
Appeal Decision

Hearing held on 27 April 2017

Site visit made on 27 April 2017

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 18th August 2017

Appeal Ref: APP/W3520/W/16/3162299

Thurston Park, Church Road, Thurston IP31 3RN

- 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 Dalton, Smart Garden Offices against the decision of Mid Suffolk District Council.
 - The application Ref 2058/16, dated 23 April 2014, was refused by notice dated 21 September 2016.
 - The application sought planning permission for change of use of horticultural buildings and yard to manufacture, store and sell portable garden buildings, fencing and ancillary equipment without complying with conditions attached to planning permission Ref 0878/97, dated 12 February 1998.
 - The conditions in dispute are No 12 which states that: *The hereby approved use shall only operate between 0800 and 1700 hrs Mondays to Fridays and between 0800 and 1500 hrs on Saturdays. There shall be no workings at any other time with the exception of administration and sales use between 1000 and 1600 hours on Sundays and Bank Holidays;* and No 15 which states that: *the operation of powered machinery shall be confined to within the workshop building referred to as building no 3 on the amended drawing scale 1:500 date stamped 19 December 1997 and as indicated in the accompanying letter.*
 - The reasons given for the conditions are: *to enable the local planning authority to retain control over the development in the interests of amenity, and in the interests of the amenity of the occupants or nearby buildings.*
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Dalton, Smart Garden Offices against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. I visited the area around 1800 hrs on 26 April 2017, and made an accompanied visit after the sitting to the premises and the gardens of nearby dwellings.
4. The appellant presented new evidence at the hearing, which had been received by the Council the previous day. As the revised layout included extensions to the proposed 3.5 metre acoustic fence, as well revisions to the geometry of the

vehicular access, I concluded that it would be prejudicial to the Council and other interested parties to deny them an opportunity to make further comment. As such, the hearing was adjourned following the sitting and site visit.

5. The Council undertook to carry out a reconsultation exercise and the appellant submitted new evidence to the Council on 11 May 2017. On receipt of further objections I concluded that there was no need to arrange another sitting. I also invited the main parties to submit applications for costs, to be dealt with under the procedure for written representations.
6. The appellant argues that as some of the comments received for the reconsultation were received after the Council's deadline, they should not be taken into account. However, the Council's reconsultation letter appears to have been incorrectly dated¹ and in any case the appellant has had an opportunity to respond to these comments. As such I am not satisfied that either main party is prejudiced by my consideration of all those comments.
7. The main parties withdrew for 30 minutes at the start of the sitting to consider whether the new evidence would enable agreement to be reached between the main parties in respect of noise, and the relevant conditions to be imposed if the appeal was allowed.

Background and Main Issues

8. This application was made to vary conditions attached to the original permission to extend operating hours and to enable the use of powered machinery in Building 2 between 0600 – 1800 hrs and use of the access road from 0500 – 1800 hrs. The premises changed hands in January 2015 and complaints were first received that operations were in breach of planning permission in autumn 2015. The Council has subsequently initiated enforcement proceedings which are in abeyance until the outcome of this appeal.
9. The determinative factors in this appeal as identified by the Council are whether the increased operating hours and use of powered machinery in Building 2, and use of the access road from 0500 hrs would generate noise and disturbance to the detriment of the living conditions of occupiers of nearby dwellings with regard to noise and disturbance, as well as the effect of the proposed acoustic fence on the locality. I have also concluded it is reasonable to include a consideration of outlook and light for occupiers of Cherry Trees.
10. Accordingly, the main issue is whether the conditions are reasonable and necessary, with reference to the living conditions of occupiers of nearby dwellings with respect to noise and disturbance, outlook and light, and the character and appearance of the area.

Reasons

Policy Background

11. The appellant argued that points listed under Policy GP1 of the Local Plan² (LP), which is a general design and layout policy, do not relate to the appeal proposals as it is not a residential development. However, the policy refers to

¹ 13 May 2017 is a Saturday.

² Mid Suffolk Local Plan, adopted September 1998

new development, without stating its particular nature and the first point states that proposals should maintain or enhance the character and appearance of their surroundings. I conclude that this is an appropriate policy against which to test the effect of the development on the character and appearance of the area.

12. With regard to LP Policy E5, which is concerned with change of use within existing industrial/commercial areas, the appellant suggested that although the appeal is concerned with an intensification of use, this is not a change of use. However, the extension of specific operating processes to other buildings, and increased operating hours would amount to a change of use over and above what has already been permitted. This view is reinforced by the supporting text to LP Policy E5 which refers to the cumulative effects of expansion, including operational changes. As such, this policy is of relevance to this appeal, particularly where it is stated that when planning permission is granted it may be appropriate to control further development in order to safeguard rural or local amenity.
13. LP Policy E8 is concerned with extensions to industrial and commercial premises. The appellant argued that the business should be considered as a mixed use rather than a conventional industrial site. However, it remains that the site is used for manufacture. Furthermore, although I appreciate that it is not proposed to construct a physical extension to the existing buildings, the development would extend the use of some operations into a part of the site where they are currently prohibited. As such I conclude that this policy is of some, if lesser, relevance.
14. There was some discussion of Policy CS5 of the Core Strategy³ (CS). Both main parties agreed that it is a general design policy. The appellant further agreed that if the design of the development is found to be satisfactory, it would pass the test of CS Policy CS5.
15. It was agreed by the main parties that LP Policy H17 does not apply to this appeal and consequently I have not considered it further in my reasoning.
16. Policies FC1 and FC1.1 of the Core Strategy Focussed Review⁴ (CSFR) are generally reflective of the presumption of sustainable development set out in the National Planning Policy Framework (the Framework).

Living conditions - noise and disturbance

17. The appeal site is located on the edge of Thurston, a small rural settlement to the east of Bury St Edmunds. The site abuts residential dwellings on its south-western boundary and the site access road runs alongside the plot boundary of Cherry Trees, an extended chalet bungalow.
18. The business is a manufacturing premises producing high value garden offices and studios. The appellant argues that in order to operate efficiently it is necessary to operate a two-shift system, and as the installation teams operate across the country, vehicles need to leave the premises at 0500hrs. The buildings do not have acoustic insulation, but as material has to be transferred between buildings, it is difficult to operate properly with the doors shut.

³ Mid Suffolk Local Development Framework Core Strategy 2008

⁴ Mid Suffolk Local Development Framework Core Strategy Focused Review 2012

19. Correspondence with the Council's enforcement officer states that operations in breach of the planning permission were to cease from 25 November 2015. However, the hours noted in the Code of Conduct for employees, and evidence from interested parties as well as further complaints to the Council in August 2016, indicate that operating hours have at least on occasion, exceeded those set by the existing planning conditions.
20. Planning Policy Guidance (PPG) requires decision making to take account of the acoustic environment as outlined in the Noise Policy Statement for England (NPSE). This identifies levels of perception and the outcomes of those perceived noise levels on health, behaviour and quality of life for the receptors. It also outlines a noise exposure hierarchy linked to the observed effect levels, which identifies specific examples of behaviour and attitude amongst receptors along a continuum of increasing noise. The NPSE states that it is not possible to have one single objective noise-based measure to define these effect levels as they are likely to be different for different noise sources, for different receptors and at different times.
21. There are also quantitative guidelines in both the British Standard ⁵ (BS) and from the World Health Organisation⁶ (WHO) which link actual noise levels to behavioural responses and health effects on receptors.
22. The noise surveys gathered data from a point on the southern edge of the site over a week in February 2016, as well as data from the operation of specific machinery. The Council saw no reason to disagree with the findings, and on the basis of the evidence before me, nor do I. It was not disputed by the main parties that ambient levels are generally lower during the hours within which this appeal seeks to extend operations at the site.
23. During my site visit specific machinery was turned on to enable me to assess its effect on the acoustic environment of nearby gardens. The CNC machine was audible above the low background noise from the A414 as a higher pitched and slightly screeching noise. When the nailing machine was operated in Building 2, there was a percussive sound and this in particular would be annoying for occupiers of neighbouring dwellings. None of the machines were loud enough to mask the ambient traffic noise, overhead planes and at one point, an emergency siren. However, as noted above, I am mindful that if the appeal was allowed, these sounds could be generated at times when the background level is less than at my site visit. The character of noise generated by these machines would also be different from the noise climate of early morning or evening.
24. Vehicles leaving the site from 0500 hrs would pass alongside the flank wall of Cherry Trees, which has openable windows on its first floor. The noise consultant's technical note advises that with mitigation works in place, noise levels would be no more than 58 dB L_{Amax} measured on the wall at a height of 4.5 metres. This is just below the WHO guidelines⁷ of 60 dB L_{Amax} for the onset of critical health effects when sleeping with windows open. However, the noise survey⁸ shows that background noise between 0500 – 0600 hrs is around

⁵ BS 8233:2014

⁶ Guidelines for Community Noise

⁷ Table T5

⁸ Figure B2

- 37 – 53 dB, depending on the wind direction⁹. Maximum noise levels in that period are generally well below 60 dB.
25. The noise report states that if the existing noise climate changes by no more than 3dB, it cannot be described as disturbing or change the amenity of residents. However, in this instance the early morning noise climate would change by more than 3dB when vehicles used the access road. It would also be unpredictable and infrequent, factors which generally contribute to surprise and annoyance. Furthermore, this is a rural environment and occupiers of nearby dwellings should have a reasonable expectation of low night-time noise levels and receptors would be sufficiently sensitive to the increased noise for this to have a moderate/significant effect. As such, notwithstanding that the noise would be slightly less than the WHO threshold, I conclude that even with mitigation in place this would be noticeable and intrusive. This would have an Observed Effect Level (OEL) according to the NPSE scale and would have an adverse effect on the living conditions of occupiers of Cherry Trees.
26. With regard to the use of machinery in Building 2, without mitigation in place the noise modelling indicates that noise levels at the nearest dwelling façade would be 61 dB L_{Aeq} and 71 dB L_{Amax} . However, a 4.5 metre acoustic screen along the site's southern boundary, and closed doors before 0700 hrs would mitigate loudness to levels well below the WHO guidelines. The loudness would not be dissimilar to background levels, again depending on wind direction. However, the particular character of the noise generated by the powered machinery would be intrusive very early in the morning or early evening. Furthermore, given the need to open doors to move material around, I am not entirely satisfied that a condition restricting door opening would be reasonable in the context of these operations. In addition, given that current operating hours appear to be outside those permitted, enforceability of such a condition is also not assured.
27. Consequently, I conclude that although the acoustic fences would effect a significant reduction in loudness, I am not satisfied that the development would not have an adverse effect on the living conditions of occupiers of nearby dwellings with respect to noise and disturbance.

Living conditions - light and outlook

28. The acoustic fence would be significantly taller than the existing boundary fence to Cherry Trees and would also directly face proposed ground floor windows serving habitable rooms. Although the existing fence would block light into these windows to some extent, the presence of an additional fence a few metres away would diminish the entry of daylight to some degree. I appreciate that the top section could have a glazed element, but unless kept scrupulously clean, (which would have its own difficulties at that height), it would be likely to reduce light transmission. Furthermore, the fence would obstruct some late evening summer sun, and consequently I am not satisfied that there would not be some overshadowing or loss of light to those windows.
29. The fence would run along the length of Cherry Trees' northern boundary. It would be screened by garden trees towards the rear boundary but it would encroach into the outlook from Cherry Tree's rear elevation and garden. Whilst not necessarily sufficient to warrant dismissal of the appeal on the grounds of

⁹ This affects the loudness of traffic noise on the A14 experienced at the site.

outlook in the absence of other concerns, it is reflective of my reasoning in respect of character and appearance, below. As such, I conclude that the fence's proximity to Cherry Trees would result in a moderate overbearing effect.

30. The appellant argues that there are trees in Cherry Trees garden but as these are located some distance from the dwelling this is of little relevance.
31. Accordingly, I conclude that the development would have adverse effects on the living conditions of all nearby occupiers with respect to noise and disturbance, and for occupiers of Cherry Trees only, with respect to light and outlook. This would be contrary to LP Policies E5 and E8 which expect commercial development to have regard to nearby residential amenity, and LP Policy H16 which seeks to protect the amenity of primarily residential areas, as well as one of the core planning principles of the Framework which requires development to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Character and appearance

32. The 3.5 metre high acoustic fence would be 4.2 metres from the plot boundary to the north-east of the dwelling and would then be angled to be sited 4.2 metres from Cherry Trees' flank wall. The existing plot boundary is a close boarded fence. An evergreen hedge located on the outside of the fence screens part of the existing boundary fence from the road.
33. The site entrance is situated at a slight dog leg in the road and the north-western boundary of Cherry Trees is prominent in the street scene. The acoustic fence would be a combination of close boarded timber with glazed panels at the top and with climbing plants at intervals. I appreciate that it has been designed to have the overall appearance of a garden fence. However, it would be considerably larger in scale than a garden fence and would appear over-scaled and disproportionately tall in the context of the dwelling and its existing boundary treatment.
34. The appellant argues that the dwelling of Cherry Trees has been increased in height from a chalet bungalow to a two-storey dwelling with roof space in recent years. However, it is clearly a dwelling in a semi-rural environment and alterations to its appearance do not justify the introduction of a fence of this height immediately in front of its side boundary and flank wall.
35. Furthermore, the existing site access is set back and has modest signage, which is appropriate in this context. The construction of highly engineered and substantial fence would have an urban and commercial appearance, and there would be insufficient space between the fence and the required vehicle access path to screen the fence with trees or shrubs.
36. The 4.5 metre fence would be located within the yard boundaries and would be separated from adjacent residential plots by an existing row of conifers, also within the plot boundary. They would be largely screened from surrounding viewpoints and I am not satisfied that there would be an adverse effect on the character and appearance of the area.
37. In the light of the above, I conclude that the development would have a detrimental effect on the character and appearance of the area and this would be contrary to LP Policy GP1 which requires development to maintain or

enhance the character and appearance of the area, and CS Policy CS5 which requires development to maintain and respect local distinctiveness.

Other matters

38. The use of the noise report to support a successful application for use of a lean-to attached to Building 3 is not of relevance to this appeal as in that application the operating hours were unchanged from the original condition.
39. I appreciate that a code of conduct for employees has been implemented and would be maintained if the appeal was allowed. This indicates that there is to be no external noise before 0600 hrs and after 1800 hrs. However, such controls are dependent on good practice, management and behaviour and I give them limited weight. In any case, I have based my reasoning largely on the effects of the acoustic fences and the code of conduct has not been determinative.
40. The fact that the nature of the manufacturing has changed since the current owner bought the site is not of particular relevance to this appeal. In any case, interested parties noted at the hearing that it is the increase in mechanisation which is the source of discontent as the noise no longer blends into the background.
41. The appellant argues that the planning officer did not substantiate the reason for objecting to use of machinery in Building 2. However, the noise report states that door closure is one part of the required mitigation and the officer's report expresses concern that door closure would be difficult to enforce. Consequently it is reasonable to conclude that noise is the outstanding issue.
42. Interested parties have raised concerns in relation to tree damage, increased traffic and highway safety. However, as I have found harm in respect of the main issues it is not necessary for me to consider these matters further.

Planning balance

43. The existing restrictions on operating hours and the extent of use at the premises were imposed in order to safeguard the living conditions of local people and to enable the Council to retain some control of the development. I appreciate that the premises is a significant rural employer and offers training opportunities. Nonetheless it is a commercial site located in a rural environment. Although there are only a few dwelling near the site, that does not diminish the significant weight that I attribute to the harm to the living conditions of those occupiers.
44. The appellant has made changes to the site's business operations and manufacturing processes without reference to the site's planning restrictions. However that situation has arisen, it is insufficient reason to justify this development. It is argued by the appellant that the development would be sustainable development in accordance with Paragraphs 7 – 10 of the Framework, and could be secured and controlled by the imposition of appropriate planning conditions. However, the existing planning permission secures and controls operations at the site for amenity sensitive neighbours. Furthermore, Paragraph 9 of the Framework states that sustainable development involves improving the conditions in which people live, as well as economic growth.

45. In this instance I have concluded that this development would not improve the conditions in which people live, and consequently the adverse effects of the development would significantly and demonstrably outweigh its benefits. It would therefore be contrary to the provisions of Paragraph 14 of the Framework, and CSFR Policies FC1 and FC1.1, as well as the policies referred to above.

Conclusion

46. Consequently, for these reasons I conclude that the disputed conditions are necessary and reasonable in the context of local and national policies for the siting of new development in sustainable locations. They are also relevant to planning and to the development previously permitted, enforceable, precise and reasonable in all other respects. A permission allowing an increase in operating hours is not justified as the proposed mitigation would not satisfactorily or successfully address the development's adverse impacts. As such, I conclude that the appeal should be dismissed.

Amanda Blicq

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Chris Bentley
Chris Dalton
Giles Hill
Leslie Short
Max Short

Sharps Redmore
Smart Garden Offices
LSDP
Artisan PPS Ltd.
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FOR THE LOCAL PLANNING AUTHORITY

Sian Bunbury
James Buckingham
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Mid Suffolk District Council
Mid Suffolk District Council
Mid Suffolk District Council

INTERESTED PARTIES

Andrew Anderson
John Barber
Beryl Barber
Jeanett Greenleaves
Chris Wishlade

ANNEX 1

Documents submitted at the sitting (by agreement)

Sharps Redmore Technical Note, 26 April 2017

Dwg. LSDP 11469-02, showing timber posts along access road

Two elevations of suggested treatment to 3.5 metre acoustic fence

Documents submitted after the sitting for reconsultation (by agreement)

Sharps Redmore Technical Note, 9 May 2017

Dwg. LSDP 11469-02, showing paving detail along access road

Dwg. LSDP 11469-03