
Appeal Decision

Site visit made on 30 August 2016

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 5th October 2016

Appeal Ref: APP/J3720/W/16/3149527

Sibcas Ltd, Brickyard Lane, Studley, Warwickshire B80 7GA

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Magnate against the decision of Stratford on Avon District Council.
 - The application Ref 16/00316/VARY, dated 26 January 2016, was refused by notice dated 22 April 2016.
 - The application sought planning permission for the variation of condition 1 of planning permission 10/00408/VARY to allow the continued stacking of portable units until May 2016.
 - The condition in dispute is no.1 which states that "this permission is limited to a temporary period of three years from the date of this decision after which no portable buildings stored on the site shall be stacked more than two high."
 - The reason given for the condition is "to protect the amenity of neighbouring properties."
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Decision

1. The appeal is allowed and planning permission is granted for the proposed manufacturing, repair and storage facility for Sibcas Ltd., including garage, canteen and office with hardstanding and unit display and storage areas at Sibcas Ltd, Brickyard Lane, Studley, Warwickshire B80 7GA, in accordance with the application ref 16/00316/VARY dated 26 January 2016, without compliance with condition No 24 previously imposed on the planning permission Ref S96/0160 dated 20 June 1996 and subject to the 8 conditions set out in the schedule attached.

Background and Procedural Matters

2. The description of development on the planning application form refers to planning permission 10/00408/VARY, although reference is also made to planning application 12/02563/VARY. On the appeal form, the description of development describes the development as the *variation of condition 1 of planning permission 12/02563/VARY to allow the continued stacking of portable units, more than two high, to continue until 31 May 2009.*
 3. Notwithstanding discrepancies between these descriptions of development, I have had regard to s73 of the Town and Country Planning Act 1990 and should I decide to allow the appeal, a new, free-standing permission for the previously permitted use would be created. However, neither planning permission 10/00408/VARY nor 12/02563/VARY state the nature of the development being
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permitted. The planning permission which does is S96/0160 which granted permission for *the proposed manufacturing repair and storage facility for SIBCAS Ltd., (Bathgate) including garage, canteen and office with hardstanding and unit display and storage areas*, subject to conditions, including condition 24 which states that *the portable buildings to be stored on the site shall not be stacked more than two high*.

4. The appellant and the local planning authority have agreed to a revised description of development which more accurately describes the development proposed. This has been agreed as the *variation of condition 24 of planning permission S96/0160 (Proposed manufacturing, repair and storage facility for Sibcas Ltd., including garage, canteen and office with hardstanding and unit display and storage areas) to allow the stacking of portable units more than two high until 31 May 2019*. It is on this basis that I have considered the appeal.
5. Since the planning application was decided, the Council has formally adopted its Core Strategy¹. As a result the Local Plan² is out-of-date and carries no weight. The Council and the appellant have referred in their submissions to the Core Strategy and therefore have had the opportunity to respond to the relevant policies in this newly adopted plan. I have had regard to this in my reasons below.

Main Issue

6. The main issue is the effect varying condition 24 would have on the living conditions of the occupiers of neighbouring properties, particularly those on Canterbury Close and St Chads Road, with particular regard to outlook.

Reasons

7. The appeal site concerns an existing manufacturing, repair and storage facility for portable accommodation units. To the rear of the site is a large yard where the units are stored. The units are stacked on one another and to varying heights. Beyond the area where the units are stored, there is a security fence and a mature line of trees and other landscaping which buffer the site from the rear gardens to the houses which front Canterbury Close and St Chads Road. The gardens are on ground lower than the appeal site.
8. The application seeks permission to stack the units to more than 2 high for a limited period of time; it is clear within the evidence before me that the intention is to stack the units 3 high for a period of 3 years.
9. Units stacked to a height of 3 would be much higher than the residential gardens mentioned, particularly given the differences in ground level. Given the height of the trees and the mature landscaping between the appeal site and the rear gardens, however, the units would be largely obscured from views from within the gardens. It is nevertheless possible that, during the winter months when there are fewer leaves on the trees, units stacked to 3 high would have a greater impact on outlook from the neighbouring gardens.
10. It is evident from the evidence before me that units have been stacked more than 2 high but only when beyond a 30 metre line from the boundary of each

¹ Stratford-on-Avon District Core Strategy (2011-2031) (adopted on 11 July 2016)

² Stratford-on-Avon Local Plan (Adopted July 2006)

garden. There is nothing within the appellant's evidence to suggest that this 30 metre buffer zone could not be adhered to should permission be granted with a condition to this effect. Units stacked 3 high but 30 metres from the shared boundary with the gardens would mitigate any impact units would have on the living conditions of the occupiers of these properties by way of outlook.

11. I find that it is necessary, therefore, to vary condition 24 to allow the stacking of units to 3 units high, provided the units are beyond 30 metres of the boundary with the gardens in Canterbury Close and St Chads Road. In line with the wishes of the appellant, I consider it reasonable to limit the period of this stacking to 3 high for a period of 3 years, after which time the units would be stacked to no more than 2 units high. In doing so I am satisfied that the development would not have a harmful effect on the living conditions of the occupiers of neighbouring properties.
12. In coming to this conclusion I have had regard to Policy CS.9 of the Core Strategy. Reference is not made within this policy to living conditions or standards of amenity for neighbouring residents. Nevertheless I have found the development to be acceptable with regards to the living conditions of the occupiers of neighbouring properties and therefore of no harm to merit refusing the proposal. I have also had regard to paragraph 206 of the National Planning Policy Framework and find that a condition to the effect proposed would meet the tests set out.

Other matters

13. I note a local concern that the units, when stacked high, may topple into the adjoining gardens. The operations on site must comply with relevant health and safety legislation which would guard against such incidents. Nevertheless, given the belt of landscaping between the site and the adjoining gardens and the proposed buffer zone of 30 metres, the gardens would be afforded protection.
14. A local concern has been raised for the impact the stacked units would have on the loss of light to a garden in Canterbury Close. I have no evidence before me to demonstrate this effect. However, given the height and proximity of the existing trees to the gardens, I consider that any loss of light would first occur as a result of the position of the trees, more than as a consequence of the units behind.

Conditions

15. In allowing the appeal I am granting permission for the proposed manufacturing, repair and storage facility for Sibcas Ltd, including garage, canteen and office with hardstanding and unit display and storage areas, subject to a condition as described above. Planning permission S96/0160 will remain intact and therefore implementable too.
16. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions for the original planning permission, unless they have already been discharged. The Council has provided a list of *without prejudice conditions*, should the appeal be allowed. As I have no information before me about the status of these conditions, I shall impose all those conditions recommended by the Council and which I consider remain relevant.

In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

17. From the list of conditions recommended by the Council, I have imposed conditions 4, 5, 6, 7, 8, 9 and 10. Conditions 1-3 limit the position, height and length of time that units beyond 2 units high can be stored. Condition 1 within the schedule of conditions attached encapsulates these requirements within one condition, and to ensure that the living conditions of neighbouring occupiers are not harmed.
18. As the original planning permission S96/0160 has been started, there is no requirement to impose a time limit condition.

Conclusion

19. For the reasons given above, I conclude that the appeal should succeed. I will vary condition 24 of planning consent S96/0160, in line with the discussion above.

R Walmsley

INSPECTOR

SCHEDULE OF CONDITIONS

1. Within a period of 3 years from the date of this decision, only those portable buildings beyond 30 metres of the rear boundary of the houses in Canterbury Close and St Chads Close may be stacked to 3 units high. After 3 years, portable buildings stored on the site shall be stacked to no more than 2 units high.
2. The permission shall relate to plan no's 158.59.002, 25.96/1 and 95/201 Rev D deposited with District Planning Authority on 8 February 1996; 158/95/001 Rev G and 5001 deposited with District Planning Authority on 7 May 1996; 158.95/301b Rev D deposited with District Planning Authority on 15 May 1996; 158.95/401 Rev H deposited with District Planning Authority on 29 May 1996; 25.96/2 and 3 deposited with District Planning Authority on 13 June 1996 and the buffer zone plan.
3. The development hereby permitted shall be carried out wholly in accordance with the recommendations of the Environmental Consultants report dated May 1996.
4. The development of the site and the construction of buildings, together with the installation of any plant, and any processes or operations conducted thereon, excluding vehicular noise, shall be such as to ensure that noise levels arising from the use of the site shall not exceed the following limits, as measured, and including any corrections, in accordance with the provisions of 654142: 1990 ("Method of rating industrial noise affecting mixed residential and industrial areas"), at any point along or beyond the perimeter of the site delineated in red on the plan annexed to the application.

Mondays to Fridays

08:00-19:00 hours 45 dBL Aeq

19:00-23:00 hours 40 dBL Aeq

Saturdays

08:00-13:00 hours 45 dBL Aeq

13:00-23:00 hours 40 dBL Aeq

Any other time

35 dBL Aeq

5. Heavy goods vehicle movements to and from the site shall be restricted to the hours of 07:00-19:00 hours Monday to Fridays and 07:00-13:00 hours on Saturdays.
6. More than one vehicular access shall not be made, nor maintained, to the site from the public highway, Brickyard Lane.
7. Obstructions, including gates and barriers, shall not be placed within the vehicular access to the site any closer than 30 metres to the near edge of the public highway carriageway.

8. Gates provided at the entrance to the site shall not be hung so as to open to within 30 metres of the near edge of the public highway carriageway.