
Appeal Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 20th June 2017

Appeal Ref: APP/Q3305/W/17/3168424

Whitebridge Park, Glastonbury Road, Meare, Glastonbury BA6 9SZ

- 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 Edwin King of RES Ltd against the decision of Mendip District Council.
 - The application Ref 2016/0473/VRC, dated 16 February 2016, was refused by notice dated 30 September 2016.
 - The application sought planning permission for erection of a replacement B2 workshop with ancillary office accommodation and alteration to existing access without complying with conditions attached to planning permission Ref 2014/0547/FUL, dated 24 July 2014.
 - The conditions in dispute are No 6, which states: "*Activity associated with the development hereby approved which are audible from the curtilage of the nearest residential property, with the exception of deliveries to or from the site, shall be carried [on] only between the hours of 07:00 and 18:00 Monday to Friday (inclusive), 07:00 and 14:00 on Saturdays, and at no time on Sundays or Bank or Public Holidays*" and; No 7 which states: "*There shall be no deliveries to or from the site outside of the hours of 0700 hours and 1800 hours Monday to Saturday and at no time on Sundays or Bank Holidays*".
 - The reasons given for the conditions are: No 6 "*In the interests of minimising the effect of noise from the development on the occupiers of nearby properties in the interests of neighbour amenity having regard to Saved Policies Q1/Q12 of Mendip District Local Plan, adopted December 2002*" and No 7: "*To safeguard the amenities of neighbours residents having regard to Saved Policies Q1/Q12 of Mendip District Local Plan, adopted December 2002*".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of varying condition 6 and removing condition 7 on the living conditions of the occupiers of adjoining residential property, having regard to noise and disturbance.

Reasons

3. The appeal site is located in a fairly remote area of open countryside. It consists of a recently erected general industrial unit and its associated external parking and storage areas. The unit is occupied by a firm of mechanical engineers who maintain repair and service waste recycling equipment.
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Vehicular access to the appeal site from the B3151 Meare Road is shared with Whitebridge Farm, a residential property in separate ownership. Whitebridge Farm consists of a detached dwelling stood in generous gardens. The dwelling fronts onto the shared access.

4. The effect of condition 6 above is to restrict activity at the appeal site audible from the curtilage of Whitebridge Farm during unsocial hours, apart from deliveries. Condition 7 restricts deliveries to the appeal site during similar unsocial hours to those of condition 6, apart from Saturdays where deliveries could occur up to 1800. It is clear from the planning permission that both conditions were intended to be read together and there is little tension between their respective requirements.
5. I understand that the appellant's business involves staff arriving at or leaving the appeal site to attend jobs throughout the UK as well as the collection and delivery of plant. The former has occurred at times when such activity is restricted by condition 6. The appellant proposes that condition 6 is varied and condition 7 is removed, so that the current restrictions on these activities would no longer apply.

Living conditions

6. When I stood on the shared access in front of Whitebridge Farm, it was difficult to identify any significant noise and disturbance arising from the appeal site. This was mainly due to the noise associated with the high level of passing traffic on the adjacent B3151. Therefore, I accept that traffic noise can be a significant factor affecting the adjoining residential occupiers' enjoyment of their property. Even so, it could reasonably be anticipated that traffic levels would fall away significantly by the later evening and will also be low at night and in the early morning. Similarly, traffic levels are likely to be lower at weekends, especially on Sundays. Consequently, the occupiers of Whitebridge Farm could normally expect to enjoy a degree of peace and quiet at those times due to low background noise levels, also having regard to the remote countryside location.
7. The appellant's evidence suggests that there may have been infrequent staff visits to the appeal site outside of the permitted hours in the past. As the visits generally took place before 2000 hours, the evidence also suggests that noise and disturbance associated with those visits is likely to have been assimilated into the background noise of road traffic. Nevertheless, by varying condition 6 as proposed it would be possible for staff to arrive at and leave the appeal site at all times. This could include late into the night or very early in the morning. Even though it has been suggested that heavier plant and equipment would not be collected by HGVs, smaller deliveries and collections could also take place without any restriction on times, if condition 7 were removed.
8. Without the disputed conditions, there would also be no restriction on the frequency and duration on staff comings and goings or deliveries and collections. The appellant contends that the past pattern of infrequent visits to the appeal site, which have been generally confined to early evenings and weekends, is typical for the business. Even if that pattern continued in the short term, there is no firm assurance that it would not change in the future, perhaps as the needs of the business changed, leading to a significant increase in the incidences of comings and goings and associated activities during unsocial hours. Moreover, planning permission runs with the land. A future

industrial business occupying the appeal site may have a different business model, which could involve a more intensive pattern of comings and goings and associated activities during unsocial hours.

9. The above vehicular comings and goings and activities at the appeal site would be likely to generate significant noise and disturbance at times where it would not otherwise be assimilated by traffic noise. This is likely to include noise from vehicles passing along the shared access, which apart from the apron adjacent to the B3151 has not been tarmacked, as well as from activities such as the revving of engines, vehicle and building doors opening and closing, loading and unloading activities, radio usage, staff conversations and the opening and closing of the gates to the appeal site.
10. In the absence of the background noise of passing traffic, the occupiers of Whitebridge Farm are likely to be highly sensitive to the above sources of noise and disturbance. This sensitivity is also likely to be further increased at times, for example during the summer months, when windows in the house are left open or the occupiers are enjoying their garden. Lights from arriving and departing vehicles and lighting at the appeal site are also likely to disturb the adjoining occupiers during the hours of darkness, having regard to the lack of significant sources of external lighting in the surrounding countryside.
11. There is no firm evidence before me to suggest that the levels of noise that would be experienced by the adjoining residential occupiers would fall below what could be regarded as the Lowest Observed Adverse Effect Level (LOAEL) in the Noise Policy Statement for England (NPSE)¹. The Council Environmental Health Officer's comments regarding staff comings and goings cannot be read in isolation from their overall objection to deliveries and associated loading and unloading activities outside of the currently permitted hours, as the latter is an integral part of the proposed changes to the disputed conditions.
12. Therefore, taking all of the above factors into account, the noise and disturbance that would be caused as a result of the proposed changes to conditions 6 and 7 would be experienced by the occupiers of the adjoining residential property as a significant and unacceptable erosion of the living conditions that they currently enjoy. Accordingly, the disputed conditions are necessary and reasonable and satisfy the tests in paragraph 206 of the National Planning Policy Framework (the Framework).
13. Consequently, the proposed changes to the disputed conditions would not accord with criterion (b) of Policy DP7 of the adopted Mendip Local Plan (LP), as the amenity of users of neighbouring buildings would not be protected. For the above reasons, the proposed changes to the disputed conditions would also fail to accord with LP Policy DP8, as there would be an unacceptable adverse environmental impact when assessed against residential amenity. I do not regard LP Policy DP8 as setting a higher threshold for harm to occur in this respect.
14. The failure to secure a good standard of amenity for existing occupants of land and buildings would also be inconsistent with one of the core planning principles at paragraph 17 of the Framework. Further, for the above reasons paragraphs 109 and 123 of the Framework do not provide any measure of support for varying and removing the disputed conditions.

¹ DEFRA 2010.

Other matters

15. I have also taken account of the effect that dismissing the appeal might have on the appellant's business, which employs a significant number of people. However, that matter would not warrant setting aside the harm that would be caused by varying condition 6 and removing condition 7 as proposed.

Conclusion

16. The variation of condition 6 and removal of condition 7 proposed would not accord with the Development Plan and would be inconsistent with the Framework. Therefore, I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR