



Appeal Decision

Site visit made on 9 August 2016

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 13th October 2016

Appeal Ref: APP/A1530/W/16/3149077

**Building A, Jodi Cottage, Nightingale Hill, Langham, Colchester, Essex
CO4 5PN**

- 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 Nigtech Limited against the decision of Colchester Borough Council.
 - The application Ref: 146162, dated 2 April 2015, was refused by notice dated 4 January 2016.
 - The development proposed is a change of use of part of the existing building and associated yard for storage and distribution of wine (Use Class B8).
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Decision

1. The appeal is dismissed.

Procedural matter

2. The use of the building has commenced and I was able to see this and the associated operations during my site visit. The planning application form describes the development as 'Continued use of part of existing building and associated yard for storage and distribution of wine (use class B8)'. Section 73A of the Town and Country Planning Act 1990 (as amended) (the Act) makes allowance for the submission of a planning application for development which has been carried out before the date of the application. Section 55 of the Act describes development as the carrying out of building operations or the making of material changes of use, as opposed to their retention or continuation. I have therefore removed the word 'continued' from the description of the development and have dealt with the appeal on the basis that it relates to a change of use of part of the existing building and associated yard for storage and distribution of wine (Use Class B8).
3. The planning application form gives the address of the appeal site as 'Building to the rear of Jodi Cottage', whilst the decision notice issued by the Council gives it as 'Building A, Jodi Cottage' and I note that the appellant has adopted the latter on the appeal form. I have therefore used this for the appeal.

Main Issues

4. The main issues in this appeal are:
 - The effect of the development on highway safety;
 - Whether the appeal site is a suitable location for the development having regard to the development plan and the principles of sustainable development; and
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- The effect of the development on the living conditions of nearby residential properties with particular regard to noise.

Reasons

Highway safety

5. Nightingale Hill is a very narrow, rural, road with carriageway widths of approximately 2.5 to 3 metres. It has narrow verges and is bounded for much of its length by hedgerows and road side vegetation. There are very limited opportunities for vehicles to pass and these occur almost exclusively where there are accesses to private properties. Due to the meandering alignment of the road, forward visibility is frequently constrained by bends and by the road side vegetation. There are advisory signs at each end of Nightingale Hill that state it is unsuitable for heavy goods vehicles.
6. The appellant has provided traffic figures that indicate that on average 72 vehicles use the road daily. These figures are not challenged by the Council. Although the traffic flows are low, due to the narrowness of the carriageway and verges, and the lack of passing places, when vehicle conflicts occur it is very likely that, as suggested by the Highway Authority, that vehicles will have to reverse a significant distance before a passing place can be reached. Due to the narrowness and alignment of the road, a lengthy reversing manoeuvre is inherently more awkward, particularly for commercial vehicles with more restricted rear visibility, and increases the risk to other road users, especially pedestrians and cyclists. The additional 10 to 12 daily vehicle movements generated by the proposal, whilst not large, represents a substantial proportion of the total vehicle movements which will increase the potential for vehicle conflicts and be harmful to the safe operation of the highway.
7. I note the appellant's point that Sustrans/Colchester Cycling Campaign have not specifically objected to the application. However, the comment does mention that Nightingale Lane is part of National Cycle Network Route 1 and is well used by cyclists and consequently suggests that additional measures are required to ensure the safety of cyclists using the road.
8. The appellant also suggests that a condition could be used to restrict vehicle movements to and from the site and the size of vehicles utilised by the business. In order to be effective and make unacceptable development acceptable a condition needs to be enforceable. Whilst it is possible that vehicles exceeding the weight limit would be noticeable, overall vehicle movements could be only monitored by counting vehicles entering and leaving the site. In practice this would be an extremely labour intensive method of monitoring on-going compliance and in my view it would not represent a realistic option for ensuring compliance with the proposed condition. Although a vehicle log could be kept, this would rely on the log being accurate and up to date to determine if there is a breach, and any breach would not be identified until after the event. Periodic or ad-hoc monitoring would not be sufficient to detect any breaches of the condition and consequently I do not consider that such a condition would pass the test of being possible to enforce required by the National Planning Policy Framework (the Framework).
9. Similarly, a condition relating to vehicle routing would not be enforceable, as once a vehicle enters the public highway it is not possible to control where it goes and such a condition would be impractical to monitor.

10. It would not, therefore, be possible or practical to limit the number of vehicles servicing the site, in order to ensure that vehicle movements were within the parameters proposed. If in the future the business were to expand, vehicle numbers would increase together with the likelihood of vehicle conflicts on the narrow road.
11. My attention has been drawn to a report by Suffolk County Council which suggests that a typical single track road with reasonably frequent passing places has the capacity to accommodate 100-300 vehicles per hour. However, this report does not have the status of policy or adopted guidance and recognises that every lane will have its own unique attributes in terms of traffic mix, visibility, width and passing places. As I have noted above, Nightingale Hill has no formal passing places and very few opportunities for vehicles to pass where private accesses occur. Accordingly, I can give very little weight to this report.
12. Access to the site is via a gated access from Nightingale Hill. Whilst there is a relatively large bellmouth at the access and the gate is set back from the carriageway, the gateway and access track are only able to accommodate one vehicle at a time. Although the road is subject to the national speed limit of 60 mph, the Highways Authority recognise that as a result of the nature of the road vehicle speeds are lower and that it is appropriate to use the visibility requirements from the Manual for Streets (2007). It is suggested that a visibility splay of 2.4 metres by 43 metres would be required for the access, and this has not been contested by the appellant.
13. To the south, although there is a sharp bend in the road, a 43 metre visibility splay is achieved. However, to the north, the visibility from the access is severely restricted by the curtilage of Jodi Cottage to approximately 10 metres. This falls well short of the recommended sight stopping distances set out in the Manual for Streets. The appellant suggests that a planning condition could be used to require part of land within the curtilage of Jodi Cottage be transferred to the business in order to achieve the required visibility to north. Although it is stated that the landowner is agreeable to this transfer, there is no evidence to substantiate this. As this relies on third party co-operation that cannot be guaranteed such a condition would fail to meet the test set out in the Framework of being practically enforceable.
14. Due to the restricted visibility to the north and the potential for vehicle conflict in the gateway, the access does not in my view provide a safe and convenient access to the site in respect of the warehouse use.
15. I note that there has only been one recorded accident on the road in the last five years, nevertheless, I am mindful that the data relates to accidents resulting in injuries and that data on incidents which only result in vehicle damage are not recorded. Consequently, I do not consider that a low number of recorded injury accidents outweighs the harm that would be caused to highway safety as a result of increased vehicle conflicts and inadequate visibility in the vicinity of the appeal site.
16. Although a Public Right of Way crosses Nightingale Hill to the north of the appeal site, and I saw during my site visit that the crossing point is close to the access, the footpath was relatively overgrown on the west side of the road and these did not appear to be a heavily used route. As such, whilst the access points are not obvious, I do not consider that there will be a significant number of

pedestrian/vehicle conflicts at these points. However, this, of itself does not outweigh the other harm to highway safety that I have found.

17. I therefore conclude that the development would cause unacceptable harm to highway safety in the vicinity of the appeal site and is contrary to the relevant requirements of Policy DP17 of the Colchester Local Development Framework Development Policies 2010 (LDFDP) which seeks to ensure that new development maintains the right and safe passage of all highway users and is located where there is physical capacity to accommodate the type and amount of traffic generated in a safe manner and Core Strategy Policy TA2 of the Colchester Core Strategy 2008 (Core Strategy) which seeks to improve national cycle routes.

Suitability of site for the development

18. Policy CE1 of the Core Strategy sets out the Council's hierarchy of commercial centres and employment zones to direct new development to sustainable locations. The appeal site is not within one of the identified commercial centres and employment zones. However, the policy does allow for small scale rural businesses if they have low travel needs and low impacts, and which meet local needs and support the rural economy. Core Strategy Policy ENV2 allows for small scale rural businesses that are appropriate to local employment needs, minimise environmental impacts and harmonise with the local character and surrounding natural environment.
19. Core Strategy Policy TA1 states that new development in the Borough will be focussed in on highly accessible locations. Policy DP9 of the LDFDP sets out the criteria that will be applied to employment uses in the countryside and allows for small scale employment uses that do not harm the character of the area by their nature and level of associated activity including traffic generation on rural roads.
20. It is not in dispute between the parties that the site is not within one of the designated commercial centres or employment zones and is located in a rural location. I saw from my site visit that, at present, the operation from the site is small in scale although it forms part of a larger business operation. There is no substantive evidence that the business meets particular local needs or supports the rural economy. The business does employ a full time worker at the site which represents only a very small benefit to the local economy.
21. It is also common ground that the activities on the site itself from the operation of the warehouse do not cause harm to the living conditions of the adjoining residents. However, I have found that the vehicle movements generated by the use cause harm to highway safety and the development therefore conflicts with Core Strategy Policies CE1 and ENV2 and LDFDP Policy DP9.
22. The appeal site is not located where can be accessed by employees and visiting staff by means other than the car and this, combined with the inability to enforce vehicle numbers or routes, conflicts with the requirements of Core Strategy Policies CE1 and TA1.
23. The building could revert to the lawful use for the storage of vehicles and furniture or to an agricultural use, however, I do not consider that either of these uses would be inherently less desirable than the development.
24. I therefore find that the appeal site is not a suitable location for the development having regard to the development plan and the principles of sustainable development. It conflicts with the relevant requirements of Policies CE1, ENV2 and

TA1 of the Core Strategy and LDFDP Policy DP9 which seek to ensure that employment uses are located in sustainable locations and employment uses do not cause harm to the character of rural areas.

Effect on the living conditions of nearby residential properties

25. There are a small number of residential properties near the appeal site on Nightingale Hill, namely Jodi Cottage, Nightingale Farm and Springfield Farm and further to the south there are scattered properties as the road (known as Grove Hill at this point) runs out of Langham. I noted during my site visit that, as a result of its countryside location, background noise levels in the area are low.
26. As previously stated, it is common ground between the parties that the use of the building and the external activities carried out in the yard area do not cause harm to the living conditions of the nearby residential properties. From what I saw during my site visit, I have no reason to come to a different conclusion. The principal concern of the Council is disturbance caused by additional vehicle movements on Nightingale Hill. The appellant states that the use of the building generates no more than 12 vehicle movements per day and this number is not challenged by the Council. Neither party has submitted any technical evidence relating to noise levels and, despite the prevailing low background noise levels, I do not consider that the number of vehicle movements that arise from the site significantly alter the prevailing noise climate.
27. I therefore find that the development does not cause harm to the living conditions of nearby residential properties with particular regard to noise and disturbance. It complies with the relevant requirements of Policy DP1 of the LDFDP and Core Strategy Policy TA4 which seeks to ensure that new development protects the living conditions of residents from excessive noise.

Other matters

28. The reason for refusal refers to the development resulting in an increased maintenance liability for the Highway Authority. Whilst this may be the case, it is not a relevant planning consideration and it is not necessary for me to make a finding on this matter.

Conclusion

29. The proposal would have very modest economic and social benefits through employment at and in connection with the site. Although I have found that the development does not cause harm to the living conditions of the occupiers of nearby residential properties, nevertheless, there would be clear environmental harm through the increase in vehicle movements on rural roads and the reliance on private car for employees and visiting staff to access the site. I have also found that the proposal would cause unacceptable harm to highway safety in the vicinity of the appeal site. This harm would significantly and demonstrably outweigh the benefits, and the proposal would therefore not constitute sustainable development.
30. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR