



Appeal Decision

Site visit made on 20 August 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Ref: APP/W3005/W/19/3228951

Van Elle Ltd, Summit Close, Kirkby in Ashfield, Nottinghamshire NG17 8GJ

- The appeal is made under section s78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Michael Mason on behalf of Van Elle Ltd against the decision of Ashfield District Council.
 - The application Ref V/2018/0563, dated 9 August 2018, sought approval of details pursuant to condition No 5 of planning permission Ref V/2016/0326 granted on 11 July 2016.
 - The development proposed is a Training Facility.
 - The condition in dispute No 5 which states that: *No training of staff shall take place outside of the building unless a scheme to control noise from this activity has been submitted to and agreed in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with these details unless otherwise agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To safeguard the amenities of residents living in the vicinity of the application site.*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. In July 2016 the appellant secured planning permission¹ for a new training facility on a parcel of land at the end of Summit Close. This site formed part of the appellant's wider operation in this location, which in its entirety, extends to an 'L' shaped parcel running to the north and west of Summit Close as well as eastwards, to the rear of residential properties at the end of Pierpoint Place.
3. Condition 5 of that permission required details of a scheme to control noise arising from the training of staff, to be submitted before it took place outside of the building. The appellant confirms that the 2016 permission has been implemented.
4. This appeal follows the Council's decision on 1 March 2019 to refuse the details submitted to discharge Condition 5 on the grounds that the measures to control noise from the training activity were insufficient to reduce disturbance to neighbouring residents.
5. The main issue in this appeal is therefore whether the details submitted to discharge Condition 5 are sufficient, having regard to effect on the living

¹ Council Ref: V/2016/0326

conditions of neighbouring occupiers, with particular reference to noise and disturbance.

Reasons

6. The appellant is a specialist ground engineering contractor and their large operation at Summit Close incorporates a range of offices, covered and open storage for plant and machinery, as well as the training facility. Whilst the parties do not agree on the categorisation of its use, from my observations, it incorporates elements of B1 (offices), B2 (general industry), B8 (storage) and D2 (training) but it is nonetheless, industrial in its character.
7. Even before the construction of the training building, the site was used to instruct staff/delegates in the same outdoor location put forward as part of the appeal proposal, as it had been by the previous owners. This identified training area is located immediately to the north the houses on Pierpoint Close and to the east of dwellings on Kingswood Drive and Roewood Close.
8. Nonetheless, in securing planning permission for the indoor training facility in 2016, it was a conditional approval that included Condition 5, the subject of this appeal, to submit a scheme to control noise from the training activity before any training of staff took place outside of the building. The merits of Condition 5 are not for me to consider as part of this appeal. Nor are other concerns raised by third party representations, such as dust, and the wider operations on the site. My role is confined to a consideration of Condition 5, which is the only matter before me.
9. I recognise that the appeal site has been part of a commercial/industrial operation for many years, with evidence that machinery operated within the designated training area as far back as 2009. At the time of my visit, on a weekday, it was busy and there was some noise, principally associated with machinery. Furthermore, its use generally is unrestricted with equipment being moved on and off the site on a 24/7 basis. However, the purpose of Condition 5 is to protect the living conditions of adjoining occupiers in respect of training outside of the training building.
10. The Noise Plan and Assessment (NPA) submitted to discharge Condition 5 shows noise sample locations, of which A-C are closest to residential boundaries. In these cases, the assessment from a crane 'on tick over' or 'full revs', or an excavator (less than 10T) indicates that when this machinery is operational in this manner, the noise readings would, for the most part, be greater than background levels. This would, in my view, be noticeable to residents adjoining the site, many of which overlook the training area and are in close proximity to it as a consequence of the limited depth of their rear gardens.
11. The details indicate that the working hours for the delivery of training would be 8am and 6pm Monday to Friday and between 8am and 4pm on Saturdays. The appellant has also indicated a willingness to restrict the use of all plant and machinery within the outdoor training area for training purposes to between 10am and 6pm on Mondays to Fridays, and between 10am and 4pm on Saturdays. Other measures are also proposed, including the fitting of white noise audible alarms to all plant used for outdoor training and restrictions on the starting time of crane operations.

12. Whether or not the training facility is relocated to another part of the site and the unrestricted storage of other plant/vehicles/materials put in its place is not a matter before me. Furthermore, even accepting that the appeal site was operational before the adjacent residential properties were permitted and occupied, so that they might anticipate some noise and disturbance, the purpose of Condition 5 is still to safeguard their living conditions.
13. Whilst the Council may have originally accepted the findings of the NPA, a scheme to control noise arising from the training of staff that includes operations for most of Saturday, in addition to weekday working, would not, in my view, achieve that particular objective. It would provide an insufficient respite from noise and activities specifically associated with the training of staff outside, at a time when residents would be more likely to be at home and using their gardens.
14. I appreciate that specialist plant training is limited by availability and cost. I also acknowledge that the appellant employs a large number of operatives nationwide and there are logistical considerations in getting staff back to train at the appeal site during the week. Consequently, training on a Saturday would offer the appellant the most economically viable option. Whilst sympathetic to such practicalities, as well as the contribution the site makes to local employment, it does not outweigh the harm that I have identified arising from the scheme submitted to discharge Condition 5.
15. For these reasons, I conclude that the details submitted to discharge Condition 5 of planning permission Ref V/2016/0326 are not sufficient and as submitted, the details would be harmful to the living conditions of neighbouring occupiers, with particular reference to noise and disturbance. It would therefore be contrary to Policy ST1 of the Ashfield Local Plan Review (Adopted November 2002) which seeks, amongst other matters, to ensure that development does not conflict with an adjoining or nearby land use. It would further conflict with guidance within the National Planning Policy Framework, which advises that development should ensure a high standard of amenity for existing and future users.

Conclusion

16. For the reasons given above, having regard to all matters, I conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR