

Appeal Decision

Site visit made on 16 November 2016

by J F Powis BA (Hons) MSc MRTPI

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

Decision date: 9 January 2017

Appeal Ref: APP/J1155/W/16/3156509

Woodlands, Tellams Yard, Cheriton Bishop, Exeter, Devon EX6 6HH

- 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 Paul Pearce of B G Pearce Ltd against the decision of Devon County Council.
 - The application Ref 16/00639/DCC, dated 18 April 2016, was refused by notice dated 17 June 2016.
 - The application sought planning permission for construction of a slurry pit without complying with conditions attached to planning permission Ref 14/00172/FULL, dated 16 July 2014.
 - The condition in dispute is No.9 which states that: No more than 1500 tonnes of septic tank waste shall be imported onto and processed at the site in any calendar year and the operator shall maintain records of waste importation and make these available for inspection by the Waste Planning Authority within 3 weeks of any request to do so.
 - The reason given for the condition is: To protect the living conditions of nearby residents in accordance with policy WPC2 of the Devon County Waste Local Plan (adopted June 2006) and W18 of the Devon County Waste Local Plan: Pre-submission Consultation (December 2013).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Paul Pearce of B G Pearce Ltd against Devon County Council. This application is the subject of a separate Decision.

Background and Main Issues

3. A slurry pit is now operational on the appeal site. The appellant wishes to increase the volume of septic tank waste that may be imported onto and processed at the site in any calendar year from a maximum of 1500 tonnes to a maximum of 5000 tonnes. He submits that the increase would assist with the practical functioning of the facility and would remove a restraint on the company's ability to trade effectively.
 4. The main issues are the effect that varying the condition would have on:
 - the living conditions of nearby residents; and,
 - the character of the surrounding countryside,with particular reference to the noise and vibration effects of transportation to the site.
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Reasons

Background

5. The appeal site forms part of the wider Tellams Yard site where a number of industrial activities are operational or have planning permission. This includes two existing animal carcass incinerators and an as yet unimplemented permission for a clinical waste incinerator. The site is in a predominantly rural area to the north west of the village of Cheriton Bishop.
6. From the A30 dual carriageway to the site there is a designated haul route along country lanes which is signposted along its route. At the time of my visit, a bridge over the A30 north of Hooperton Lane which forms part of the haul route was closed for highway maintenance and a diversion to surrounding lanes was in place. Accepting that road closures are beyond the control of the appellant, and having viewed the area as a whole, I am satisfied that the way-marked haul route is the main and most efficient route serving the slurry pit operation.
7. The appellant has made financial contributions to road improvements along parts of the haul route and I note the highway authority's comments that the proposal would be acceptable in highway safety terms. The Council's refusal is based on the noise and vibration effects of transporting the increased amount of waste to the site upon the living conditions of nearby residents and the peaceful enjoyment of the countryside.

The Effect on Living Conditions

8. Policy W18 of the Devon Waste Plan 2011-2031 states that peoples' quality of life and amenity will be protected from the adverse effects of waste management development and transportation, including any cumulative effects in conjunction with other development. It stipulates that any significant nuisance to dwellings and other sensitive properties close to waste sites or their transportation routes should be avoided, specifying noise and vibration impacts, including effects on areas of tranquility.
9. The appellant states that septic tank waste is ordinarily brought to the site by 10 tonne carrying capacity vehicles, normally tractor-towed tanker trailers. His evidence indicates that larger capacity HGVs are occasionally used for deliveries and that this reduces the total number of journeys required. The slurry is then stored in the pit until conditions allow for it to be spread on nearby land. The appellant states that a maximum of 1250 tonnes of slurry may be stored at any one time and that varying Condition 9 would allow the pit to be filled and emptied up to four times per year.
10. The current limit of 1500 tonnes of waste per annum generates approximately 150 journeys to the site (300 movements on the basis that journeys are two way trips), assuming the use of 10 tonne carrying capacity vehicles. Using the same assumption, the proposed increase of this limit to 5000 tonnes per annum would generate approximately 500 journeys to the site (1000 movements). This would equate to an increase of 350 journeys (700 movements) per annum.
11. The appellant submits that this would result in a total average of 1.6 HGV journeys (3.2 movements) per working day associated with the slurry pit. Based on the appellant's assumption of 304 working days per annum, this compares to a current average of approximately 0.5 journeys (1 movement) per day. The appellant states the company has turned down offers to rent buildings

at Tellams Yard for activities that could generate significantly higher levels of HGV traffic than currently generated by the site and that the proposal compares favourably in this context. I have not been provided with details of those operations sufficient to understand whether they may be carried out without the need for further planning permission but in any event, my remit is to assess the merits of the proposal before me.

12. Whilst the total number of HGV movements generated by the proposal would be relatively low, it would nonetheless lead to a more than threefold increase in the number of HGV journeys to the slurry pit compared with existing levels. The representations of people living along the haul route indicate some concern about the effect of the increased number of HGV movements on their quality of life, particularly in terms of noise.
13. No noise assessment has been provided but the appellant contends that only a small number of dwellings along the approach roads to the site are directly adjacent to the highway. Having viewed the haul route, I found that a number of residential properties are sited at close proximity to the roads along the route to the site. In particular, there is a small collection of dwellings at Pitton Barton, to the south west of the appeal site, comprising properties known as The Threshing Barn, The Paddocks, The Linhay and Caribarn which front directly onto the eastern side of the lane. Further south, a detached house known as Rydon together with an adjacent residential property sit close to the road at the staggered crossroads. There are also a small number of dwellings positioned close to the road immediately to the west of the entrance to Tellams Yard. All of these properties are located along the northern part of the haul route, which is on the approach to the appeal site and therefore it is likely that most HGVs travelling to and from the site will pass them at close proximity.
14. I acknowledge that the road near Pitton Barton is relatively level which may theoretically minimise the need for passing HGVs to perform gear changes in the immediate vicinity of the houses, but I am mindful that the range of noises emanating from passing HGVs is not limited to engine noise. Whilst I understand the Pitton Barton dwellings to have been relatively recent conversions of farm buildings, the purchasers would have been aware of the limits on the operation of nearby industrial activities in place at the time and would have had a reasonable expectation that their living conditions would be protected into the future.
15. I accept that the set back of some other properties from the carriageway would reduce the severity of noise impacts of passing vehicles when experienced from within those dwellings. I am mindful, however, that in most of these cases, the private residential gardens of the properties extend up to the road and occupiers' ability to enjoy their outdoor space is an important component of their quality of life.
16. I note that there was no objection to the proposed variation of Condition 9 from the environmental health officer of Mid Devon District Council. Condition 4 of the Council's July 2016 permission relating to the removal of Condition 8 of planning permission 14/00172/FULL limits the hours of deliveries to the slurry pit to between 0800 and 1800 on Monday-Friday and between 0800 and 1300 on Saturdays. As a result, no routine deliveries to the slurry pit would take place on Sundays, bank holidays or in the evenings. This would protect nearby residents at the most sensitive times of the day and week. Each noise event

would have a relatively short duration as a vehicle passes the property but for properties close to the road, the noise would be of high intensity, particularly in light of the low baseline noise levels in the area.

17. The frequency of noise and vibration events would increase significantly as a result of the proposal. As discussed in paragraph 11 above, deliveries to the slurry pit currently happen on average approximately every other day, whereas the proposal would result in deliveries on average at least once a day, and often more than once per day. This would take the noise impact from an intermittent effect to a more regular pattern and would be in addition to traffic movements generated by other parts of the business operating from Tellams Yard.
18. Whilst the appellant's records indicate that there was only more than one delivery to the slurry pit per day on 24 days of the year in 2015, there is no limit on the total number of deliveries that may be made on a single day. Given the nature of the business, it is conceivable that the proposal could lead to several deliveries per day at some times which could give rise to repeated, intense noise and vibration effects for residents close to the route. It is also reasonable to anticipate that a proportion of deliveries would continue to be undertaken by larger than 10 tonne capacity vehicles which due to their increased weight could have greater potential for adverse noise and vibration effects.
19. Taking into account all of the above matters, I consider that varying Condition 9 as proposed would give rise to a level of noise and vibration that would cause unacceptable harm to the living conditions of occupiers of properties close to the approach roads. This would conflict directly with the aims of Policy W18 of the Devon Waste Plan.

Effect on the Character of the Surrounding Area

20. The area surrounding Tellams Yard and its haul route is predominantly open countryside, with some dispersed residential development reflecting its agricultural character. The lanes along the haul route tend to be narrow with high hedge banks. Whilst there are sections of road that are level and straight, there are also sections that are undulating and winding.
21. At the time of my visit there were low volumes of vehicular traffic on the lanes and the area was relatively undisturbed by noise from human caused sources. The southernmost part of the haul route at Hask Lane passes through Dartmoor National Park and it is clear from the representations of local people that the area encompassing the haul route is valued for its tranquility.
22. I have found above that the proposal would result in a significant increase in HGV movements along the haul route to the site. I consider that the greater frequency of noise and vibration events related to HGV movements would erode the tranquil character of the surrounding rural area. I also consider that this increase would adversely affect the ability of local people to peacefully enjoy the lanes and surrounding area through activities such as walking, running, cycling and horse-riding.
23. Consequently, I consider that the proposed variation of Condition 9 would unacceptably harm the tranquil character of the countryside along the haul route to the site, contrary to Policy W18 of the Devon Waste Plan.

Conclusions

24. I therefore conclude that Condition 9 remains necessary to protect both the living conditions of nearby residents and the tranquil character of the surrounding countryside, having regard to Policy W18 of the Devon Waste Plan and all other material considerations. I also consider that the condition is enforceable, relevant to planning and to the development to be permitted, precise and reasonable in all other respects in accordance with paragraph 206 of the National Planning Policy Framework.
25. For the reasons given above I conclude that the appeal should be dismissed and the condition retained in its original form.

J F Powis

INSPECTOR