taken all other issues raised into consideration, the appeal is dismissed.

Helen Heward

PLANNING INSPECTOR