
Appeal Decision

Site visit made on 10 April 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 4th May 2017

Appeal Ref: APP/F1040/W/17/3167369

Land at The Castle Way, Willington, Derbyshire DE65 6BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by G D Golding Skip Hire Limited against the decision of South Derbyshire District Council.
 - The application Ref 9/2016/0479, dated 13 May 2016, was approved on 30 November 2016 and planning permission was granted subject to conditions.
 - The development permitted is change of use of vacant land to an area of hard standing for skip storage (Use Class B8).
 - The condition in dispute is No 13 which states that: This permission shall be for a limited period only, expiring at the end of 24 months from the first use of the site hereby permitted, on or before which date the use shall be discontinued and the site reinstated to the satisfaction of the Local Planning Authority unless, prior to that date, an application has been made and permission has been granted for an extended period.
 - The reason given for the condition is: To conform with Section 91(1) of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004) in order that the impact of the noise from the site can be assessed.
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Decision

1. The appeal is allowed and the planning permission Ref 9/2016/0479 for change of use of vacant land to an area of hard standing for skip storage (Use Class B8) at land at The Castle Way, Willington, Derbyshire DE65 6BW granted on 30 November 2016 by South Derbyshire District Council, is varied by deleting condition 13 and amending Condition 7 as set out below.
 - 7) The use allowed shall not commence until a Site Management and Operation Plan has been submitted to and approved in writing by the local planning authority. The skip storage use shall thereafter comply with the requirements of the approved plan.

Application for costs

2. An application for costs was made by G D Golding Skip Hire Limited against South Derbyshire District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The site with permission for the storage of skips is contained within roads forming part of a grade separated junction to the A38 trunk road. The A38 is a busy two-lane dual carriageway which runs directly alongside the western site boundary. The southern boundary abuts the raised section of the A5132 which crosses the trunk road. Access to the site is from the north directly from The
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Castle Way which links to the on and off slip roads to the southbound carriageway of the A38.

4. There is a counterpart site within a similar road arrangement on the opposite side of the A38 which contains a car sales operation. There are trunk road service facilities at both the off slips immediately north of this junction. The services on the east side have an exit onto The Castle Way. East from these there is frontage housing along the north-side The Castle Way which faces the appeal site. These 1930s semi-detached houses pre-date the more recent changes to the road system which have altered the previously more rural character of this area. The large amount of traffic using the A38, and this junction, creates a relatively high volume of background noise which was evident at my visit during the middle of the day
5. The skip storage permitted would have convenient access to the strategic road network via the adjacent the A38. The main part of the site is currently undeveloped and a small section in the western corner contains a pumping station building and compound. The approved use would provide over-flow storage capacity for a main skip hire business operating from Burton-on-Trent. As such the proposal had envisaged a level of use averaging at two skip deliveries per day, resulting in four movements to and from the site.
6. The permission is subject to conditions that there will be no more than 10 vehicle movements bringing skips in or out of the site per day, and limiting these to taking place only between 0800 – 1700 Mondays to Fridays and 0800 – 1200 on Saturdays, with the requirement that no skip or vehicle maintenance takes place here. The Council's decision was based on a Noise Assessment and a further condition ties the approved use to its recommendations. Additional conditions relate to the requirements for the improved new access and landscaping and another limits the consent to skip storage only and not a general B8 use.
7. The Council had considered an officer recommendation for approval subject to these conditions, but decided that the permission should also be for a two-year temporary period to allow time to assess the noise impacts of the use before deciding whether or not to grant a permanent consent. The appeal concerns only the condition that makes the approval temporary for two years. Consequently the main issue whether this condition is necessary and reasonable having regard to the living conditions of the occupiers of the adjacent houses along The Castle Way, with particular regard to the effects from noise.

Reasons

8. Paragraph 206 of the National Planning Policy Framework (the Framework) requires that planning conditions should only be imposed where they are necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.
9. The Planning Practice Guide¹ (PPG) acknowledges that under section 72 of the Town and Country Planning Act 1990 the Council may grant planning permission for a specified temporary period only. However the PPG advises that where a proposal complies with development plan policy or where material

¹ Paragraph: 014 Reference ID: 21a-014-20140306

considerations indicate otherwise that planning permission should be granted, a temporary permission would rarely pass the Framework test of necessity.

10. The Council has made the permission temporary for a two year period as a trial run to assess the effect of the development on the area. This is one circumstance where the PPG advises such a condition may be appropriate. The reason relates to the need to protect the living conditions of the occupiers of the adjacent houses along The Castle Way from any unforeseen noise problem where these residents already experience a more continuous level of background traffic sound from the A38.
11. Traffic noise is a relatively constant sound that residents would become attenuated to. More sudden and intermittent sounds, such as might arise from the movement of large hollow metal skips, the release of security chains and from heavy vehicle reverse warning alarms, could have a more disturbing impact and harm the living conditions of nearby residents by exacerbating the existing background traffic sound and adversely affecting health and well-being.
12. However, having considered the evidence in the appellant's Noise Assessment², I am persuaded that such intermittent sounds would be at a level below and contained within that of the ambient sound levels of the nearby road traffic. It is noted that the Council's environmental health officer found no fault with the Noise Assessment's findings. I am aware of no proposals to monitor the noise of the permitted operation and, with safeguards the other conditions provide, am not persuaded that the noise generated by the approved use would cause material harm to the living conditions of the residents nearby. Therefore, a condition providing for a two-year temporary permission would not in this case pass the test of being necessary required by the Framework.
13. The implementation of the permission would require significant investment to surface the site, create the improved access and reinforce the boundary planting. Consequently, the condition that the permission would be temporary for two years, with no guarantee of a subsequently permanent consent, would be unreasonable in relation to the initial outlay of expenditure required. The Framework test of reasonableness would not be met.

Other Matters

14. Consideration has been given to the further concerns raised by interested parties. Regarding the matter of visual intrusion and the loss of rural views these would not provide sufficient grounds to question the permission already granted, particularly given conditions that would require supplementary boundary planting.
15. Regarding any harmful impacts arising from the cleanliness of the skips, or those collecting stagnant water, and any resulting nuisance caused by smell, insects or the attraction of vermin, much would depend on the satisfactory operation and management of the site. The same would apply to any problems arising from dust.
16. The existing Condition 7 requires that the scheme be implemented in accordance with the general measures recommended in the Noise Assessment. Some of these, such as hours of operation are controlled through separate

² Noise Assessment – Proposed Skip Storage Facility, Castle Way, Willington, Derbyshire – Vibrock 23 August 2016

conditions. Others, such as avoiding any unnecessary horn usage or staff shouting would not be realistically enforceable.

17. Therefore Condition 7 is replaced with a condition that the skip storage use be carried out in accordance with a Site Operation and Management Plan which should be the subject of prior written agreement with the Council. Thereby the Council might decide what measures it might seek to ensure the operation takes place in a neighbourly manner to minimise any reasonably unavoidable harm to occupiers living nearby. Such a condition would be necessary in the interests of the living conditions of nearby residents.

Conclusion

18. The Council's concerns, and those of neighbouring occupiers, are appreciated. Nevertheless, I find no reason to question the appropriateness in planning terms of the use permitted. For the reasons given, I have not found the condition which grants approval for a temporary two-year period to be either necessary or reasonable. Apart from Condition 7, which is amended for the reasons explained, the other conditions would meet the tests set out in the Framework. Consequently, having taken into consideration all other matters raised, I conclude that the appeal should be allowed in the terms set out above.

Jonathan Price

INSPECTOR