



Appeal Decision

Site Visit made on 11 December 2020

by Laura McKay MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th January 2021

Appeal Ref: APP/Y3940/W/20/3258550

**Heritage Automotive, Units 6 and 7 South Newton Industrial Estate
Warminster Road, South Newton SP2 0QW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr J Walsh (Heritage Automotive Limited) against Wiltshire Council.
 - The application Ref 20/01488/FUL, is dated 18 February 2020.
 - The development proposed is described as 'Retrospective planning consent for use of existing land as stock car storage and helipad'.
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Decision

1. The appeal is dismissed and planning permission for retrospective planning consent for use of existing land as stock car storage and helipad is refused.

Background and Main Issue

2. Planning permission has previously been granted for use of part of the appeal site to be used for parking of cars associated with the business operating from Units 6 and 7. Conditions on that permission included a limit on the area that could be used for parking of cars and requirements for landscaping. At my site visit I saw that a concrete helipad had been constructed and marked out, surrounded by a fenced enclosure. Cars were parked across the whole of the appeal site, including on the helipad, which appears to be a change to the situation that the Council observed when considering the application. However, the evidence before me is that the helipad had been in use since approximately October 2019, and permission is sought for its continued use. I have therefore considered the appeal on the basis that the development has already occurred.
3. During the application process extensions of time for determination were agreed between the Council and the appellant however a decision was not made by the agreed date. Although the Council subsequently issued a 'decision notice' on 2 September 2020 this was several days after the appellant had lodged an appeal against non-determination. Consequently, I have considered the appeal on the basis that it was submitted, but have had regard to the Council's putative reason for refusal, which relates to the impact of the use of the helipad on neighbouring residential properties.
4. The main issue is therefore the effect of the development on the living conditions of neighbouring occupiers in respect of noise and disturbance.

Reasons

5. The National Planning Policy Framework (the Framework) requires development to be appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment. It requires that development should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development, and avoid noise giving rise to significant adverse impacts on health and the quality of life.
6. The Planning Practice Guidance (PPG) identifies a number of factors that may influence whether noise could be a concern. These include the source and absolute level of the noise, the time of day, how it relates to the existing sound environment, the number of noise events and the frequency and pattern of occurrence of the noise.

Helipad

7. South Newton Industrial Estate is a small group of commercial and industrial units on the edge of a small settlement, set behind a car dealership and a row of residential properties along the A36. The appeal site comprises two commercial units behind the dwellings and land wrapping around the garden of Bonham Lodge and extending up to the A36.
8. The helipad is 75 metres from the nearest dwelling, which is set at approximately the same ground level as the site, with a palisade fence and hedge along the shared boundary. The evidence before me is that the helicopters' flight path does not pass directly over neighbouring dwellings, which are sensitive receptors in noise terms. Nevertheless, noise levels would increase as a helicopter approached the site and decrease as it flew away, and neighbouring occupiers would experience the highest noise levels when helicopters are landing and taking off from the appeal site, as they are then close to the dwellings and moving slowly. There would also be considerable noise while the helicopters are warming up for take-off and shutting down after landing. Although there is some dispute between parties as to the duration of each noise event, the evidence before me is that it lasts at least several minutes for each flight.
9. I have not been provided with any specific noise data or details of the types of helicopter that fly to and from the appeal site, however in my experience helicopter engines and rotors make a loud and distinctive noise. Given the proximity of the helipad to neighbouring dwellings, it is reasonable to conclude that helicopters approaching, landing, taking off and departing would be very noticeable for residents of those dwellings. Indeed, interested parties describe the noise from previous occurrences as 'overwhelming' and describe instances of waking sleeping children and disrupting their peace when sat outside. From the evidence before me therefore, due to the level and duration of noise generated, the use of the helipad is already likely to have resulted in material changes of behaviour such as not sitting outside when the noise occurs. Having regard to the PPG, this can be categorised as a significant observed adverse effect.
10. The A36 is a busy main route to and from Salisbury and as such carries considerable traffic, resulting in a relatively continuous noise. In my experience however, the level of noise from traffic is likely to be fairly low, with peaks

when larger vehicles pass. Operations at the industrial estate are also likely to generate some noise at times, but there are no details before me of the type of activities undertaken, or any particularly noisy businesses. Nonetheless, the appeal site and surrounding area are not particularly quiet, and residents of the existing dwellings will experience some noise on a day to day basis. There is however no substantive evidence before me that the character, level, frequency or duration of noise from other sources is comparable to the relatively short but intense experience of noise from helicopters using the appeal site in close proximity to existing dwellings.

11. I am also advised that military helicopters fly in the local area regularly, and while I have limited details of the frequency of such flights, this does mean that helicopter noise is already experienced in the area. However, the information provided indicates that these helicopters fly quickly along the valley and even when low flying, are still relatively high up and some distance from residential properties. As such, these flights are likely to result in different noise impacts to use of the helipad, where helicopters are close to neighbouring dwellings for several minutes at a time.
12. Accordingly, despite the existing sound environment, the evidence before me is that noise resulting from use of the helipad has a significant and disruptive adverse effect on the quality of life and living conditions of neighbouring occupiers. The Framework directs that significant adverse effects of this type should be avoided.
13. The appellant now proposes that helicopter flights be limited to no more than 28 flights per calendar year, with an approved flight path which does not pass over housing or fields with livestock, taking place only during daylight hours and during the operational hours of the associated car business. The proposed measures would avoid some adverse effects such as night flights, when noise is likely to be even more disruptive to neighbours. However, the significant adverse effects identified above have already occurred despite the number of flights averaging less than 28 per year and only during daylight, with a similar flight path. Consequently, there is no compelling evidence before me to demonstrate that these measures would avoid or mitigate and reduce to a minimum the adverse effects resulting from noise from use of the helipad.
14. Concerns have also been raised about dust pollution from the helicopters' downdraft, which has the potential to affect residents' use of their gardens and thereby impact further on their quality of life. The helipad is constructed of concrete with compacted gravel and earth around it however, which would limit the amount of dust being picked up. Therefore, the impacts of dust pollution are likely to be limited to certain weather conditions, for example very dry periods, and could be mitigated by measures such as planting. Consequently, I find that the effects of dust pollution could be addressed by planning conditions.
15. Nevertheless, for the reasons set out above, the use of the helipad, even to the limited extent proposed by the appellant, would significantly adversely affect the quality of life, and thereby the living conditions, of the occupiers of neighbouring dwellings in respect of noise. It would therefore conflict with Core Policy 57 of the Wiltshire Core Strategy, which requires development to have regard to the compatibility of adjoining buildings and uses and the impact on the amenities of existing occupants, including the consideration of pollution.

16. Furthermore, it would conflict with Framework paragraphs 127 f), 170 e) and 180, which seek to ensure a good standard of amenity for existing users, prevent new development from contributing to unacceptable levels of noise pollution and ensure new development is appropriate to its location taking account of the likely effects of noise.
17. The appellant suggests that the helipad could be used for 28 days per year as permitted development, however Class B of Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) does not permit temporary use of land where it is within the curtilage of a building. The appeal site includes Units 6 and 7 and the stock car parking and helipad are used in association with those units. As such, the helipad is physically and functionally related to the building and therefore can be considered to be in its curtilage. In any event, the formation of the hardstanding for the helipad was development requiring planning permission. Consequently, there is no permitted development fallback position available to weigh against the harm I have identified.
18. The PPG requires that decisions take account of the economic and social benefit of the activity causing the noise. The helipad is used for senior management of the car business to commute to the site and as a base to access their other sites in the local area. Previously, Old Sarum airfield was used, however this is no longer available for private flights. The helipad is therefore a convenience for the business, however there is no substantive evidence before me that without it the viability of the business would be significantly affected. I am also mindful that use of the helipad appears to have ceased, given that there were cars parked on it at the time of my visit. While this may be temporary, nevertheless there is no evidence before me that stopping use of the helipad has had adverse impacts on the business. It has not therefore been demonstrated that the helipad is essential to the sustainable and successful operation of the business, as the appellant suggests. Consequently, the economic benefits of the helipad can be afforded very little weight and do not outweigh the harm I have identified.
19. The proposal includes signage along the A36 to warn traffic that helicopters may be in the area. This is necessary to mitigate the potential harmful impacts on highway safety of helicopters appearing close to a busy road, and could be secured by planning condition. The ability to mitigate this potential harm does not however outweigh the harmful impacts in respect of noise.

Parking

20. The layout proposed for the car parking on the wider site differs from how it was being used when I visited. In particular, cars would be parked further from the A36 and from the boundary with Bonham Lodge. While parked, the cars would have little impact on the living conditions of neighbours. Manoeuvring could cause some noise and disturbance, such as from headlights shining into the neighbouring garden, however this could be mitigated by planning conditions to require compliance with the proposed layout and to limit the times of day when vehicles are moved. Consequently, the proposed parking arrangement would not adversely affect the living conditions of neighbouring occupiers in respect of noise and disturbance.
21. The appellant states that no more than 200 cars would be parked on the site, which would accord with the existing permission. Fencing is proposed along

the site boundaries which would screen the cars from view while parked and when manoeuvring. As such the cars would have little impact on the character and appearance of the area or harm highway safety.

Conclusion

22. While I have found that with appropriate planning conditions the use of the remainder of the site for car parking would not result in harm, this does not outweigh the significant harm that I have identified to the living conditions of neighbouring occupiers from the use of the helipad by helicopters. Therefore, the appeal is dismissed.

L McKay

INSPECTOR