The Planning Inspectorate

Appeal Decision

Site visit made on 17 December 2019

by J E Jolly BA (Hons) MA MSc CIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/C3810/W/19/3232526
Quercus Nursery, Littlehampton Road, Ferring, West Sussex BN12 6PH

- 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 Quercus Nursery against the decision of Arun District Council.
- The application Ref FG/35/19/PL, dated 22 March 2019, was refused by notice dated 6 June 2019.
- The application sought planning permission for amendments to design approved under FG/95/16/PL, polytunnels, outdoor growing beds, tree nursery, storage & welfare facilities for a horticultural enterprise without complying with condition No 2 attached to planning permission Ref FG/52/18/PL, dated 13 December 2018.
- The condition in dispute is No 2 which states that 'there shall be no deliveries undertaken between 1900 hours and 0600 hours.'
- The reason given for the condition is: 'The interests of the amenity in accordance with Arun Local Plan Policies QE SP1 and QE DM1.

Decision

1. The appeal is allowed and planning permission is granted for amendments to design approved under FG/95/16/PL for polytunnels, outdoor growing bags, tree nursery, storage and welfare facilities for a horticultural enterprise at Quercus Nursery, Littlehampton Road, Ferring, West Sussex BN12 6PH in accordance with the application Ref FG/35/19 dated 22 March 2019, without compliance with condition number 2 previously imposed on planning permission Ref FG/52/18/PL dated 13 December 2018, and subject to the conditions set out in Annex A.

Main Issue

2. The main issue is the effect variation of condition 2 of FG/52/18/PL would have on the living conditions of the neighbouring properties with particular regard to noise and disturbance.

Reasons

3. The appeal site, which accommodates a rural horticultural business, is located adjacent the A259 which is a four-lane, double dual-carriageway separated by a grassed central reservation. Opposite the appeal site there are large detached houses which are set back behind high hedges or walls.

4. Planning Permission FG/52/18/PL was granted, subject to conditions, on 13 December 2018 for amendments to design from an earlier permission (FG/95/16/PL) for polytunnels, outdoor growing bags, tree nursery, storage and welfare facilities for a horticultural enterprise. These permissions included a condition which restricted the hours for deliveries.

5. The disputed condition was imposed to limit the hours and volume of deliveries to Quercus Nursery in the interests of the amenity of the adjacent residential dwellings, with particular reference to noise and activity associated with the business. However, the Appellant has stated that due to the nature of the business which requires early delivery of perishable goods, and the driving restrictions placed upon delivery drivers there is a need to extend the opening hours and frequency of deliveries from those imposed by the Council.

6. The appeal proposal seeks to allow for up to 5 deliveries per week between the hours of 05.00 and 06.00 hours except on Sunday and Monday mornings with no more than one vehicle on each day between these hours.

7. In practice this would result in deliveries taking place one hour earlier in the day from 5am, up to five times per week. Deliveries would be made into a defined area, which is described as a pergola, that is set behind protective fencing and at some distance from the nursery entrance. The adjacent car-parking area has a loading bay which appears adequate to accommodate one larger vehicle or lorry.

8. I acknowledge that there has been a number of complaints and representations from interested parties related to the noise and activity associated with the existing business arrangements. However, I give substantial weight to the independent Noise Impact Assessment and the evidence provided by the Councils' professional Environmental Health Department. The assessments found, on a number of occasions, that while noise associated with deliveries generated between 3am and 4am would be considered as a statutory nuisance, and potentially subject to enforcement by the Council, after 4.45am, when early morning traffic levels start to increase, the activity would be within acceptable limits. Indeed, measurements carried out between 5am and 6am found that the noise generated by Quercus deliveries were relatively low in comparison to the ambient background noise. Moreover, the noise was described as low frequency 'thuds' at a level of around 20dB, which is comparable to a library or quiet room.

9. In the absence of any convincing evidence to the contrary, I consider that the limited number of deliveries suggested from 5am would not cause an unacceptable impact on the living conditions of the occupiers of nearby residential properties. This is particularly the case given the generous distance between the appeal site and the properties on the other side of the A259, which are also buffered by a range of boundary treatments.

10. For the above reasons the proposed alterations to condition 2 would not result in an unacceptable impact on the living conditions of the occupiers of nearby residential properties and would therefore accord with Policies D DM1, QE SP1 and QE DM1 of the Arun Local Plan 2011-2031 (2018) which amongst other matters seek to ensure that development will have minimal impact to users and occupiers of nearby property and land, including unacceptable noise and disturbance.

Other Matters

11. My attention has also been drawn to other concerns related to the operation of the site more generally, including concerns related to the storage of vehicles. However, my remit under this appeal is to consider the condition in dispute.

12. I also acknowledge the appeal decision[1] which was sent by the Council relating to a site in Bersted. However, in the absence of any explanation by the Council as to the relevance of this decision to the current appeal, and the fact that this relates to an entirely different form of development, I can only give this very limited weight. Moreover, each proposal must be considered on its individual merits.

Conditions

13. In order to ensure that deliveries are restricted to the times suggested in the application it is clear that a revised condition is necessary, and I am satisfied that such a condition would comply with the requirements of Paragraph 55 of the National Planning Policy Framework and the associated National Planning Practice Guidance.

14. I have also considered whether it is necessary to impose any of the other conditions from permission FG/52/18/PL. Given that the development has already been carried out it is not necessary to include a condition relating to the approved plans.

15. In respect of the other conditions; condition 1 of application Ref FG/52/18/PL is removed as I am satisfied from the evidence before me and from my site visit that the proposal has been carried out. Similarly, condition 3 is also removed as the work has been carried out and the condition is no longer required.

16. However, condition 4 is retained as the Council has confirmed that the details of the proposed surface water drainage system remain outstanding. This condition is needed to ensure that the site is satisfactorily drained.

Conclusion

17. For the reasons given above, I allow the appeal and vary condition 2 of planning permission Ref FG/52/18/PL.

J E JOLLY

INSPECTOR

[1] Reference APP/C3810/W/19/3230405

Appendix A – Conditions

1) There shall be no deliveries undertaken between 1900 hours and 0600 hours except for no more than 5 deliveries per week (Tuesday to Saturday inclusive) to be undertaken by one vehicle only between the hours of 05.00 and 06.00 hours on any one day.

2) Within 3 months of the date of this permission full details of the proposed surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The design should follow the hierarchy of preference for different types of surface water drainage disposal systems as set out in Approved Document H of the Building Regulations, and the recommendations of the SUDS Manual produced by CIRIA. Winter groundwater monitoring to establish highest annual ground water levels and percolation testing to BRE 365, or similar approved, will be required to support the design of any infiltration drainage. The agreed details shall be maintained for the lifetime of the development.

*****End of Conditions*****