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## Appeal Decision

Hearing Held on 17 July 2019

Site visit made on 17 July 2019

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 August 2019**

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**Appeal Ref: APP/A0665/W/19/3220038**  
**Byley Road, Byley, Northwich CW10 9NB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by FP McCann Ltd against the decision of Cheshire West & Chester Council.
  - The application Ref 18/04268/S73, dated 17 October 2018, was refused by a notice dated 13 December 2018.
  - The application sought planning permission for new direct access/egress point via B5081 Middlewich Road, creation of internal access road, alterations to existing production building, extension of existing product storage area, relocation of parking facilities, additional fencing, lighting and landscaping and associated ancillary works without complying with a condition attached to planning permission Ref 17/04482/FUL, dated 22 December 2017.
  - The condition in dispute is No 9 which states that: No deliveries or export of material or other goods to or from the site shall take place outside of the following hours: Monday to Friday (excluding Bank Holidays) – 7am and 10pm; Saturdays – 7am and 2pm; No deliveries or collection of materials or other goods to or from the site shall take place at any time on Sundays or Bank Holidays.
  - The reason given for the condition is: To ensure that the residential amenities that occupiers can reasonably expect to enjoy are adequately protected.
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### Decision

1. The appeal is allowed and planning permission is granted for new direct access/egress point via B5081 Middlewich Road, creation of internal access road, alterations to existing production building, extension of existing product storage area, relocation of parking facilities, additional fencing, lighting and landscaping and associated ancillary works at Byley Road, Byley, Northwich CW10 9NB in accordance with the terms of the application, Ref 17/04482/FUL, dated 22 December 2017, subject to the conditions set out in the attached Schedule.

### Summary of Decision

2. The planning permission I have granted allows delivery vehicles to enter and leave the site between 0600 – 2200hours Mondays to Friday (excluding Bank Holidays); 0600 hours to 1400 hours on Saturdays; and no delivery vehicles shall enter or leave the site at any time on Sundays or Bank Holidays. In addition, in the interests of clarity and to protect the living conditions of

neighbouring residents, the permission I have granted also specifies that no work, activities or operations, including loading and unloading of delivery vehicles, shall take place within the 'proposed operational area' defined by red hatching on drawing no. PD-04 Rev 0 except in accordance with the following: Monday to Friday (excluding Bank Holidays) -outdoor between 0800 to 2000hours and within an enclosed building between 0800 to 2200 hours; Saturdays-outdoor between 0800 to 1400 hours and within an enclosed building between 0600 to 1400 hours; and no work, activities or operations, including loading and unloading of delivery vehicles, shall take place within the 'proposed operational area' defined by red hatching on drawing no. PD-04 Rev 0 at any time on Sundays or Bank Holidays.

### **Procedural Matter**

3. Revised versions of the National Planning Policy Framework (the Framework) have been published since the appeals were lodged. The current version is dated February 2019. The main parties have been given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.

### **Main Issue**

4. The main issue in this case is whether condition No 9 is reasonable and necessary having regard to the effect of the proposed extended delivery hours on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance.

### **Reasons**

5. The appeal site relates to a site operated by FP McCann for the manufacture of precast concrete. The site contains a number of large manufacturing buildings, ancillary buildings, including offices, travelling cranes, open storage and car parking. It occupies an operational area of approximately eight hectares and takes access from Byley Road (B5081). The premises lie in an area of open countryside and the nearest residential properties are situated to the north and north west of the site on King's Lane and Byley Road.
6. Deliveries to and from the premises are currently restricted to within the hours of 0700 – 2200 hours Monday to Fridays; 0700 – 1400 hours on Saturdays and at no time on Sundays or Bank Holidays. In addition, there are conditions attached to the extant permission which, amongst other things, restrict the times of working, activities and operations within the site and noise levels from the use of the access road and extended storage area.
7. The new access which has been constructed to the site from Byley Road is for the use of both staff and delivery vehicles. However, whilst staff are permitted to work within the building from 0600hours, condition 9 prohibits delivery vehicles entering or leaving the site until 0700 hours. Whilst the appellant accepts that for the operation of their business it is not necessary for deliveries to take place before 0700hours, in practice when vehicles are arriving from the continent and prior to their designated delivery slot, it is difficult to prevent those vehicles arriving entering the site when the site entrance is already open for staff. The appeal proposal therefore seeks to extend the delivery hours to 0600hours to align with the staffing hours.

8. The original application for the new access road (Ref: 17/04482/FUL) was accompanied by a Traffic Noise Assessment<sup>1</sup> (TNA). An updated assessment to take account of the proposed extended delivery hours has also been submitted as part of the appeal documentation (Technical Clarification (TC), dated 1 May 2019, prepared by Hoare Lea). Despite the Council expressing some concerns that the TNA and TC did not include an LMax assessment of the proposed HGV vehicles movements, or seek to identify the maximum number of deliveries that would be made between the hours of 0600 and 0700, the Council and third parties did agree at the Hearing that it was not the movement of HGV's into and out of the site that was having a harmful effect on the living conditions of neighbouring residents, but the noise and disturbance resulting from the unloading and loading of delivery vehicles. In particular, the clanging and scraping of metal, reversing vehicle alarms and the operation of fork lift trucks, all of which are activities associated with the loading/unloading of delivery vehicles.
9. The TC was prepared to assess the impact of both the movement of delivery vehicles and associated external activities during the proposed extended delivery period. It concluded that the cumulative noise impact of all external operations in the early morning (0500 – 0700hours) would be below background noise levels and which, in accordance with the requirements of BS4142<sup>2</sup> would equate to a level of 'low impact' at the nearest residential neighbours.
10. However, it is clear from all the evidence before me that it is those transient acoustical events of short duration during the night-time, which would include the proposed extended delivery hours (0600 – 0700hours), which have the most harmful effect on the living conditions of neighbouring residents by reason of noise and disturbance. The TC undertaken did not include an accurate assessment of the impact of those impulsive noise events and with an indeterminate number of such events the evidence fails to demonstrate that the proposed loading and unloading of vehicles within the proposed extended hours would not cause harm to the living conditions of neighbouring residents.
11. Whilst I am satisfied that there be no demonstrable harm to the living conditions from neighbouring residents from the delivery vehicles entering or leaving the site from 0600hours, there is no doubt in my mind that the character of the noise from the unloading and loading of vehicles which takes place within the extended external storage area between the production buildings and neighbouring properties has a harmful impact on the living conditions of the occupiers of those properties by reason of noise and disturbance. The unloading and loading activities from 0600 hours would contribute significantly to those one-off noise events. Whilst I appreciate that the bund created around the northern boundary of the site now provides some screening and noise attenuation, it is clear from the existing operations that those one-off noise events during the night time have a significant and harmful effect on the living conditions of neighbouring occupiers.
12. That said, there is no dispute between the main parties that the use of the access for delivery vehicles from 0600 would not in itself have a significant or harmful effect on the living conditions of neighbours. Furthermore, the appellant's confirmed at the Hearing that they do not require materials to be

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<sup>1</sup> Proposed new access road traffic noise assessment, dated 20/11/17 Rev 1, Hoare Lea Acoustics.

<sup>2</sup> BS4142:2014: Methods for rating and assessing industrial and commercial sound.

loaded or unloaded to or from delivery vehicles during the proposed extended hours for business purposes and only seek to align staff and delivery vehicle entrance times for logistical reasons.

13. However, I am mindful that there is some dispute between the main parties as to whether or not the extant planning permission permits delivery vehicles to unload or load outside of an enclosed building within the operational area before 0800 hours. Whilst this is not a matter for me in my determination of this appeal, given the harm I have identified to the living conditions of neighbouring residents from the loading and unloading of delivery vehicles during night-time hours, it would not be prudent to allow the proposed extension to those hours without some further clarification on whether those vehicles would be also be permitted to load and unload from 0600hours.
14. Section 73 of the Town and Country Planning Act, 1990 is however widely drafted and so, as discussed at the Hearing, in addition to considering the disputed condition, it does provide the power to attach new conditions, to not attach conditions which were previously imposed, or to attach modified versions of them. Having concluded that the use of the access for delivery vehicles from 0600hours would not in itself have a harmful effect on the living conditions of neighbouring residents, in the interests of precision and to protect the living conditions of neighbouring residents would be reasonable and necessary to also modify condition 8 which was attached to the previous consent. I therefore propose to modify condition 8 to prevent loading or unloading of delivery vehicles except within the 'proposed operational area' and in accordance with the following criteria: Monday to Friday (excluding Bank Holidays)-outdoor between 0800 to 2000hours and within an enclosed building between 0600 to 2200 hours; Saturdays -outdoor between 0800 to 1400 hours and within an enclosed building between 0600 to 1400 hours; and no work, activities or operations, including loading and unloading shall take place within the 'proposed operational area' at any time on Sundays or Bank Holidays. The modification of this condition should not however be taken as an indication or interpretation of the parameters of condition 8 or condition 9 which are attached to the extant planning permission Ref: 17/04482/FUL.
15. In conclusion, taking into account my findings above, the proposed extension of hours to allow delivery vehicles to enter and leave the site from 0600 hours for the purposes of site access only, would not cause significant or demonstrable harm to the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance. I therefore find no conflict with Policy SOC5 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies and Saved Policy BE1 of the Vale Royal Local Plan, 2006 which seek to ensure, amongst other things, that the amenities of people living nearby are protected. I also find no conflict with the Framework which seeks to provide a high standard of amenity for all existing and future occupiers.

### **Other Matters**

16. From discussions that took place during the Hearing it was apparent that the Council may consider some further flexibility to the manner in which the site is able to operate and how the company manages its deliveries. However, the suggested condition discussed at the Hearing (Document 2 received at the Hearing) would require further details to be agreed by the Council. In the absence of an agreed delivery plan before me and taking into consideration the

site history and representations received, it would not be appropriate for me to impose a condition which has no certainty of being discharged and which has not been fully consulted on.

17. I appreciate the concerns of neighbouring residents who had expectations that further tree planting would take place adjacent to the access road. However, that suggested tree planting is not a matter that I am able to consider in this appeal.

## **Conclusion**

18. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed. The planning permission I have granted allows delivery vehicles to enter and leave the site between 0600 – 2200hours Mondays to Friday (excluding Bank Holidays); 0600 hours to 1400 hours on Saturdays; and no delivery vehicles shall enter or leave the site at any time on Sundays or Bank Holidays. In addition, in the interests of clarity and to protect the living conditions of neighbouring residents, the permission I have granted also specifies that no work, activities or operations, including loading and unloading of delivery vehicles, shall take place within the 'proposed operational area' defined by red hatching on drawing no. PD-04 Rev 0 except in accordance with the following: Monday to Friday (excluding Bank Holidays) - outdoor between 0800 to 2000hours and within an enclosed building between 0800 to 2200 hours; Saturdays-outdoor between 0800 to 1400 hours and within an enclosed building between 0600 to 1400 hours; and no work, activities or operations, including loading and unloading of delivery vehicles, shall take place within the 'proposed operational area' defined by red hatching on drawing no. PD-04 Rev 0 at any time on Sundays or Bank Holidays.
19. Conditions previously imposed relating to the approved plans, site access, lighting, noise levels and operational area and hours remain necessary for reasons of certainty, highway safety and to protect the living conditions of neighbouring residents. In addition, and with the agreement of the main parties, I have amended proposed condition 4 to correct a typographical error in the previous permission (previously condition 6).

*Elizabeth Pleasant*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

Grant Anderson

Paul Hamill

Tommy Bailey

Adrian McCordick

Hill Dickinson

FP McCann Ltd

FP McCann Ltd

Hoare Lea Acoustics

## FOR THE LOCAL PLANNING AUTHORITY

|                 |                                                            |
|-----------------|------------------------------------------------------------|
| Steve Lewis     | Planning Officer                                           |
| Jim Candlin     | Regulatory Services Officer, Environmental Protection Team |
| Pete Hargreaves | Regulatory Services Officer, Environmental Protection Team |
| Samantha Green  | Planning Enforcement Officer                               |

## INTERESTED PARTIES

|                 |                      |
|-----------------|----------------------|
| Simon Moorehead | Local Resident       |
| Keith Wilkinson | Local Resident       |
| John Beecroft   | Byley Parish Council |

## DOCUMENTS SUBMITTED AT THE HEARING

1. Historic Photographs of the site and extract of site layout of proposed access road.
2. Suggested wording for Condition 9

## SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Drawing No PD-01 Location Plan;
  - Drawing Nos. PD-02(0) Rev A, PD-02(1) Rev A, PD-02(2) Rev A, PD-02(3) Rev A and PD-02 (4) Rev A;
  - Drawing No PD-3 Rev A landscaping plan;
  - Drawing No PD-04 Rev 0 operational area;
  - Drawing No PD-06 Rev A plans and elevation D shop buildings;
  - Drawing No PD-07 Rev 0 external lighting plan;
  - Drawing No PD-08 Rev 0 fencing details;
  - Drawing No H1201-401 Rev A access details;
  - Drawing No 2016-2028 Rev A drainage plan.
2. The Kings Lane access shall remain permanently closed at all times.

3. Visibility splays for the new access of 2.4m by 120m in both directions, as shown on ADL drawing no H1201-401 Rev A shall be provided prior to first use of the access hereby approved and retained in that manner thereafter.
4. The maximum noise levels emitted from the use of the constructed access road and extension to the storage area hereby permitted shall not exceed a level 5dBLAeq below recorded background levels when measured in accordance with BS 4142:2014 at the façade of the nearest noise sensitive receptor.
5. No work, activities or operations, including loading and unloading of delivery vehicles, shall take place within the 'proposed operational area' defined by red hatching on drawing no. PD-04 Rev 0 except in accordance with the following:

Monday to Friday (excluding Bank Holidays)

-outdoor between 0800 to 2000hours and within an enclosed building between 0600 to 2200 hours;

Saturdays

-outdoor between 0800 to 1400 hours and within an enclosed building between 0600 to 1400 hours;

No work, activities or operations, including loading and unloading of delivery vehicles, shall take place within the 'proposed operational area' defined by red hatching on drawing no. PD-04 Rev 0 at any time on Sundays or Bank Holidays.

6. No delivery vehicles shall enter or leave the site outside of the following hours:

Mondays to Friday (excluding Bank Holidays)

-0600 to 2200 hours;

Saturdays

-0600 to 1400 hours;

No delivery vehicles shall enter or leave the site at any time on Sundays or Bank Holidays

7. No construction related deliveries in connection with the development hereby approved shall be taken at, or despatched from, the site outside the hours of 0800 to 1800 hours Mondays to Fridays; 0800 to 1400 hours on Saturdays; or at any time on Sundays or Public Holidays.
8. No development, storage, parking or other operation activity shall be carried out or take place on the land which is within the site application boundary but outside of the 'proposed operational area' as defined on approved drawing no. PD04 Rev 0.
9. Prior to the first use of the access hereby approved, details of all external lighting equipment shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of the hours of operation, location, size, design of luminaires and fittings, type/output of

light sources with lux levels, together with isolux drawings to demonstrate the levels of illumination within the site and the amount of overspill beyond the site boundaries. The approved external lighting plan shall be implemented in accordance with the approved details and thereafter retained. No other external lighting equipment may then be used within the development other than as approved by the Local Planning Authority.

**END OF CONDITION SCHEDULE**