



Appeal Decision

Site visit made on 5 October 2020

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/P1560/W/20/3250989

Mulleys Farm, Bentley Road, Little Bromley, Manningtree CO11 2PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs M Cooper against the decision of Tendring District Council.
 - The application Ref 18/01888/FUL, dated 9 November 2018, was refused by notice dated 25 October 2019.
 - The development proposed is change of use of agricultural and storage buildings to mixed open use (B1, B2 and B8) and the erection of an extension following the removal of a lean-to structure.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural and storage buildings to mixed open use (B1, B2 and B8) and the erection of an extension following the removal of a lean-to structure at Mulleys Farm, Bentley Road, Little Bromley, Manningtree CO11 2PL in accordance with the terms of the application, Ref 18/01888/FUL, dated 9 November 2018, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mrs M Cooper against Tendring District Council. This application is the subject of a separate Decision.

Procedural matters

3. The application was submitted retrospectively, changes of use having already occurred and the extension having been erected. I shall therefore consider the proposal as being retrospective.
4. The application form refers to the Planning, Design and Access Statement for the description of the development. I have taken the description from the appeal form, which is the same as that given on the decision notice.

Main Issues

5. The main issues in the appeal are:
 - i) the effect of the proposal on the living conditions of adjacent occupants in terms of noise and disturbance; and
 - ii) the effect of the proposal on highway safety.

Reasons

Living conditions

6. The appeal site forms a complex of former farm buildings that are now in business uses. The buildings are accessed from Bentley Road and extend back from the road. On one side of the site is the farmhouse. On the other side, and immediately adjacent is Mulleys Cottage, a grade II listed building. Beyond Mulleys Cottage there is a public house and another dwelling. The buildings form a small group within an open rural area.
7. Planning permission was granted in 2008¹ for use of six of the buildings for B8 storage and two buildings for B2 industrial use. The latter two buildings are adjacent to the eastern boundary of the site. A condition attached to that permission restricted those two buildings to use by a named occupier. That occupier has vacated the buildings. Therefore, the authorised use of the majority of the site, excluding the two buildings referred to, is for B8 storage use.
8. The largest of the buildings is occupied by Datum Group Ltd, which manufactures structural steel. This is the first building as one enters the site. It is separated from Mulleys Cottage by the access drive through the site. Other than this, from the information before me, the rest of the buildings appear to be currently used for storage.
9. A noise survey has been undertaken by the appellant, with monitors at Datum Group's unit and at the boundary with Mulleys Cottage. The survey notes that operations included welding, vehicle movements, general site noise, electric forklift loading and occasional dropping of steel at Datum Group's unit. A survey was also undertaken in the absence of operational activity to establish background noise levels in order to enable an assessment of the noise impact to be made.
10. The noise assessment indicates the need for a 2m high acoustic fence along the boundary with Mulleys Cottage in order to mitigate noise to an acceptable level. Subject to this provision the predicted noise level at that dwelling would be less than 3dB above the existing ambient noise level. This would be well within the maximum 5dB increase which BS4142:2014 states can result in adverse impact. The predicted noise level of 54dB _{L_{Aeq}} is within the World Health Organisation's recommended daytime value of 50 – 55 dB _{L_{Aeq}}. I noted on my visit that acoustic fencing has been provided along the boundary with Mulleys Cottage as recommended. It has been demonstrated that, with this mitigation, noise levels at Mulleys Cottage would be within acceptable limits.
11. Appended to the noise report is a Noise Management Plan. This recommends various physical and management measures to ensure that the existing, and any future occupiers of the units would remain within acceptable noise limits. Those measures include the fitting of white noise reversing alarms to mobile plant, provision of acoustic cladding to the barn doors facing Mulleys Cottage and keeping doors and windows closed at all times other than when access is required. The latter measure would reduce noise and light disturbance to the adjacent occupant.

¹ Ref. 07/02031/FUL

12. The Council's Environmental Protection Officer accepts the findings of the appellant's noise report and the provisions of the Noise Management Plan. Conditions could be imposed to ensure that noise levels do not exceed 5dB above the background level and that the site is managed in accordance with the Noise Management Plan. Such conditions would ensure that noise from site operations remains within acceptable limits.
13. Local residents say that, in the past, planning conditions have been flouted. Enforcement of conditions is a matter for the Council and the alleged non-compliance with conditions in the past is not a reason for me to dismiss the appeal.
14. There is no evidence before me to demonstrate that the development would attract a greater volume of heavy goods vehicle traffic than the authorised use. B1 and B2 uses have higher car parking requirements than B8 use, because of the increased number of employees likely to be on site. Given the provision of the acoustic fence it is unlikely that any increase in the number of smaller vehicles visiting the site would adversely affect the living conditions of the adjacent occupant.
15. The submitted parking plan identifies an area designated for deliveries which is between two buildings and away from the boundary with Mulleys Cottage. This would avoid any disturbance from delivery lorries which may have occurred in the past.
16. I note the comments which have been made about fumes from activities carried out at Datum Group's unit. I note also the appellant's assurance that appropriate containment measures are used. This did not form part of the reasons for refusal and no specific evidence has been presented in this respect.
17. For the reasons given above I am satisfied that the development would not have a materially damaging impact on the health or amenities of the adjacent occupants, and on this basis would accord with saved Policy QL11 of the Tendring District Local Plan (2007) (LP). It would also accord with saved Policy ER11 of the LP which requires that the type and scale of activity proposed is compatible with the character of the area, and that the impact on local amenity is acceptable. Accordingly, I conclude on this issue that the development would not adversely affect the living conditions of adjacent occupants.

Highway safety

18. The appellant has submitted a plan that shows the provision of 48 car parking spaces, 2 lorry parking spaces, an area for deliveries and a turning area. Tracking diagrams have been provided which demonstrate that a 16m long articulated lorry could turn within the identified turning area. Although I note residents' comments that lorries have in the past manoeuvred within the road to gain access, this need not be the case if the turning area were kept clear and available at all times for this purpose.
19. Saved Policy TR7 of the LP applies the adopted car parking standards to non-residential development. The standards are expressed as maximum requirements. The number of parking spaces shown on the plan is four spaces less than the requirement if all units were in B2 use. It is just over half the requirement if all units were in B1 use.

20. This use class covers offices, research and development and light industry, which can have varying car parking needs, depending on the number of staff and visitors. The buildings are former farm buildings, faced with cladding and generally without windows. Realistically, it is unlikely that all of the buildings within the site would be used for offices, and on this basis the highest of the parking standard requirements would not apply.
21. The highway authority has not raised an objection on the basis of car parking provision, and I see no reason to disagree. Provision of car parking facilities in accordance with a detailed parking plan, and retention of those facilities can be secured by means of a condition. This would ensure that unacceptable on-street parking does not take place.
22. Similarly, a condition could secure the provision and maintenance of a turning area for articulated vehicles on the site. It has been demonstrated that such manoeuvres are possible. I noted on my visit that there were materials and parked vehicles within the area identified on the parking plan for this purpose which may have prevented such manoeuvres in the past.
23. The existing access is wide enough to accommodate two-way traffic flow and I saw that there is good visibility in both directions along the road. The highway authority has no concern regarding the capacity of Bentley Road to accommodate the traffic generated or in terms of highway and pedestrian safety. The proposal would accord with saved Policy TR1a of the LP which requires consideration of the capacity of the roads and prevention of hazards and inconvenience. The proposal would also accord with saved Policy ER11 of the LP which requires that the level of traffic generated, and the relationship with the highway network would be acceptable. For the reasons given, the proposal would not adversely affect highway safety.

Other Matters

24. The listed Mulleys Cottage is visually separated from the site by fencing and hedging. The appearance of the acoustic fence is consistent with what would normally be expected to form a domestic boundary. It is not out of scale or character. The extension which is subject to this appeal is of limited scale in relation to the building to which it is attached. It is of lightweight construction with large areas of glazing and is not dominant or intrusive. For these reasons the operational development that has been carried out does not harm the setting of the listed building.
25. There is no evidence before me to indicate that there would be any significant increase in traffic past the listed building or other activity that would be harmful to either the fabric of the building or its setting. The Council did not consider that there would be any harm to the listed building, or its setting and I see no reason to disagree.
26. Policy SP3 of the emerging local plan² requires new development to make a positive contribution to the quality of the local environment. The draft policy requires that the highway network is able to accommodate the additional traffic generated. Developments should be compatible with surrounding uses and minimise any adverse environmental impacts. For the reasons given above,

² Tendring District Local Plan 2013-2033 and Beyond Publication Draft

the development would not conflict with that draft policy, however I give the policy limited weight as it has not been subject to examination.

27. Local residents have raised concerns about water supply, drainage, and potential for contamination of land and ground water. These did not form part of the Council's reasons for refusal. I note that the group of buildings relies on water from a borehole. The appellant states that foul drainage is to a suitably designed septic tank. There are separate legislative powers available to control pollution and contamination. These matters do not alter my conclusions on the main issues.

Conditions

28. I have imposed the conditions suggested by the Council with some minor alterations to ensure that they meet the tests in the National Planning Policy Framework.
29. I have not included the recommended condition requiring acoustic fencing to be provided adjacent to Mulleys Cottage as I saw that this has already been installed.
30. I have included an additional condition which limits the noise level to 5dB above background noise level, as recommended in the Environmental Noise Report, in order to safeguard the living conditions of adjacent occupants.
31. It is necessary that a detailed plan showing car parking, loading/unloading space and vehicle turning facilities is approved, notwithstanding the parking plan that has been submitted, and that the facilities are provided and retained, in order to ensure that on-street parking and manoeuvring of vehicles does not take place. It is also necessary to close the existing access to the front car park to ensure its efficient operation.
32. It is necessary to control external lighting and any public address system to protect the living conditions of adjacent occupants. A restriction on permitted development rights for extensions to industrial buildings is also necessary to protect living conditions.
33. It is necessary to ensure that the site is managed in accordance with the Noise Management Plan and that working hours are limited to protect the living conditions of adjacent occupants. The restriction on working hours is as suggested by the Council and the appellant. I understand that this is the same as the restriction in the existing permission. The Environmental Protection Officer has not objected to the suggested 07:00 hours start time.
34. Finally, a condition specifying the plans to which the permission relates is necessary to provide certainty. There is no need to refer to the extension plan as this has been erected. I have not referred to the Environmental Noise Report in this condition as it is covered by other conditions.

Conclusion

35. For the reasons given I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan and Parking Plan.
- 2) Notwithstanding the approved plans, within three months of the date of this decision, a plan identifying areas within the site for vehicle parking and turning for staff and delivery vehicles shall be submitted to and approved in writing by the local planning authority. The vehicle parking and associated turning areas shall be completed within three months of approval of the plan by the local planning authority and retained in this form at all times. The vehicle parking and turning areas shall not be used for any purpose other than the parking and turning of vehicles that are related to the use of the site.
- 3) Notwithstanding the approved plans, within three months of the date of this decision, a plan identifying areas within the site for the purposes of loading/unloading/reception and storage of materials and manoeuvring shall be submitted to and approved in writing by the local planning authority. The works shall be completed within three months of approval of the plan by the local planning authority. These areas shall be clear of the highway and retained in the approved form thereafter for that sole purpose.
- 4) The existing access to the formal parking area shown on the Parking Plan shall be suitably and permanently closed incorporating the reinstatement to full height of the highway verge within three months of this decision.
- 5) Notwithstanding any existing floodlighting or other means of external lighting on site, no floodlighting or other external lighting shall be installed until details of the illumination scheme have been submitted to and approved in writing by the local planning authority. Development shall only be carried out in accordance with the approved details.
- 6) Notwithstanding the provisions of Article 3 and Schedule 2 Part 7 Class H of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), there shall be no extension to or alteration of any building unless details of such extension or alteration have been submitted to and approved in writing by the local planning authority.
- 7) No public announcement system or other form of external audio communication system shall be installed at the site except in accordance with details, including position, height and full technical details, which shall have been submitted to and approved in writing by the local planning authority.
- 8) Cumulative noise from all operations/mechanical/electrical plant at the unit(s) shall not exceed 5 dB above background noise level (L_{A90}) at 1 metre from any sensitive façade. All measurements shall be undertaken in accordance with BS4142:2014.
- 9) Within three months of the date of this decision, details of the physical and management noise control measures as indicated in the Noise Management Plan at Appendix B of the Environmental Noise Report by Sharps Redmore dated 15 May 2019 shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented and completed within three months of approval and

adhered to thereafter. The development shall at all times be managed in accordance with the Noise Management Plan.

- 10) Use of the site as hereby permitted shall be confined to the following hours:

Mondays to Fridays: 07:00 hours to 18:00 hours

Saturdays: 07:00 hours to 12:00 hours

The site shall not be used for the hereby approved purposes on Sundays and bank/public holidays.