



Appeal Decision

Site visit made on 15 July 2013

by David Harmston FRICS DipTP MRTPI

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

Decision date: 22 July 2013

Appeal Ref: APP/X1735/A/13/2191295

Land adjacent to 2 New Road, Havant, Hampshire PO9 1DE

- 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 Ravenswood Developments Limited against the decision of Havant Borough Council.
 - The application (Ref APP/12/00736), dated 16 July 2012, was refused by notice dated 19 September 2012.
 - The development proposed is the construction of a two-storey building comprising 2 x two-bed flats with a new access to New Road, associated car parking, bin storage, 2 x cycle storage sheds, communal landscaping and 2m high acoustic fence.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In 2003 planning permission was granted for the erection of a two-storey office block on the site (Ref:- 03/60233/008) and this was renewed in 2008 (Ref:- 08/60233/011). I am informed that this permission is regarded as having been commenced as the foundations have been constructed. In August 2011 an appeal was dismissed against the decision¹ of the Council to refuse planning permission for the erection of one, two-bedroom dwelling and two, one-bedroom flats on the site, together with car parking and associated facilities (Appeal Ref:- APP/X1735/A/11/2153015).
3. The Council's second reason to refuse the application concerns the provision of a financial contribution towards transport infrastructure in accordance with policies CS21 and DM12 of the Havant Borough Core Strategy (2011). A Planning Obligation by way of a Unilateral Undertaking made under Section 106 of the Act and dated 9 April 2013 has been submitted in respect of this matter. This makes provision for the payment of a sum of £7490 as a transport contribution to Hampshire County Council in the event of the development proceeding. The Council has confirmed that the Section 106 Agreement as now submitted is 'acceptable'. From this I assume that reason no 2 of its decision is no longer at issue.
4. Notwithstanding, the appellant states that because of the comments made by the previous Inspector regarding the financial contributions towards transport

¹ Application Ref:- APP/10/00890

infrastructure sought by the Council at that time, there is a question mark regarding the appropriateness and reasonableness of the contribution sought in respect of this appeal. For its part the Council states that since the previous appeal decision, and in the light of other appeal decisions where the provision of financial contributions towards transport infrastructure was an issue, its evidence to justify the contribution has been revised. Since then its position has been supported.

5. In the previous appeal the Inspector stated that he had some sympathy with the appellant's contention that the site is very close to a railway station, within walking distance of the town centre and that none of the local transport projects appeared to relate to the site or its immediate area. He concluded that without better evidence as to the relationship of the proposal to the need for a transport contribution, he would not have attached great weight to the fact that a Section 106 undertaking was not in place.
6. In this appeal the Council has supplied comprehensive evidence concerning the need for the contribution. In particular, and amongst other local projects, it would be put towards the provision of a network of strategic cycle routes in the Havant area. The level of contribution sought in each case uses a formulaic approach set out in the Transport Contributions Policy document. Having regard to policies CS21 and DM12 of the Core Strategy, in my conclusion the contribution sought in this case is necessary to make the development acceptable in planning terms, it is directly related thereto and is fairly and reasonably related to it in scale and kind.
7. The need for the contribution therefore meets the statutory tests of Regulation 122 of the Community Infrastructure Levy Regulations (2010) and is compliant with paragraph 204 of the National Planning Policy Framework (the 'Framework'). As the Undertaking has been made in the form and to the amount to satisfy the Council's expectations on this issue, I attach some weight in favour of the proposal on these grounds.

Main Issue

8. In the light of the above the outstanding main issue in this appeal is whether or not the development would provide for a satisfactory living environment for the residents of the flats having regard to the noise levels present on the site arising from the proximity of the railway line and the main road and whether appropriate mitigation measures could be employed to alleviate any such nuisance to an acceptable level.

Reasons

9. The appeal site is an irregularly shaped parcel of untidy and overgrown land lying between the main Portsmouth – Waterloo railway line and New Road (B2149) and amounting to about 0.03ha in area. It is close to a level crossing with a predominantly residential area situated to the east with terraced housing fronting the main road. The Council has no objections to the design and layout of the development, its impact on the character and appearance of the area or on highway and car parking grounds. Its principal

concern is in respect of the noise levels present on the site resulting in a very poor and unsatisfactory quality of life for the occupants of the flats.

10. In his decision my colleague described the site as 'clearly noisy' being sandwiched between the busy main road and the main railway line both of which lie in very close quarters to the proposed building. At that time Planning Policy Guidance Note No 24 (*Planning and Noise*) (PPG24) was in force and the Framework had been published in draft. After examining the evidence before him the Inspector concluded that the site lay within Zone C of PPG24 where planning permission for residential development should not normally be granted. In these circumstances, he continued, a grant of planning permission should only be considered where there are no alternative, quieter sites. In the absence of any suggestion that such was the case, he determined that on that issue alone the appeal should be dismissed.
11. Since then the noise levels present at the site will not have decreased. Notwithstanding, the appellant states that in the present scheme the development has been specifically designed to render it as being acceptable on this issue. Particularly, the flats would be predominantly single aspect with acoustic insulation, with special glazing and ventilation systems and the construction of a 2m high acoustic fence on the boundary with the railway line. The previous proposal provided only for standard, double-glazed units which would have been ineffective when opened. The previous Inspector commented that 'a complete redesign' of the development would be required to overcome the noise problems. It is contended that this has been achieved.
12. The appellant's acoustic consultants point out that many developments are now positioned close to railway lines and motorways and have non-opening windows. A satisfactory living environment is capable of being provided in this development with the special measures being implemented. It was assessed that with the acoustic fence in place compliance with the World Health Organisation document could be achieved. With the cancellation of PPG24, the previous categories of Zones B and C no longer apply and the evaluated planning category of the development within Zone C should be taken as being for guidance purposes only.
13. The appeal site is highly constrained in its development potential because of its location. I acknowledge that the design of the building, the installation of appropriately manufactured and installed, non-opening fenestration, the use of an artificial ventilation system and the erection of an acoustic fence on the southern boundary of the site are, in combination, measures which would be capable of mitigating the noise nuisances generated by the railway line and the road to an acceptable level within the flats. However, these measures would come at some cost to the living standards of the residents of the units.
14. Particularly, and notwithstanding the acoustic fence, the rear grassed area would provide a very poor environment for amenity purposes with trains passing at frequent intervals and sometimes at speed within very close proximity. This aspect of the development would be in conflict with the Council's Design Guidelines SPD which requires flats to have an outside amenity space in the form of a garden or balcony. I agree with the Council

that the use of the rear amenity area would so adversely affected by the noise and intrusion from passing trains that it could not be used in any beneficial way as an amenity area for recreational or relaxation purposes. The use of a forced air system to provide adequate ventilation to the kitchen and dining area for the ground floor flat would be less than satisfactory and would create an oppressive and claustrophobic environment for the residents.

15. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. Further, the development is one which would make an efficient and effective use of undeveloped land in a sustainable location. The proposals attract support from the Framework in all these respects. Nevertheless, the Government attaches great importance to the design of the built environment which is a key aspect of sustainable development. This is indivisible from good planning and should contribute positively to making places better for people.² Designs should be of a high quality and, importantly, as a Core Planning principle, they should secure a good standard of amenity for all existing and future occupants of land and buildings.³ Policy CS16 of the Core Strategy is broadly consistent with the Framework in seeking, amongst other matters, to ensure a high quality of design in new developments with a positive relationship between buildings, streets and spaces.
16. In my conclusion the development of the appeal site in the manner proposed falls well short of providing what should be regarded as an acceptable living standard for its residents. Whilst it may be technically possible to mitigate the noise nuisance to an appropriate level within the building, that would come at a considerable cost in terms of design and the very poor internal environment which would result. Additionally, the rear amenity space would be so poor in terms of its ability to be enjoyed that it would be of very little if any benefit to the living conditions of the occupants.
17. In summary I conclude that the development would conflict with both the Framework and the Core Strategy for the reasons I have given and in the ways I have described. All the positive features in its favour are insufficient in substance to outweigh the harm the development would cause. I have taken into account everything else that has been raised in support of this matter. I have noted the nearby developments to which my attention has been drawn and I have considered the points made by the acoustic consultants in relation to developments which have been implemented in locations close to, for instance, the M3. However, each case falls to be considered on its individual planning merits and the circumstances of this case are such that the appeal must fail.

David Harmston

Inspector

² National Planning Policy Framework – paragraph 56

³ National Planning Policy Framework – paragraph 17