The Planning Inspectorate

Appeal Decision

Site visit made on 26 June 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 July 2019

Appeal Ref: APP/B1740/W/19/3221350
Former Dairy Site, Milford Road, Pennington SO41 8DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval under Article 3(1) and Schedule 2, Part 3, Class P of The Town & Country Planning (General Permitted Development) Order 2015 (as amended) (hereafter 'Class P' and the 'GPDO').
- The appeal is made by Mr J Wallrock of DMG Retirement Trust against the decision of New Forest District Council.
- The application Ref 18/11353, dated 1 October 2018, was refused by notice dated 11 December 2018.
- The development proposed is change of use from B8 to C3.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Paragraph P.1(c) of Class P states that development is not permitted by Class P if the prior approval date falls on or after 10th June 2019. As this date now lies in the past, even if this appeal were to be allowed, it would be impossible for the proposed development to comply with this restriction. In this regard paragraph W(3) of Part 3 of Schedule 2 of the GPDO allows for refusal of an application where, in the opinion of the authority, the proposed development does not comply with any conditions, limitations or restrictions applicable to the development in question. The appeal could therefore be dismissed on this basis.

3. However, on account of the fact that refusal on the basis set out in paragraph W(3) is not mandatory, and more particularly given that the appeal was lodged prior to the 10th June deadline, I have in this instance resolved to determine the appeal with regard to the contested issue.

4. The Council's decision notice makes reference to paragraph P.2 (b)(vi) of Class P. However the Council has confirmed that it no longer wishes to pursue an objection on this ground. I have therefore considered the appeal solely in relation to paragraph P.2 (b)(v) of Class P, which relates to the noise impacts of development.

Main Issue

5. The main issue is the noise impacts of the development.

Reasons

6. An Inspector in a recent appeal concerning development in relation to Class P on the site (reference APP/B1740/W/18/3195646), found that that 'noise impacts' should be considered to include both those which would arise from the development, and those which would be experienced by the development. As each is a form of noise impact, I see no reason to disagree with the Inspector's view. In this regard the Council's specific concern is in relation to the impact of noise upon future occupants of the development.

7. The building in question is a small, single storey office block located within the yard space attached to the former dairy. The former dairy otherwise comprises 2 ranges of predominantly single storey buildings arranged across 2 sides of the yard. Some parts of the former dairy site are currently in use for 'commercial' purposes whose lawfulness has been questioned by the Council. Other parts were closed up during my visit. The appellant has offered no clarification with regard to the status of current uses. The office building itself appears to be in ongoing use as an office. As I have no indication that the use of buildings within the former dairy has lawfully changed, and given that the Council has accepted that the approved use of the former dairy site as a whole falls within Class B8, I have considered the scheme on this basis.

8. The site occupies a location to the rear of the main street frontage. Background traffic noise is therefore a feature, but exposure is not direct. Given the position of the building relative to the yard, it would however be subject to both a direct and high level of exposure to noise generated by adjacent uses within the former dairy, as too those nearby, including a car wash. Exposure would be exacerbated by the very limited provision of defensible curtilage space.

9. The appellant has provided a noise impact assessment (NIA). This considers noise generated by existing daytime uses of the former dairy site, and adjacent commercial uses. Given that the lawfulness of some of these uses has been questioned, the noise generated by them is not a wholly reliable guide of potential future impact. Indeed, in this context the NIA does not consider that uses to which the former dairy site might be put.

10. Whilst I accept the appellant's view that return to use as a dairy is unlikely, other uses within Class B8 would nonetheless appear to be possible, and other changes would be permitted. In the absence of any existing restriction on operating times these uses could furthermore take place at any time of the day or night, all year round. Notwithstanding the appellant's assurance that this would not occur, the risk that significant noise and disturbance could be generated by future use or uses of the rest of the former dairy site nonetheless exists, as too therefore does the reasonable potential for such noise to have a significant adverse effect on future occupants of the building.

11. In order to prevent the possibility of night time disturbance, the appellant has proposed a condition which would limit the operating times of other uses within the former dairy site. In this context, paragraph W(13) of Part 3 of Schedule 2 of the GPDO allows an authority to grant prior approval unconditionally, or subject to conditions reasonably related to the subject matter of the prior approval; in this case, the noise impacts of the development.

12. Whilst I have found that noise which would be experienced by the development is a relevant consideration, a condition which limited the times at which other, entirely separate uses within the former dairy site could operate, would not, in my view, fall within the scope of paragraph W(13). Indeed, given that the prior approval relates specifically to the building in question, and not the rest of the former dairy site, or for that matter, other uses in the area which generate noise, such a condition would be neither fairly nor reasonably related to the development permitted. This is true regardless of the appellant's willingness to accept such a condition. Furthermore, the proposed condition would not limit the amount of noise that could be generated by any potential future use of the former dairy site during the day. Therefore it would be ineffective in its intended purpose of safeguarding future occupants from unacceptable levels of noise.

13. I have had regard to paragraph 170(e) of the National Planning Policy Framework (the Framework) which states that planning decisions should prevent new development being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution. In my view, given that the occupants of the development would face such an unacceptable risk, allowing the appeal would be contrary to the Framework.

14. The appellant has drawn attention to the Council's allocation of the site for housing. The Council has confirmed that the former diary site, including the adjacent garage, has in fact been allocated in the New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management 2014 for a mixed-use development, which would feature complementary residential and commercial uses. As the appeal scheme does not involve the delivery of the allocated mixed-use development, the allocation itself does not provide a basis to presume that the noise impacts of the development subject of this appeal would be acceptable.

15. For the reasons outlined above, I conclude that the noise impacts of the proposed development would be unacceptable. Insofar is it a material consideration, Policy CS2 of the New Forest District (outside the National Park) Core Strategy 2009, is quoted by the Council. However, given that it relates to noise and other effects caused by a development, rather than the noise and other effects which would be experienced by it, Policy CS2 is not applicable.

Other Matters

16. The Council indicates that the development would be likely to have a significant effect on the integrity of habitats sites. Article 3(1) of the GPDO grants planning permission for the classes of development within Schedule 2 subject to Regulations 75-78 of the Conservation of Habitats and Species Regulations 2017. Regulation 75 provides that it is a condition of any planning permission granted by a general development order made on or after 30 November 2017 that development which (a) is likely to have a significant effect on a European site alone or in combination with other plans or projects, and (b) is not directly connected with or necessary to the management of the site must not be begun until the developer has received written notification of the approval of the local planning authority under Regulation 77. Consequently, this is not a matter I need to address further.

17. The appellant has drawn attention to the Council's lack of demonstrable five-year supply of deliverable housing sites, and the related benefit of providing

additional dwelling. With regard to paragraph W(10)(b) of Part 3 of Schedule 2 of the GPDO however, this is not a relevant consideration. This is because it does not fall within the subject matter of the prior approval listed in paragraph P.2(b) of Class P, and is otherwise unrelated to the noise impacts of the development.

18. The appellant has drawn further attention to the good accessibility of the site. However this is again not relevant to consideration of the noise impacts of the development.

Conclusion

19. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR