



Appeal Decision

Site visit made on 21 July 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Appeal Ref: APP/Z4718/W/20/3246778

Daisy Lee Farm, New Hey Road, Scammonden, Huddersfield HD3 3FW

- 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 Mr R Shaw against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/70/90468/W, dated 14 February 2019, was refused by notice dated 10 January 2020.
 - The application sought planning permission for alterations to convert stables to holiday let cottage without complying with a condition attached to planning permission Ref 2017/62/93436/W, dated 6 December 2017.
 - The condition in dispute is No 4 which states that:
'The 'single holiday let unit' hereby approved shall be let and occupied solely for the purposes of holiday accommodation and shall not be occupied as a main or principal place of residence.'
 - The reason given for the condition is:
'In the interests of residential amenity of future occupiers, as the application site is within 100.0m of a third party wind-turbine which would cause continuous noise pollution that would be detrimental to the amenity of long term residents of the hereby approved residential unit. This is in accordance with Policy EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Paragraph 17 and Chapter 11 of the National Planning Policy Framework.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The original 2017 planning permission to which this appeal relates is referred to as '2017/62/93436/W' on the original decision notice. Although it has subsequently been referred to as '2017/93436' by both the Council and the appellant, I have used the longer reference in the banner heading above for consistency with the original grant of planning permission.
3. The 2017 planning permission described the development as the conversion of a stable block to a holiday let cottage. The removal of the disputed condition would have the effect of permitting the appeal property to become an open-market dwelling. The Planning Practice Guidance advises that applications under section 73 of the Town and Country Planning Act 1990 cannot be used to

change the description of the development¹, and I sought the views of the main parties on whether recent case law on this matter² might indicate that the appeal fell outside the powers conferred by section 73. Both parties were of the view that, as a holiday let and an open-market dwelling fall within the C3 use class, the removal of the disputed condition would not lead to a material change of use compared to that allowed by the original permission. On the basis of the information before me I accept and agree with that view, and have proceeded to determine the appeal accordingly.

4. Since the 2017 permission was granted, the 2019 Kirklees Local Plan (the KLP) has been adopted. The policies within the KLP replace those of the previous Unitary Development Plan referred to in the original permission, and I have accordingly determined the appeal on the basis of the policies in the KLP.

Main Issue

5. The main issue is whether the disputed condition is reasonable and necessary, having regard to the potential impact of noise disturbance on living conditions for permanent residents.

Reasons

6. The appeal property is a former stable block within the bounds of Daisy Lee Farm. It is a substantial stone-faced building which under the 2017 planning permission has been converted to a holiday let cottage.
7. There is a group of three wind turbines to the west of the appeal site, the closest of which is approximately 80m from the cottage, and the M62 motorway runs in a cutting around 160m to the north. Both of these are potential sources of noise disturbance to occupiers of the cottage. The Council's primary concern is that the impacts of noise from the nearest turbine would be significantly detrimental to living conditions for long-term occupiers of the cottage, and that consequently it should remain only available for shorter-term holiday lets.
8. The appellant submitted with their application a noise survey which included an external sound survey carried over three days in January 2019. The report indicates that the sound monitoring equipment was set up and collected on days with calm weather and low wind speeds. The acoustic consultants observed that at the times of their site visits the dominant noise source was traffic on the M62 and that the noise from the nearby turbine was not audible. Nonetheless, the report found that measured noise levels put the appeal site in ProPG³ Noise Risk Category 2, meaning that noise could, if unmitigated, have a significant adverse effect on health and quality of life.
9. My site visit was carried out on a moderately breezy day and, when standing immediately outside the walls of the cottage I was able to clearly hear the turbine above the traffic noise much of the time. I recognise that this is only a snapshot and I was of course not able to measure sound levels or wind speeds, so this observation does not invalidate the findings of the appellant's noise survey. Nevertheless, I consider that noise from both the motorway and the

¹ Planning Practice Guidance Paragraph: 014 Reference ID: 17a-014-20140306

² *Finney v Welsh Ministers & others* [2019] EWCA Civ 1868

³ Institute of Acoustics, Chartered Institute of Environmental Health, Association of Noise Consultants (2017) *Professional Practice Guidance on Planning and Noise – New Residential Development*

- nearest turbine is intrusive, and without mitigation would have the potential to cause significant harm to the quality of life for the occupiers of the cottage in the long-term. In my view, without suitable noise mitigation the cottage would not offer acceptable living conditions as a permanent dwelling.
10. The submitted noise report concludes that, with mitigation measures including suitable double glazing and mechanical ventilation, the internal noise levels within the cottage could be made to comply with the criteria set out in BS8233:2014 *Guidance on sound insulation and noise reduction for buildings*. However, the evidence before me does not indicate whether the identified mitigation measures have already been installed in the cottage and if this has resulted in an acceptable level of internal noise, or if additional measures remain necessary to make the cottage suitable for permanent occupation. Without such evidence, I cannot be certain that the noise levels would not have a significant adverse effect on long-term residents' well-being.
 11. The survey also indicates that noise levels outside the cottage exceed those recommended for external areas in BS8233:2014. This potentially limits the space's usefulness as an amenity area for permanent residents, and no information is before me to indicate whether any additional measures to achieve the lowest practicable noise levels in the external areas are proposed. The standard recognises that the desirable levels may not be achievable in all areas, and having regard to the constraints of the site's location I acknowledge that it may not be practical to mitigate noise disturbance outside the dwelling. I therefore consider that the external noise levels would not on their own justify the retention of the disputed condition, although this of course does not negate the potential for harm which would arise from unacceptable internal noise.
 12. The Council has not suggested that they consider it would be impossible to mitigate the identified noise impacts within the cottage, nor did they raise any other planning concerns about the implications of removing the disputed condition. However, in the absence of evidence to demonstrate that noise has been adequately mitigated, or firm proposals for the installation of further suitable mitigation should this be required, I consider that the potential remains for noise disturbance to result in unacceptable living conditions for permanent residents.
 13. I therefore conclude that the disputed condition is reasonable and necessary to ensure that the development complies with KLP Policies LP24(b) and LP52, which together seek to ensure that development provides acceptable living conditions for future occupiers, and that measures are taken to ensure that noise and pollution does not have an unacceptable impact on quality of life and well-being. For the same reasons, the condition is necessary to ensure that the development accords with the requirements of the National Planning Policy Framework, notably chapters 12 and 15.

Conclusion

14. For the reasons given above the appeal is dismissed.

M Cryan

Inspector