



Appeal Decision

Site visit made on 4 June 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2019

Appeal Ref: APP/X4725/W/19/3224330

Unit 2, Park Road, Pontefract WF8 4PR

- 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 Gregory Projects (Pontefract) Limited against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 18/01509/FUL, dated 02 July 2018, was refused by notice dated 20 November 2018.
 - The application sought planning permission for industrial/ storage building for use as Storage and Distribution (Use Class B8), General Industry (Use Class B2) and Light Industry (Use Class B1c) with ancillary offices including parking, servicing, landscaping and associated works, without complying with a condition attached to planning permission Ref 17/03072/FUL, dated 22 February 2018.
 - The condition in dispute is No 19 which states that: The operations associated with the use hereby permitted comprising HGV vehicular movements, HGV and fork lift truck loading/ unloading, deliveries, movement of any materials stored in the yard of the site and use of any associated machinery and yard equipment, shall not take place to any external area on Bank/Public Holidays nor at any time except between the hours of 07:30 and 20:00 Mondays to Fridays; 08:30 and 19:00 on Saturdays and 10:00 until 16:30 on Sundays.
 - The reason given for the condition is: To protect the local amenity of residents of Park Lodge House, properties to the south of Beechnut Lane and land to the East allocated for housing on the Local Development Framework Site Specific Policies Local Plan. To accord with policy D20 of the Council's adopted Local Development Framework Development Policies Document and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to the planning permission for an industrial/ storage building with ancillary offices and associated areas. The permission includes a condition to restrict the hours of operation insofar as they relate to HGV movements, movement of materials in the yard and associated machinery and yard equipment. The original application proposed the removal of the condition, but the description of the proposals was subsequently revised and accepted by the Council. Accordingly, the appeal seeks to vary the condition to allow the specified activities at all times, in accordance with the submitted scheme of night-time mitigation measures.

3. The wider site has outline permission (ref 17/00177/OUT) for uses as storage and distribution, general industry and light industry, with ancillary offices. Approval of reserved matters for Units 1, 3 and 4 was granted under permission 17/02774/REM. Permission was subsequently granted for the development of Unit 2 (ref 17/03072/FUL). At the time of my visit, I observed that much of the wider site, including Unit 2, had been constructed.

Main Issue

4. The main issue is whether or not Condition No 19 is necessary and reasonable in order to protect the living conditions of nearby residential occupiers with particular reference to noise and disturbance.

Reasons

5. Unit 2 is one of a number of industrial and warehousing units to the south of Park Road Retail Park. There are residential properties in the surrounding area, including Park Lodge House on the opposite side of Park Road and dwellings immediately to the south on Beechnut Lane. Although not yet developed, the land to the east is allocated for housing in the Local Development Framework Site Specific Policies Local Plan. As a result of the proximity of the Unit 2 to residential areas, there is potential for noise and disturbance impacts upon nearby residential occupiers.
6. The outline planning application (ref 17/00177/OUT) for the development of the wider site at Park Road was supported by the results of noise impact assessments. These identified that HGV operations would result in noise disturbance, including night-time noise at levels that would disturb the sleep of residential occupiers to the south and to the east. The outline permission was subsequently granted subject to several conditions which secure noise mitigation, including Condition No 33 which restricts the hours of operation of HGV and forklift vehicles and external yard operations across parts of the outline development area which include Unit 2.
7. The application for the development of Unit 2 (ref 17/03072/FUL) was supported by the same noise impact assessment as had been submitted in support of the outline application. However, there were discussions during the processing of the Unit 2 application in respect of the acceptability of removing the restrictions on the hours of operation subject to a scheme of overnight noise management measures. Notwithstanding, permission was subsequently granted subject to essentially the same conditions as the outline permission including Condition No 19 which restricts the hours of operation of HGV and external yard activities.
8. The application the subject of this appeal (ref 18/01509/FUL) then sought to vary condition No 19 to allow operations to be undertaken at all times in strict accordance with the measures detailed in the document entitled 'Park 32 – Unit 2 – Night Time Noise Management Measures' (Unit 2 NTNMM).
9. The Unit 2 NTNMM refers to measures that would be adhered to after the hours of 20.00 and before 07.30 Mondays to Fridays, after 19.00 and before 08.30 on Saturdays, and after 16.30 and before 10.00 on Sundays. Neither the Unit 2 NTNMM nor the suggested variation to condition No 19 make any specific reference to bank or public holidays. I have therefore determined this appeal on the basis that the proposal would allow the operations every day of the year,

including bank and public holidays, subject to the implementation of the noise management measures.

10. In order to be acceptable, any condition must pass the tests set out in the National Planning Policy Framework in terms of being necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
11. The best practicable measures set out in the Unit 2 NTNMM include the switching off of HGV engines when not in use, the disabling or use of low-noise reversing alarms, unloading and loading to be carried out furthest from the receptors if possible, and staff and visitors to be encouraged by signage and training to keep noise levels to a minimum.
12. It is not clear that HGV alarms could be disabled or replaced without breaching relevant health and safety requirements. The presence of signage is no guarantee that drivers and operatives will keep noise levels to a minimum. Moreover, it is not clear what 'keeping noise levels to a minimum' would mean in practice or whether this would be at levels that would avoid significant noise disturbance to nearby residential occupiers particularly in the overnight period. The scheme makes no mention of who would be responsible for implementing the measures and monitoring compliance, or how any issues of non-compliance would be addressed. It therefore seems likely that it would fall to nearby residential occupiers to monitor non-compliance, which would not be a reasonable approach. The best practicable measures do not therefore appear sufficiently precise or robust to be enforceable and therefore effective.
13. I appreciate that Condition No 19 is only one of several conditions relating to noise mitigation. I also acknowledge that the need for the restriction on the hours of operation was identified originally in relation to a superseded layout. In this respect, my attention has been drawn to Unit 3 where external service yards are also located away from site boundaries and where no overnight restriction on the hours of operation was considered necessary. However, on the basis of the evidence before me and notwithstanding apparent similarities, I cannot be certain that Unit 3 is directly comparable to Unit 2 and I have therefore considered the appeal scheme on its own merits.
14. Further evidence has been submitted to the appeal in the form of a noise assessment and the results of 3D noise modelling¹. This appears to relate only to the hours from 23:00 until 07:00. While the avoidance of sleep disturbance is of paramount importance, the Council clearly considered that restrictions on working at other times of the day and week were necessary to protect residential amenity in this area. In this respect, and particularly given the background levels of noise during the day, it would not be unreasonable for nearby residential occupiers to expect to enjoy their homes and gardens free from significant noise disturbance for at least some of their waking hours.
15. There is little before me to demonstrate that the complete removal of the restriction on the hours of operation, and the sole reliance on the best practice measures set out in the Unit 2 NTNMM, would guarantee any quieter times during evenings, weekends or public holidays. In the absence of any comments from the Council with regard to the revised noise assessment, I cannot be certain that it does adequately address the Council's concerns.

¹ Letter from REC to Gregory Projects (Pontefract) Limited, ref AC102617-2r1 dated 6th March 2019

16. I acknowledge that there has been discussion between the parties in respect of some form of relaxation of the restrictions secured by Condition No 19. However, I am not persuaded that the proposed variation of Condition No 19 would be adequate to avoid significant adverse effects on nearby residential occupiers during otherwise quieter times of the day and week including the overnight period.
17. I therefore find that the condition restricting night time HGV and servicing yard activity is necessary and reasonable, in order to protect the living conditions of the occupiers of nearby residential properties from unacceptable noise and disturbance. The proposed variation would conflict with the development plan, including Policies D9 and D20 of the Wakefield Metropolitan District Council Local Development Framework Development Policies Document Adopted April 2009. These require, among other things, that development avoids significant detrimental impacts on the amenity of neighbouring residents and that mitigation measures should demonstrably protect health and amenity. It would also conflict with the amenity protection aims of Policy 180 of the National Planning Policy Framework, including the need to avoid significant adverse impacts on the quality of life.
18. I have considered whether allowing the proposed variation of condition would set a precedent for other units at this site. However, the servicing yards at Unit 1 and 4 are located adjacent to the site boundaries and in closer proximity to nearby residential properties. They do not therefore appear directly comparable to the layout of Unit 2 or its relationship to residential properties. Any proposals relating to those units would therefore need to be considered on their own merits.

Conclusion

19. For the reasons set out above, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR