

Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 19 June 2017

Appeal Ref: APP/A2280/W/17/3166401

Turkey Hall Farm, Malmaynes Hall Road, Upper Stoke, Rochester ME3 9SG

- 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 AC Goatham and Son against the decision of The Medway Council.
 - The application Ref MC/16/1574, dated 7 April 2016, was refused by notice dated 15 July 2016.
 - The development proposed is the change in use of land for the stationing and storage of 16 rural worker caravans and provision of associated hardstanding, drainage and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the change in use of land for the stationing and storage of 16 rural worker caravans and provision of associated hardstanding, drainage and landscaping at Turkey Hall Farm, Malmaynes Hall Road, Upper Stoke, Rochester ME3 9SG in accordance with the terms of the application, Ref MC/16/1574, dated 7 April 2016, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by AC Goatham and Son against the decision of The Medway Council. This application is the subject of a separate Decision.

Procedural Matters

3. An alternative Site Location Plan 01.002.1292 – 05 was submitted at the hearing indicating a potential amenity area on the northern boundary of the site. The main parties agreed that the amendment shown was very minor and could be used for illustration purposes. I agree and I have determined the appeal on this basis, treating the submitted plan and details provided as illustrative, insofar as they relate to the potential amenity area.
 4. A signed and completed S106 Unilateral Undertaking (UU) was submitted by the appellant at the hearing. It would to secure contributions towards strategic mitigations measures on local Special Protection Areas (SPAs) and Ramsar sites in the area and I return to this matter later.
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Main Issues

5. The main issues are the impact of the development on
- (i) the living conditions of the occupiers of the neighbouring properties with particular regard to noise and disturbance;
 - (ii) the living conditions of the future occupiers and whether a satisfactory standard of accommodation would be provided; and
 - (iii) the local Special Protection Areas (SPAs) and Ramsar sites and whether any adverse effects can be effectively mitigated.

Reasons

Living conditions of the occupiers of the neighbouring properties

6. The appeal site consists of a part of the open field located at the rear of one of a number of agricultural buildings located within Turkey Hall Farm complex. It is set back from the road in an isolated rural location and accessed via an unmade track between the buildings. Turkey Hall Farm House and a pair of semi-detached dwellings are situated at the front of the farm complex on Malmaynes Hall Road.
7. Policy BNE2 of the Medway Local Plan 2003 (LP) seeks to prevent development having a harmful effect on residents and protect the amenities of future occupants and nearby residents from, amongst other things, noise, vibrations, light, activity levels and traffic generation. This policy, although somewhat dated, is consistent with the National Planning Policy Framework (the Framework) core principle of a good standard of amenity for all existing and future occupants of land and buildings.
8. Paragraph 123 of the Framework states that planning decisions should aim, amongst other things, to avoid noise from giving rise to significant adverse effects on health and quality of life as result of new development. The Government's Noise Policy Statement for England (NPSE) defines the terms in the Framework¹ and the Planning Practice Guidance (PPG) makes it clear that decision taking should consider the potential for an effect from noise and consider whether or not there would be a 'significant adverse' or 'adverse' effect that is likely to occur.
9. The proposal involves the change of use of land for the stationing and storage of 16 rural worker mobile homes and provision of associated hardstanding, drainage and landscaping. The proposed mobile homes would be occupied by seasonal workers employed mainly to carry out work at Turkey Hall Farm and occasionally at one of the appellant's other farms in the area. Turkey Hall Farm is a top fruit farm, with about 165 acres of recently planted apple and pear orchards. The appellant's supporting statement outlines that the workers would be undertaking general horticultural operations and would work in teams carrying out harvesting, packing, tree pruning and topping, mowing, spraying and replanting.
10. The main concern of the Council is the impact of the proposal on the nearest residential properties at Turkey Hall Farm House and a pair of semi-detached

¹ Department for Environment Food and Rural Affairs Noise Policy Statement for England March 2010

dwellings both about 60m away from the appeal site. The Council and the local residents are concerned that the proposed development would lead to a significant adverse impact on the amenities of the neighbouring properties as a result of increased disturbance from general comings and goings from the site and the noise created by the general activities. There is particular concern in relation to the outdoor living of the future occupants of the mobile homes by way of BBQs, gatherings and socialising outside during the summer months. In addition, the Council considers that the proposed number of occupants and restricted living conditions provided by the mobile home might encourage the future occupants to socialise outdoors.

11. However, residents living near to a main road and a farm complex might reasonably expect to experience some noise and disturbance during the daytime and evening activities. My daytime site visit indicated that the area was fairly busy, experiencing some noise and disturbance particularly associated with traffic movements along the main road. A noise assessment undertaken by the appellant and submitted before the hearing², shows that average background noise levels of 54dB LAeq (daytime) and 46.8dB LAeq (night-time) already exist at the site. The report outlines that this is already above those considered to be moderate annoyance in accordance with the World Health Organisation (WHO) recommended day time and evening noise level of 50dB LAeq over a 16 hour period³. The report indicates that these relatively high background noise levels are largely as a result of the site's position adjacent to a main road and the farm complex.
12. As a worst case scenario, the report has predicted noise levels of 37dB LAeq outside the windows of the potentially affected residential properties and an internal noise level of 24dB LAeq⁴. This would be below the WHO recommended night time noise level of 30dB LAeq over an 8 hour period. Both externally and internally, the predicted noise levels at the residential properties would fall within the NPSE No Observable Effect Level and any significant adverse effect under the terms of the PPG that would require appropriate mitigation measures. This is a material consideration to which I can attach significant weight in making this decision.
13. The appellant outlined in the appeal statement and in oral evidence at the hearing that the staff would work long hours generally working from 0700 to 1900 each day, although this would vary depending on the seasons. There would, therefore, be little free time for socialising. The appellant also stated that the numbers on the site would vary throughout the day as they worked in teams and throughout the year from around 30 staff employed in the low seasons in the first quarter of the calendar year, to an average of between 48-64 people for the remainder of the year. This would rise to a requirement of around 96 workers based on forecast fruit production once the farm was fully operational by around 2020.
14. The appellant states that this is comparable to the circumstances at one of the appellant's other farms at Howt Green Farm where 16 mobile homes were allowed on appeal and the total number of seasonal workers was capped at 96 workers by a planning condition⁵.

² RBA Acoustics External Noise Assessment Prepared 12 April 2017

³ RBA Acoustics External Noise Assessment Prepared 12 April 2017: Table 7957/T6 and Paragraph 4.1.6

⁴ RBA Acoustics External Noise Assessment Prepared 12 April 2017: Paragraph 6.4.9

⁵ APP/V2255/W/15/3133538

15. No evidence has been provided by the Council to contradict the appellant's claims concerning the likely number of workers who would occupy the mobile homes. There is also no specific evidence that workers would either enter and leave the mobile homes at the same time nor congregate and gather outside the mobile homes causing unacceptable external noise and disturbance. It is likely that most seasonal workers are unlikely to have a car, and would be transported to and from the site using the appellant's own transport. It is therefore unlikely that there would be significant noise from vehicular activity.
16. I am mindful that no objections were submitted by the Council's Environmental Health officers concerning any adverse impact which might be caused to the living conditions of the occupiers of neighbouring properties by the proposed development. The appellant has outlined that a designated on-site manager would be present at all times to manage the workers and the appellant together with the employment agency, Concordia, from where many of the seasonal worker are employed, operate a zero tolerance policy as a deterrent to unneighbourly behaviour. Therefore whilst this proposal may cause some limited increase in noise and disturbance, I do not consider this harm would be sufficient to justify withholding permission on these grounds in this case.
17. Both parties agreed that the alternative Site Location Plan 01.002.1292 – 05 presented at the hearing indicating a potential amenity area on the northern boundary of the site was not a viable option and would potentially encourage the workers to gather in one location on the site. I agree that this is not a viable option and therefore have given it limited weight in making my decision.
18. Consequently, based on evidence before me, I conclude that the proposed development would not adversely harm the living conditions of the occupiers of the neighbouring properties with particular regard to noise and disturbance. It would accord with Policy BNE2 of the Medway Local Plan 2003 (LP) that seeks to prevent development having a harmful effect on residents and protect the amenities of future occupants and nearby residents. In addition, it would accord with the aims of the Framework that development should seek to secure a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17) and avoid noise from giving rise to significant adverse effects on health and quality of life (paragraph 123).

Living conditions of the future occupiers

19. The Council outlines the importance of ensuring that mobile homes provide satisfactory living conditions for the benefit of the future occupants. The internal layout of the mobile homes show they would not meet the Council's minimum accepted standard for a 2 person one bed flat. Whilst the Council recognise that the space standards for a flat are not directly comparable for this temporary form of living, it does, however, consider that the occupants could be in the mobiles homes for a reasonably long period during the year.
20. The Council, however, accepted in it's appeal statement and during the hearing that no space standards existed for the intended use of the mobile homes for seasonal workers. The appellant outlines that each of the proposed mobile homes could accommodate up to 6 people and up to a maximum of 96 people on this site, although this would only likely to be for limited periods during the high season once the farm was fully operational. No evidence has been provided by the Council to contradict the appellant's claims concerning the

likely number of workers who would occupy the mobile homes and the duration for which they would occupy them.

21. I note in the appellant's statement that the scheme as originally submitted proposed a maximum capacity of 96 occupants and that, in light of the Council's view that a proposal for 64 occupants was feasible they, in the interest of moving the development scheme forward, agreed to facilitate only 4 persons per unit. However the appellant goes on to state that they did not agree that 64 occupants represents any maximum acceptable number of occupants required at Turkey Hall Farm⁶.
22. The appellant sets out that the standard of the accommodation provided has to comply with the Concordia guidance and recommendations for growers to ensure high welfare standards on farms for workers. Accordingly, based on the evidence before me and oral evidence during the hearing, I see no reasonable justification to restrict the number of people to 64 as proposed by the Council in this case.
23. The Council also considers that, in some larger farms, where comparable numbers of mobile homes are provided, separate amenity blocks should be provided so that the occupants have cooking, washing and laundry facilities in separate blocks. The Council considered that this would alleviate the cramped accommodation in the mobile homes and would improve the living conditions for the future occupants.
24. However, the appellant outlined that no such separate amenity block facility was provided or required on the appellant's other farms where similar numbers of mobile homes are provided for seasonal workers at Meresborough Nursery and Howt Green Farm. No evidence has been provided by the Council to contradict the appellant's claims on this matter. In addition, concerns were raised by the appellant during the hearing that such a facility would potentially encourage the workers to gather in one location on the site in a similar way to the potential amenity area outlined above. This could cause increased noise and disturbance and such would not be an option that would be encouraged. Based on the evidence before me, I therefore cannot see any reasonable justification for this requirement in this case.
25. Consequently, in the absence of evidence to the contrary, I conclude that the proposed development would not adversely harm the living conditions of the future occupants and a satisfactory standard of accommodation would be provided by the proposed mobile homes. It would accord with Policy BNE2 of the LP for the reasons set out above. In addition, it would accord with the aims of the Framework that development should seek to secure a good standard of amenity for all future occupants of land and buildings (paragraph 17).

S106 Unilateral Undertaking and the local SPAs and Ramsar sites in the area

26. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.

⁶ Appellant's appeal statement para. 5.5

27. A signed and completed UU has been provided by the appellant showing a financial contributions totalling £223.58 per dwelling/mobile home towards strategic mitigation measures to avoid adverse effects on the Thames Estuary and Marshes SPA and Ramsar site, the Medway Estuary and Marshes SPA and Swales SPA and Ramsar site. The appellant submitted the UU in response to a consultation response from Natural England on the appeal scheme during the initial planning application process and had not been requested by the Council nor formed part of the Council's appeal case.
28. The Council indicated during the hearing that this contribution was a standard requirement for any new development within 6km of the SPA and Ramsar sites that might increase the pressure on the nature conservation interests of these sites and was not subject to pooling restrictions under the CIL Regulation. However, no other supporting information was provided by the Council to show how the appeal site related to the SPA and Ramsar sites, the likelihood of any adverse effects on the designated sites and what the financial contribution would be used for.
29. Consequently, in the absence of supporting evidence to the contrary, I am not satisfied that the proposed contribution is necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with the Framework and the CIL Regulations 122 and 123. I have therefore attached little weight to this UU in reaching my decision.

Other matters

30. I note the objections from local residents to the proposal on the basis of the noise and disturbance, number of future occupants, requirement for a new access, domestic waste, water pressure and utilities. However, I have addressed the matters relating to the impacts on the noise and disturbance and the future occupiers in the main issues above and the other matters did not form part of the Council's reasons for refusal. The Highway Authority has no objections to the proposal. Based on the evidence before me, I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal and can be dealt with by planning conditions where appropriate.
31. I have noted the support and comments from Stoke Parish Council regarding the proposal on the basis of highways, restricting the numbers and length of time the mobile homes would be occupied. However, I have addressed these matters and they can be dealt with by planning conditions where appropriate.

Conditions

32. Having regard to the Framework, and in particular paragraph 206, I have considered the conditions suggested by the Council. The conditions I shall impose are based on those suggested by the Council but with some variation to the wording in the interests of clarity.
33. In addition to the standard time limit condition, I have specified the approved plans as this provides certainty. Details of the disposal of foul and surface water are necessary in order to prevent ground water pollution and flooding. Conditions requiring details of boundary treatments and external lighting are necessary to protect the amenities of local residents and the character and appearance of the area. For similar reasons, the dark green colour external

finishes of the mobile homes are reasonable to ensure the proposal does not adversely affect the character and appearance of the rural location.

34. For the construction period, in order to mitigate the environmental impact of proposed works, restricting the hours of construction works and precautions to limit construction vehicles depositing mud on the highway are necessary to protect the amenities of local residents and to ensure highway safety. Conditions restricting occupation of the mobile homes, the numbers and remediation measures when they are no longer required are necessary and reasonable in order to reflect special occupational need for the permitted development and to protect the rural character of the area. For similar reasons, restricting the occupation of the mobile homes to seasonal workers employed by AC Goatham & Son only is considered necessary and reasonable.

Conclusion

35. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be allowed.

David Troy

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Goatham	Appellant
Mr J Lopez	FTB Chambers
Mr C Stewart	RBA Acoustics
Mr R Keeble	RBA Acoustics
Mr T Ogden	Bloomfields Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs H Gunner	Senior Planner
Ms V Nutley	Legal Services Officer

DOCUMENTS SUBMITTED DURING THE HEARING

- Doc 1 Alternative Site Location Plan 01.002.1292 – 05 indicating Amenity Area submitted by the appellant.
- Doc 2 A signed and completed S106 Unilateral Undertaking dated 12 May 2017 submitted by the appellant.
- Doc 3 An application for costs made by AC Goatham and Son against the decision of The Medway Council

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan, 01.002.1292 –01, 01.002.1292 – 02, 01.002.1292 – 03, 01.002.1292 – 04 and 884064 - 3.
- 3) Prior to the commencement of development hereby approved, full details of the method of disposal of foul and surface waters shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to occupation of the development hereby approved and thereafter retained.
- 4) No construction work, including demolition or engineering operations, shall take place outside 08:00 hours to 18:00 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays, nor at any time on Sundays or Bank or Public Holidays.
- 5) Prior to the commencement of the development hereby approved, full details of adequate precautions to be taken during the period of construction to prevent the deposit of mud and or other debris on the public highway arising from the development hereby approved shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented as approved until the works have been completed.
- 6) Prior to the commencement of the development hereby approved, details of all fencing and hedging to be located along the boundaries of the proposed site, shall be submitted to and approved in writing by the local planning authority. The approved details shall be erected prior to occupation of any of the mobile homes and thereafter retained.
- 7) The mobile homes hereby permitted shall be used for the purpose of seasonal workers accommodation in association with agriculture as defined by Section 336(i) of the Town and Country Planning Act 1990, as amended (or any definition which replaces it) and for no other purpose including Class C3 (residential) of the Use Classes Order 1987, as amended. Such accommodated seasonal workers should undertake work for AC Goatham & Son only (or any successor in title).
- 8) The total number of seasonal agricultural workers accommodated within the mobile homes hereby permitted shall not exceed 6 persons per caravan, a total of 96 persons (including immediate family members).
- 9) The caravans hereby permitted shall not be used for human habitation between 31 December in any year and 1 March in the following year.
- 10) Should any of the mobile homes become redundant or unused for two consecutive years for the purposes set out in Condition 7, they shall be removed from the site and the land restored to its original conditions; that is the hardstanding removed and the land restored to its natural state as farmed land. Should all the mobile homes be removed under this condition, the fences subject to condition 6 of this permission shall be removed within 3 months of the cessation of the use and removal of the mobile homes.
- 11) At no time shall there be more than 16 mobile homes stationed or

stored within the area of the appeal site. Furthermore the caravans shall only be sited in the area shown on drawing 01.002.1292 - 01.

- 12) The mobile homes shall be coloured dark green in colour and thereafter retained in such colour.
- 13) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details submitted and agreed in writing by the local planning authority. Such details shall include a statement as to the need for the lighting, the hours and frequency of operation, the areas of illumination and beam angles, and the number and location of any lighting. Thereafter any lighting details shall be installed as agreed and retained in that condition.