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## Appeal Decision

Hearing held on 11 September 2019

Site visit made on 11 September 2019

**by Robert Parker BSc (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 October 2019**

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### **Appeal Ref: APP/Q0505/W/18/3210468**

### **Station Area Redevelopment Land off Tenison Road Blocks C1/C2, D1 and F1 of the CB1 Station Area Masterplan, Cambridge, Cambridgeshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 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 Hill Partnerships Ltd against the decision of Cambridge City Council.
  - The application Ref 16/2012/S73, dated 16 November 2016, was refused by notice dated 15 March 2018.
  - The application sought planning permission for minor material amendments to outline planning permission reference 08/0266/OUT (the CB1 masterplan outline application) comprising an alteration to conditions 4 and 5 to enable an increase in the height of Block C1/C2, a basement car park under Block D1 and minor adjustments to Blocks C1/C2, D1 and F1 without complying with a condition attached to planning permission Ref 13/1041/S73, dated 13 January 2014.
  - The condition in dispute is No 33 which states that: Before any residential or other noise sensitive development (as defined by PPG 24) is commenced a noise attenuation scheme and/or phased attenuation measures shall be submitted to and approved by the local planning authority in order to demonstrate that no primary external leisure/amenity area associated with the proposed dwellings (rear gardens, balconies) will be affected by a daytime (0700-2300) outdoor noise level in excess of 50 dB LAeq, 16 hours or a night time (2300-0700) outdoor noise level in excess of 50 dB LAeq, 8 hours. Any phased measures that form part of the noise attenuation scheme shall be completed prior to the occupation of any proposed residential or other noise sensitive development that requires protection by the requirements of this condition.
  - The reason given for the condition is: To protect amenity of the occupants of residential and other noise sensitive development (Cambridge Local Plan 2006 policy 4/13).
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### **Decision**

1. The appeal is allowed and planning permission is granted for minor material amendments to outline planning permission reference 08/0266/OUT (the CB1 masterplan outline application) comprising an alteration to conditions 4 and 5 to enable an increase in the height of Block C1/C2, a basement car park under Block D1 and minor adjustments to Blocks C1/C2, D1 and F1 at Station Area Redevelopment Land off Tenison Road Blocks C1/C2, D1 and F1 of the CB1 Station Area Masterplan, Cambridge, Cambridgeshire in accordance with the application Ref 16/2012/S73 made on the 16 November 2016 without complying with condition No 33 set out in planning permission Ref 13/1041/S73 granted on 13 January 2014 by Cambridge City Council, but otherwise subject to the same conditions, insofar as they are still relevant.

## **Background and Procedural Matters**

2. The appeal site forms part of the wider Station Area Redevelopment proposals which were granted outline planning permission on 9 April 2010 under Council reference 08/0266/OUT. Application reference 13/1041/S73 sought to amend this permission and in approving this the Council re-imposed condition No 33.
3. Most of the Masterplan area has now been developed under a number of separate reserved matters approvals. The site which is the subject of this appeal was built-out under reserved matters approval 13/1034/REM, approved on 10 January 2014. This related to, amongst other things, 137 residential units (including 58 affordable units) within Blocks C1/C2, D1 and F1 along with the Northern Access Road [subsequently named Great Northern Road] and two areas of open space.
4. The appellant has disposed of its interest in the buildings and the flats are now occupied as a mix of private owner-occupied, shared ownership and affordable rented tenures. The Council does not dispute that the scheme has been constructed in full accordance with the plans approved at reserved matters.
5. Despite protracted discussions, condition No 33 has not been discharged. This is a breach of planning control, albeit one which does not go to the heart of the planning permission. I have dealt with the appeal under section 73A of the Act, on the basis that permission is being sought retrospectively for the development of the land without complying with the disputed condition.

## **Main Issue**

6. The main issue is whether condition No 33 is necessary and reasonable to secure acceptable living conditions for the occupiers of the flats.

## **Reasons**

7. Blocks C1/C2, D1 and F1 of the Station Area Redevelopment flank Great Northern Road. This provides the sole means of access to Cambridge Railway Station for taxis and private vehicles seeking to pick-up and drop-off rail passengers. The road also leads to a public car park and provides service access to various commercial uses in and around Station Square. Traffic levels fluctuate according to train arrivals and departures, but there is no dispute that it is a busy thoroughfare. My observations confirmed this.
8. The floor plans provided at the hearing demonstrate how the residential blocks provide a mix of internal layouts. Some of the flats, mainly within Block C1/C2, benefit from more than one balcony. Others have a single balcony or private terrace, whereas a small minority (8 units) have no external amenity space at all. At the time the scheme was permitted, the Council had no policies requiring such provision. In approving the reserved matters, the authority must have considered the future living conditions to be acceptable throughout the scheme. It therefore follows that it was not a prerequisite for units to have a balcony.
9. It is nevertheless argued that balconies should provide an acceptable living environment where they exist; hence the disputed condition requires the submission of a noise attenuation scheme to ensure that specified noise levels are not exceeded. The condition is of necessity generic, because the Council had no means of knowing at the outline stage where any external leisure/amenity areas would be positioned in relation to sources of noise.

10. The plans submitted at reserved matters showed numerous balconies on the main facades of all three blocks fronting Great Northern Road, and on the side elevations overlooking public open space in between Blocks D1 and F1. The appellant contends that the balconies were included for architectural reasons to provide articulation. Whatever the reason, balconies with 1.1 m high glass balustrades were accepted by the Council, with detailed construction drawings being agreed as part of the discharge of conditions on the reserved matters.
11. It is common ground that the approved design is unable to comply with the noise levels stipulated within condition No 33. This was made clear in the noise assessment which accompanied the reserved matters application. Actual measurements taken after the opening of Great Northern Road show that noise levels in the daytime, when balconies are most likely to be in use, are in the region of 62 dB LAeq, 16 hours. This figure is agreed between the parties.
12. British Standard BS8233:2014<sup>1</sup> (BS) states that for traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed 50dB LAeq, T, with an upper guideline value of 55 dB LAeq, T which would be acceptable in noisier environments. The BS makes an exception for smaller balconies but states that the general guidance on noise in amenity space is still appropriate for larger balconies, roof gardens and terraces, which might be intended to be used for relaxation. Given that most of the balconies facing Great Northern Road are large enough to fit a table and chairs, I can see no reason why the guidance should not be relevant.
13. The BS recognises that the guideline values are not achievable in all circumstances where development might be desirable. In higher noise areas, such as city centres or urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met, might be warranted. The guidance advises that, in such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces. It is the Council's case that this criterion has not been met.
14. The appellant has considered several options for modifying the balconies. The first is to increase the height of the balustrade to 1.5 m, in conjunction with the installation of acoustic absorption to the underside of the soffit. Acoustic modelling, the results of which are uncontested by the Council, indicates that this would achieve an improvement of 2.6 dB. Although this may be perceptible to the human ear under laboratory conditions, it does not represent an appreciable reduction in noise levels in the real world.
15. The second option is the raising of the balustrade to 1.8 m, again with absorptive material under the soffit. This is predicted to achieve a reduction of 3.4 dB which may be perceptible. However, glazing to this height would represent a material change to the external appearance of the buildings. Likewise, and to a much greater extent, the conversion of the open balconies to fully enclosed winter gardens. These options would be the most effective in reducing noise, but they would also require a grant of planning permission – a point accepted by the Council. Consequently, they are beyond the scope of what could reasonably be expected as part of a noise attenuation scheme.

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<sup>1</sup> Guidance on sound insulation and noise reduction for buildings

16. The Planning Practice Guidance (PPG) makes clear that conditions which modify a development in such a way as to make it substantially different from that set out in the application should not be used. In this case, the plans have been approved with 1.1 m high glass balustrades. To agree a fundamentally different balcony design retrospectively through the mechanism of a noise attenuation scheme would deprive those who should have been consulted on the changed development of the opportunity of such consultation.
17. There was debate during the hearing as to whether the mechanical ventilation systems provided within the flats are effective, with some residents arguing that patio doors need to be left open to prevent overheating. The enclosure of the balconies is unlikely to assist in cooling the main living accommodation where patio doors are routinely left open. I am also mindful that some residents may prefer to retain an external leisure space, rather than an internal, or substantially internal, one.
18. During my site visit I was able to sit on one of the upper floor balconies for a short period of time. Noise from the traffic in the street below was noticeable, particularly as the vehicles bumped over the speed tables. However, I do not accept the view that the balconies are unusable for relaxation. They provide a reasonable level of amenity for a central urban location near a busy railway station where a certain level of noise is to be expected. This is precisely one of those areas where the BS indicates that compromise is required.
19. Despite noise being above the stipulated levels, those units with balconies provide a better standard of living than those without. The development gives its occupiers the choice as to whether or not to use their external amenity space, but it also provides convenient access to public open space adjacent to the blocks as an alternative. Those areas provide seating for relaxation purposes and based on my experiences they are quieter than the street frontage. PPG<sup>2</sup> advice is that noise impacts may be partially offset if residents have access to a relatively quiet, protected, external publically accessible amenity space that is nearby.
20. The PPG also states that the impacts may be partly offset by giving residents access to a relatively quiet facade (containing windows to habitable rooms) as part of their dwelling; or a relatively quiet external amenity space for their sole use. A significant number of units within the scheme have windows, and in some cases balconies and terraces, to the rear. Notably, the Council raises no concerns regarding the living conditions within the flats and I noted during my visit that double glazing is effective in suppressing external noise.
21. The Council concedes that it has adopted a more flexible condition wording in more recent cases involving balconies. In my view, the disputed condition is too onerous, and it is neither necessary nor reasonable to secure acceptable living conditions for occupiers of the flats. There are no practical measures that could be implemented within the scope of the condition, and not requiring planning permission in their own right, that would result in a noticeable reduction in noise levels on the balconies. Therefore, having given careful consideration to all material considerations, including representations from residents and elected members, I conclude that the disputed condition should be removed. Although the Council tabled an alternative condition wording for discussion purposes, this is insufficiently precise or enforceable, and does not pass the test of necessity.

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<sup>2</sup> Reference ID: 30-011-20190722

## **Other Matters**

22. At the hearing it was suggested that traffic should be removed from Great Northern Road and/or the public highway altered to delete the raised speed tables. However, the outline permission established the parameters for the Station Area Redevelopment scheme which included use of Great Northern Road as the primary means of access to the station. There is no evidence to suggest that the road has been constructed otherwise than in accordance with the approved details and therefore to require the developer to make alterations retrospectively as part of a noise attenuation scheme would be unreasonable.
23. Residents allege that they were mis-sold their properties on the basis that they were not made aware of the likely noise impacts of traffic on Great Northern Road. However, information regarding the future road layout was available as part of the outline application which is in the public domain. The request for compensation is a private matter which should be addressed between the relevant parties concerned; it carries very limited weight as a material planning consideration in the determination of this appeal.
24. Concerns have been raised regarding noise from delivery vehicles, particularly early in the morning. This is a broader issue which goes beyond the quality of environment on the balconies, seemingly affecting residents within their flats. The Council did not provide details but indicated that it was seeking to resolve the issue separately.
25. Notwithstanding my findings above, there would be nothing to prevent an individual flat occupier from making a planning application to alter their balcony, should they so wish. Any such application would need to be considered on its merits following a period of public consultation. Given my conclusions on the adequacy of the existing balconies, residents should not be compelled to pursue any particular solution.

## **Conclusion**

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Robert Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Colin Campbell BSc (Hons) Dip TP MRTPI	Head of Planning, Hill Partnerships Ltd
Peter McKeown BSc (Hons) MSc MRTPI	Associate Partner, Carter Jonas
Chris McNeillie MIOA CEng	Director, Cass Allen Associates Ltd
Matthew Wilson	Technical Manager, Hill Partnerships Ltd

### **FOR THE LOCAL PLANNING AUTHORITY:**

Lewis Tomlinson	Senior Planning Officer
Ben Walther	Principal Environmental Health Officer

### **INTERESTED PARTIES:**

Deborah Bowen	Local resident
Cllr Kelley Green	Ward member
Tom de Grunwald	Local resident
Fernando Perez	Local resident
Cllr Richard Robertson	Ward member
David Stoughton	Local resident

### **Documents submitted at the hearing**

1. Condition wording for discussion
2. URS Noise Assessment, June 2013
3. Cass Allen Addendum – Balcony Noise Calculations
4. Internal floor plans