

Appeal Decisions

Site visit made on 30 November 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 5 January 2017

Appeal A Ref: APP/M4320/C/16/3148940

Land at the former Goggins Haulage Depot, Trinity Park, Orrell Lane, Bootle L20 6HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Callister on behalf of Commercial Trailer Services Ltd T/A JC Commercials against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 22 March 2016.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years, the change of use of the land from general haulage depot to use for storage and distribution of storage containers.
- The requirements of the notice are to cease using the land for the storage and distribution of storage containers and remove all storage containers from the land as shown cross hatched in the plan attached to the notice.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the formal decision.

Appeal B Ref: APP/M4320/W/16/3148939

Trinity Park, Orrell Lane, Bootle L20 6HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
- The appeal is made by Mr S Callister on behalf of Commercial Trailer Services Ltd T/A JC Commercials against the decision of Sefton Metropolitan Borough Council.
- The application ref DC/2014/02092, dated 2 December 2014, was refused by notice dated 15 February 2016.
- The development proposed is described in the application form as *proposed change of use of land from general haulage depot to use for storage and distribution of storage containers. Removal of condition 1) of planning permission S/2013/0128. Removal of condition 1) of planning permission S/2013/0129.*

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the formal decision.

Procedural matters

1. In Appeal B, the description of development given in the planning application form is incorrect. Planning permission is sought for the continuation of the storage and distribution of container use. I shall adopt the wording given in the Council's decision notice.
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Appeals A and B – ground (a) and s78

Main issue

2. The common main issue is the effect of the development upon nearby residents' living conditions, having particular regard to noise and general disturbance.

Reasons

3. The site is a roughly rectangular shaped former haulage depot situated in Trinity Park, which is designated as a primary industrial estate. There is a variety of industrial activity, offices and storage and distribution depot. To the east of the appeal site, there is a steep embankment upon which there is a close-boarded fence beyond which there is a modern residential estate. These dwellings are located on higher land. The area immediately to the west of the site is used for container storage and distribution, which benefits from planning permission¹.
4. In an urban environment such as this, background noise levels are likely to be dominated by sound from passing traffic and the usual hustle and bustle of daily life. In addition, noise generated by operations at Trinity Park is likely to affect ambient sound levels. In this location, Mr Callister suggests industrial-related sound, in particular the 24/7 storage and distribution activity adjacent to the appeal site, already produces industrial noise. That is, I am afraid, not a strong enough reason to grant planning permission for this development. The appeal site being much closer to residential properties. In primary industrial areas, local planning policy seeks to ensure development does not harm the amenity of nearby residential area and, if the opportunity arises, the proposal helps to improve the general environment. It is reasonable to examine the character of the use and any potential environmental impact on amenities.
5. I observed activity associated with the loading and unloading of metal containers and this generated irregular yet impulsive sound. Sporadic noise caused by increase and decrease of heavy plant and machinery used to lift and move containers is noticeable to the human ear at close-range. The crashing of metal containers also caused some level of noise. These observations are broadly consistent with neighbours' complaints. Residents in Heatherleigh Close, Parkdale Avenue and Roseworth Avenue indicate disturbance caused by activity at unsociable hours, which affects sleep patterns. Residents complain about leaving windows shut during summer months and not using their own gardens, because of the level of noise. The sound generated by commercial operations is likely to be perceptible from surrounding properties.
6. The Council's environmental health section investigated noise nuisance complaints. In particular, it found noise during the evening amounts to a statutory nuisance and issued a noise abatement order, but this covers both lawful and unauthorised sites. In response to these concerns, Mr Callister has commissioned a noise impact assessment². While there are some criticisms of the report by environmental health officer, the assessment applies industry-based methodology and standards. Calculations show that external noise levels are likely to have a low impact when considering a worst case scenario. However, given the nature of the impact noise generated by the storage and distribution of containers combined with its location adjacent to an existing container storage use, I take the view that the development

¹ Council ref: DC/2014/00447.

² Clement Acoustics Noise Impact Assessment March 2015.

has the potential to adversely affect neighbours' quality of life. This is because of the uncontrolled nature and scale of operations at the site.

7. Potentially, planning conditions could be imposed to mitigate this harm by limiting and controlling the use of the site. A planning judgement, rather than rigid mathematical prediction, is required as to whether the development could be made acceptable in planning terms by imposing suitable worded conditions to mitigate the impact of unwanted sound created by the development. On the other hand, if suitably worded conditions could not be imposed, then I am afraid there would be no alternative but to refuse planning permission.

Conditions

8. National Planning Policy Framework (NPPF), paragraphs 203-206, state that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Further guidance is given in relevant section to the Planning Practice Guidance.
9. The concern is that the operator at the adjacent lawful site might extend into the appeal site as there is no physical barrier. Imposing a condition specifying some kind of artificial separation is unreasonable, but the appeal site is clearly identified in the submitted site plans. The area where containers would be stored at a height of 3 m is clearly marked out. In the hatched area containers would be stored at 2 m, which would reduce their visual impact. The development has already commenced but the hatched area is yet to be utilised. I can impose a stipulation that the development permitted shall be carried out in accordance with the layout plans scale 1:1250.
10. The Council suggest a condition requiring submission of an operational management plan within one month, as there is lack of detail regarding type of plant and machinery, parking layout, detail for use of vehicle inspection shelter and layout of the site office. Additionally, recommendations made by the noise report, which seek to control noise at source, and operating times for machinery, could be incorporated into the plan. I consider that such level of detail could be submitted in the management plan. In the interests of safeguarding residential amenities, this condition is necessary and reasonable. This matter needs to be addressed in order to make the development acceptable in planning terms.
11. In terms of the management plan, a retrospective condition is needed. Unlike an application for planning permission for development yet to commence, in this case it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because development has substantially taken place on the site. A retrospective condition therefore provides for the loss of the effective benefit of the grant of planning permission where the management plan in question is not submitted for approval during the time set by the condition, approved either by the local planning authority or by the Secretary of State on appeal, and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
12. In addition to that, I consider that a limitation could be imposed specifying the container height without adverse impact on the functional use of the land. For the

avoidance of any doubt, the submitted site layout plan can be appended to this Decision. These limitations would reduce the need to use specialist lifting machinery to stack containers at higher level, thus lessen the frequency and occurrence of unwanted impact, acceleration and vibration noise caused by the movement of machinery.

13. Mr Callister says that the existing container storage and distribution site to the west does not have any condition stating when it can operate. In theory, at least, it could operate 24/7. In practice, this outcome is totally unacceptable at the appeal site because of its proximity to residential properties. Use of the site without any operating limitations has the potential to become a source of annoyance, distraction and interference resulting in significant complaint from neighbours. It is therefore in the public interest that some kind of control is imposed. Operating times would allow neighbours some respite. For this purpose, the Council suggest 0700 to 1800 on weekdays, 0800 to 1300 Saturdays and Sundays. Having regard to neighbours' concerns I shall specify the use does not operate on Bank and Public Holidays. This is a reasonable compromise that would safeguard residential amenities without putting without imposing onerous limitations on the business.
14. The plans identify a vehicle inspection shelter but to me its use is unclear. I saw various hand-held tools inside the building and it could be used for vehicle repair. This type of activity could give rise to noise-related complaints from nearby residents given the location of the shelter. A condition is necessary to prohibit use of this building for repair and maintenance of motor vehicles or heavy goods vehicles.
15. I consider that suitably worded conditions could be imposed to make the development acceptable in planning terms. These would fairly and reasonably relate to the permitted development. A breach of each condition is detectable and so they are enforceable.
16. Pulling all of the above points together, I find that, subject to the conditions that have been discussed in the written representations before me, users and occupiers of nearby residential property would not be exposed to unacceptable and unbearable levels of noise. Conditions would significantly mitigate and minimise adverse impacts on health and quality of life from noise caused by the use of the site for this particular development.

Planning balance

17. Local and national planning policy is supportive of economic development. Evidently, the uncontrolled use of the site for storage and distribution of containers has caused complaint from neighbours, because of the level of noise and general disturbance. On the other hand, the character of the land-use could be reasonably controlled by imposing planning conditions. Combined with the location of the acoustic fence on top of the embankment and layout of residential properties, I consider that regulating the development on this site considerably ameliorates its environmental impact.
18. On balance, in my planning judgement the development, subject to the imposition of conditions, would not have a significant adverse effect on nearby residents' quiet enjoyment of their property.
19. Accordingly, subject to conditions, the development would not materially conflict with saved policies EP6 and EDT7 of the Sefton Metropolitan Borough Council

Unitary Development Plan 2006. The aims of these policies are reflected in emerging policies ED3 and EQ4 of the Sefton Local Plan. The purposes of these local policies are broadly consistent with national guidance and policy found in NPPF paragraphs 9, 17, 21, and 123.

Appeals A and B - Conclusions

20. In Appeal A, for the reasons given above and having regard to all other matters, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. In Appeal B, I further conclude that the appeal should be allowed.

Formal decisions - Appeal A Ref: APP/M4320/C/16/3148940

21. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at former Goggins Haulage Depot, Trinity Park, Orrell Lane, Bootle L20 6HX, as shown in black on the plan annexed to the this Decision, for the change of use of the land from general haulage depot to use for storage and distribution of storage containers, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site layout plan scale 1:1250 and red edge site layout plan scale 1:1250.
- 2) The activity hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a management plan shall have been submitted for the written approval of the local planning authority and the scheme shall include the following details: a timetable for its implementation; detail of noise reduction required by proposed noise management (section 8) of Clement Acoustic Noise Impact Assessment (4 March 2015); detail of type of plant and machinery including operating times for specified machinery; detail of parking layout; detail of use of vehicle inspection shelter and the site office.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in force and use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Storage containers of any kind shall not be stacked or deposited above a height of 3 metres measured from ground level at any time on the area edged black in the site plan scale 1:1250 annexed to this Decision.
- 4) Notwithstanding condition 3) above, on the hatched area shown in the plan annexed to this decision, storage containers of any kind shall not be stacked or deposited above a height of 2 metres measured from ground level at any time.
- 5) The use of the land hereby permitted, including the use of any plant and machinery on the land shown edged in black on the plan annexed to this Decision, shall only take place between the following hours: 0800 – 1800 Mondays – Fridays, 0800 – 1300 Saturdays and Sundays. The use hereby permitted shall not take place at any time on Bank Holidays and Public Holidays.
- 6) No repair and maintenance of motor vehicles or heavy goods vehicles, shall take place whatsoever in the building identified as Vehicle Inspection Shelter on the plan annexed to this Decision.

Appeal B Ref: APP/M4320/W/16/3148939

22. The appeal is allowed and planning permission is granted for the change of use of the land from general haulage depot to use for storage and distribution of storage containers at land at the former Goggins Haulage Depot, Trinity Park, Orrell Lane, Bootle L20 6HX in accordance with the terms of the application, ref DC/2014/02092, dated 2 December 2014, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site layout plan scale 1:1250 and red edge site layout plan scale 1:1250.
- 2) The activity hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a management plan shall have been submitted for the written approval of the local planning authority and the scheme shall include the following details: a timetable for its implementation; detail of noise reduction required by proposed noise management (section 8) of Clement Acoustic Noise Impact Assessment (4 March 2015); detail of type of plant and machinery including operating times for specified machinery; detail of parking layout; detail of use of vehicle inspection shelter and the site office.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter remain in force and use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Storage containers of any kind shall not be stacked or deposited above a height of 3 metres measured from ground level at any time on the area edged black in the site plan scale 1:1250 annexed to this Decision.
- 4) Notwithstanding condition 3) above, on the hatched area shown in the plan annexed to this decision, storage containers of any kind shall not be stacked or deposited above a height of 2 metres measured from ground level at any time.
- 5) The use of the land hereby permitted, including the use of any plant and machinery, shall only take place between the following hours: 0800 – 1800 Mondays – Fridays, 0800 – 1300 Saturdays and Sundays. The use hereby permitted shall not take place at any time on Bank Holidays and Public Holidays.
- 6) No repair and maintenance of motor vehicles or heavy goods vehicles, shall take place whatsoever in the building identified as Vehicle Inspection Shelter on the plan annexed to this Decision.

A U Ghafoor

Inspector



Plan

This is the plan referred to in my decision dated: 5 January 2017

by **A U Ghafoor BSc (Hons) MA MRTPI**

Land at: Former Goggins Haulage Depot, Trinity Park, Orrell Lane, Bootle L20 6HX

Reference: APP/ APP/M4320/C/16/3148940 and W/16/3148939

Scale: Not to be scaled.

