
Appeal Decision

Hearing Held on 22 February 2018

Site visit made on 22 February 2018

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2018

Appeal Ref: APP/A2280/W/17/3181443

Flanders Farm, Ratcliffe Highway, Hoo St. Werburgh, Rochester ME3 8QE

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by AC Goatham and Son against the decision of Medway Council.
 - The application Ref MC/16/5177, dated 23 December 2016, was refused by notice dated 16 March 2017.
 - The application sought planning permission for the construction of a new grading, packing and storage facility with ancillary access, hardstanding, landscaping and relocation of refuelling point without complying with a condition attached to planning permission Ref MC/14/3063, dated 2 April 2015.
 - The condition in dispute is No 17 which states that: Upon the cessation of the use of the building and hardstanding hereby permitted for the purposes of the packing and storage of fruit, the building shall be demolished and the resultant material and the hardstanding shall be removed and the land reinstated to land capable of being used for agriculture as defined in section 336 of the Town and Country Planning Act 1990 (or any Act amending, revoking or re-enacting that Act).
 - The reason given for the condition is: This permission is only granted on the basis of the agricultural need for the development.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a new grading, packing and storage facility with ancillary access, hardstanding, landscaping and relocation of refuelling point at Flanders Farm, Ratcliffe Highway, Hoo St. Werburgh, Rochester ME3 8QE, in accordance with the application Ref MC/15/5177, dated 23 December 2016, without compliance with condition number 17 previously imposed on planning permission Ref MC/14/3063 dated 2 April 2015 and subject to the conditions in the schedule at the end of this decision.

Application for costs

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

Preliminary matter

3. While I have had regard to the emerging Local Plan, because of its early stage of preparation, the weight I can accord its policies is very limited.
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Background and main issue

4. Planning permission was granted for a large, grading, packing and storage building on a farm, alongside other buildings, which stand in the countryside, in an Area of Local Landscape Importance (ALLI). The Council applied a condition requiring the demolition of the building and the reinstatement of the land on the cessation of the use because the permission was only granted on the basis of the agricultural need for the development.
5. The appellant sought to remove the condition under an application which the Council refused because without the link between the permitted use of the building and the agricultural use of adjacent land there would be an industrial use in the open countryside which would harm the character of the area and the visual amenities of nearby residents. At the Hearing the Council confirmed that it did not object in terms of the effect of the development on the living conditions of surrounding occupiers nor to the loss of best and most versatile agricultural land.
6. The main issue is therefore whether condition No 17 meets the tests set out in paragraph 206 of the National Planning Policy Framework (the Framework), having particular regard to the character and appearance of the surrounding area.

Reasons

Necessary

7. In purely volumetric terms, the building has a marked impression on the landscape. The site straddles a section of a long, high ridge of land and the building projects above the horizon in views from surrounding land. In as much as the surrounding agricultural fields share an open character and contain agricultural buildings of more modest scale and traditional appearance, the industrial aesthetic of the large shed is a departure from that familiar, rural character.
8. However, the landscape in which the building is viewed includes the neighbouring settlements of Hoo St Werburgh and High Halstow, a garden centre, and more urban landscape features such as the dual carriageway of the A228, electricity pylons and masts, as well as an industrial-scale chimney. In this context, the effect of the scale of the building on the character of the surrounding landscape is diminished.
9. It has been erected alongside 2 existing buildings of substantial height and footprint. Directly alongside the existing buildings, which have no similar demolition condition, this shed does not appear out of scale. Nor does the combined effect of what appears a doubling of built-form result in an overall development over scaled or too great for the site or the landscape which surrounds it. The building has a long rectangular footprint set along the length of the ridge and parallel to the existing buildings and the existing access road. This mitigates its scale impact in the immediate surroundings.
10. The design of the shed, from close and from afar, resembles larger agricultural sheds in the countryside. The materials and detailing are plain and restrained in colour and arrangement. While this does not neutralise the presence of the building, it lessens its bearing in the landscape.

11. The Deansgate Ridge ALLI is described as a high ridge with a diverse landscape of woodland, agriculture, orchards and golf course and the Chattenden Ridge ALLI as a prominent wooded ridge. The Council's more recent Landscape Character Assessment 2011 (LCA) describes the area as undulating, predominantly arable farmland. Its analysis section concludes its condition is poor and its sensitivity is moderate but recommends strengthening the landscape structure.
12. Overall, I find no significantly adverse effect from the building on the local landscape. In terms of character and appearance, there is no material harm from the development.
13. The policies of the Medway Local Plan 2003 (LP) referred to in the reason for refusing the application to remove the condition substantially pre-date the Framework with the work on the ALLI's dating back to 1992 when local landscape designations were a standard approach. Policies BNE25 and BNE34 are more restrictive than the Framework which limits the weight I can accord them.
14. LP Policy BNE34 permits development in ALLI's subject to it meeting one of two provisos. First, that it does not materially harm the landscape character and function of the area, or, second, that the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape. The Council originally concluded in the positive against the latter, and I conclude positively against the former.
15. The removal of the condition would not lead to a development in conflict with LP policy BNE34, nor with LP policies BNE1 and BNE25 which require the design of development to be appropriate to the character of the environment and to maintain the character of the countryside. There would be no conflict with the approach to conserving the natural environment as set out in the Framework, nor with the improvement guidelines recommended in the LCA.
16. There is no policy requirement and no other factor to justify the demolition of the building in the event that its use ceases. I conclude therefore that Condition No 17 is unnecessary to make the development acceptable in planning terms.

Relevant to planning and to the development

17. While I understand the Council's caution in granting permission for a building of such volume, and its anxiety about what might become of it should the use cease, the condition rules out any alternative use in the future. The original decision notice has an explicit description of the consented development, and local and national planning policies already provide sufficient measures to control a future use, so the condition is superfluous, and irrelevant to this development.
18. The Council has not shown how, having found the building to be acceptable, an alternative use would cause such harm that the building should be demolished. The condition effectively tries to guess the future and already concludes in the negative before any change of use has even been sought. It works against the purpose of the planning system which is to contribute to the achievement of sustainable development. If the landscape were so sensitive and any potential

future use so harmful to it, then the original application should have been seen in a different light.

19. The reason for refusing the application states that the permission was granted only because of the link between the building and the agricultural use of surrounding land. However, it is not clear whether the condition is relevant to the consented development which is described as the construction of a new grading, packing and storage facility etc. whereas the use of the building in the condition is for the purposes of the packing and storage of fruit.
20. A condition cannot be imposed to remedy a problem not created by the development, and the impact of the development does not justify a condition which seeks to control the effect of unknown future development. For these reasons the condition does not fairly and reasonably relate to the development or to planning.

Precise and enforceable

21. The trigger for the condition to bite, the cessation of the use of the building and hardstanding, is not defined; it could apply equally to a week of ceased use as it could to a year. A token continuation of the use could avoid the condition biting at all, as well as the burden of the ensuing costs of demolition and reinstatement.
22. Furthermore, there is no surety or other means of securing the demolition of the building and the reinstatement of the land, which would be substantial, in the event that the use ceased. The lack of precision in the terms of the condition and the lack of surety would make enforcement difficult.

Reasonable in all other respects

23. The appellant's financial evidence, which is not challenged by the Council, demonstrates how the condition constrains the expansion of the business because of the reduced borrowing security against the building.
24. I appreciate that in this industry loans are given on a value basis rather than on earnings, and the need to re-invest. However, the loan security implication relates to the particular circumstances of the business rather than the use of the building, and attracts less weight. Nonetheless, the building is part of a larger development and clearly intended as a permanent facility, the demolition and reinstatement costs for which were estimated by the appellant to amount to between £0.5M and £1M. I also have regard to the investment made in the construction of the building and its plant, estimated by the appellant at around £9M.
25. The Planning Practice Guidance¹ (PPG) makes clear that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. Whilst condition No 17 does not limit the duration of the development, the effect is similar. I have found no harm from the development which needs to be resolved by the demolition of the building on the cessation of its use. The Framework lends support to sustainable growth and expansion of business in rural areas through well designed new buildings to promote a strong rural economy. The

¹ Planning Practice Guidance paragraph: 014 Reference ID: 21a-014-20140306

requirement for demolition would be an unreasonable burden on the development.

26. For the reasons given above I conclude that condition No 17 does not meet the tests set out in paragraph 206 of the Framework, having particular regard to the character and appearance of the surrounding area. It is unnecessary, irrelevant to the development and to planning, difficult to enforce, imprecise and unreasonable.

Other matters

27. I have noted the concerns of the surrounding occupiers and the Dickens' Country Protection Society, many of which are addressed above. However, as for the main issue above, there is no necessity to require the demolition of this development should the consented use cease in order to protect the living conditions of neighbours.

Conditions and conclusion

28. For the reasons given above I conclude that the appeal should succeed. In accordance with Section 73(2)(a) of the Act, I have granted a new planning permission with the contentious condition omitted. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
29. As the development has been implemented, I have omitted the statutory time condition. I have also omitted the conditions which the Council has discharged. I have retained the hours, noise, lighting and access conditions to safeguard the living conditions of surrounding occupiers. The conditions listing the approved plans, and the landscaping, drainage, biodiversity and acoustic fencing conditions have been adjusted so that their effect is one of retention rather than implementation.

Patrick Whelan

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Juan Lopez	Counsel for the appellant, Francis Taylor Building Chambers
Mr Thomas Ogden	Director, Bloomfields Chartered Town Planners
Mr Nick Holmes	Chartered Accountant, Chavereys
Mr Nick Whatley	Chartered Landscape Architect, Lloyd Bore Landscape Architects

FOR THE LOCAL PLANNING AUTHORITY:

Miss Vicky Nutley	Solicitor, Medway Council
Mrs Hannah Gunner	Planning Officer, Medway Council

Documents submitted at the Hearing

By the appellant:

1. Medway Council Decision Notice MC/17/3392
2. Medway Council Officer Report MC/17/3392
3. Brexit: Trade in Food; report of the House of Commons Environment, Food and Rural Affairs Committee, 18 February 2018

Schedule of conditions

- 1) The development shall be retained in accordance with approved drawings:110, ICA/ENQ/1367/103/J; ICA/ENQ/1367/104/F; ICA/ENQ/1367/105/F; ICA/ENQ/1367/106/B; 2360-1300-003 rev A; 2360-1300-004 rev A; 06 J7-01043 Sheet 1 – 2.5mH; 06 J7-01043 Sheet 1 – 3.0mH; A ACS 01-01 and site location plan.
- 2) The hard and soft landscaping shall be retained in accordance with drawings 2769_DR_006-A; 2769_DR_007-A; 2769_DR008-A; and 2769_DR_009-A as approved under reference MC/15/2279. Any retained tree which within 5 years of planting is removed or becomes seriously damaged or diseased shall be replaced in the next planting season with another of a similar size and species.
- 3) No part of the site shall be used outside the hours of 05:30 to 23:00 Mondays to Sundays and the external storage hardstanding area to the north-east of the north-eastern access shall not be used at any time between the hours of 18:30 and 07:00 Mondays to Fridays, 13:30 and 07:00 on Saturdays, and at no time on Sundays or Public Holidays.
- 4) No external lighting other than that shown on approved drawings 2360-13000-003A and 2360-13000-0034 and as specified in the 'Exterior Lighting Recommendations' report prepared by WSP and dated 23 September 2014 shall be installed and this lighting shall only be used during the permitted operating times as defined by condition 3 of this permission.
- 5) All fork lift trucks operated in association with the development hereby permitted shall be fitted with broad band sound reversing alarms.
- 6) The north eastern (existing) access shall not be used by heavy goods vehicles at any time between the hours of 20:00 and 07:00 on any day.
- 7) Other than when heavy goods vehicles (HGVs) equipped with diesel-powered refrigeration units or trailers designed to be hauled by HGVs and equipped with diesel-powered refrigeration units are being manoeuvred within the site, any diesel-powered engines associated with the operation of the aforementioned refrigeration units shall be switched off and be powered as necessary via the electric hook-up points provided at the site in association with the development hereby permitted. The electric hook up points shall be retained in accordance with drawing ICA/ENQ/1367/103/J and approved under reference MC/14/3063.
- 8) The acoustic fencing shall be retained in accordance with drawing ICA/ENQ/1367/103/J approved under reference MC/14/3063.
- 9) The foul and surface water drainage scheme shall be retained in accordance with the Technical Note dated 20/10/15 reference TN004-Rev 2ii-MC, calculations dated 11/09/15, Micro Drainage details dated 15/10/15, GATIC slot drain specification dated 23/09/15 reference 34308 and drawings 34308/2001/003 and 34308/2001/005 approved under reference MC/15/2440.
- 10) The biodiversity enhancement measures shall be retained in accordance with the Biodiversity Enhancement Strategy prepared by KB Ecology dated 25 September 2014 reference 2014/03/08 and shown on drawing 2769/DR005Rev C as part of planning permission MC/14/3063.

END OF SCHEDULE OF CONDITIONS