The Planning Inspectorate

Appeal Decision

Site visit made on 20 April 2021

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2021

Appeal Ref: APP/P1805/W/20/3263967
30 The Avenue, Rubery, Rednal, Birmingham B45 9AL

- 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 Mr Wahid Ch of Adams Food Services Limited against the decision of Bromsgrove District Council.
- The application Ref 20/00479/FUL, dated 22 April 2020, was refused by notice dated 26 August 2020.
- The development proposed is the retrospective change of use from B1 (light industrial) use to B8 (storage and distribution) use and erection of associated cold storage facilities to the rear of the premises.

Procedural Matters

1. The appellant's company name is taken from the appeal form which tallies with the signage on site. Similarly, the site address is taken from the appeal form as it is more comprehensive.

2. I observed that the change of use described above has already occurred. I have dealt with the appeal on that basis.

Decision

3. The appeal is allowed and planning permission is granted for the change of use from B1 (light industrial) use to B8 (storage and distribution) use and erection of associated cold storage facilities to the rear of the premises at 30 The Avenue, Rubery, Rednal, Birmingham B45 9AL in accordance with the terms of the application, Ref 20/00479/FUL, dated 22 April 2020, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

4. An application for costs was made by Mr Wahid Ch of Adams Food Services Limited against Bromsgrove District Council. This application is the subject of a separate Decision.

Main issue

5. The main issue is the effect of the proposal in terms of noise/disturbance and fumes, on the living conditions of the dwellings in Richmond Road and Barrington Road.

Reasons

6. The appeal site is located on an industrial estate within which there are various commercial and light industrial uses. It is at the end of the road serving the estate, which culminates in a turning facility suitable for large vehicles. The appeal site access is off this turning head and it has frontage parking. The other boundaries of the appeal site adjoin the back gardens of houses in Richmond Road and Barrington Road, which are larger than average, and the site boundary consists of a mixture of varying quality timber fence panels and wire fences. These dwellings lack any significant front garden space.

7. The appeal site itself includes a range of brick buildings dating from the 1960s, of which the front is used as offices, but the majority is warehousing space to the rear, which is largely open with neatly painted white walls. An original side access has been maintained, which leads to a rear parking area and a rear roller shutter door access. To the rear of the building is a cold store, with air conditioning units at either end. A chiller unit is within the main building.

8. The building has had several previous uses including storage of scaffolding equipment. The appellant distributes frozen and non-perishable food, drinks and food sundries to shops and restaurants largely around the Birmingham area.

9. Typically, there is one incoming HGV delivery each day, in the morning, then after unloading, distribution vans depart. The incoming goods are on pallets which are unloaded by forklift and taken into the building. At the time of my site visit the daily delivery lorry had just arrived and its unloading took approximately 15 minutes.

10. The appellant has reviewed the operation and now restricts the movements of goods in/out to 08:30 to 17:00 Mondays to Fridays and 08:30 and 13:00 on Saturdays. There is no Sunday working, however Bank Holidays are necessary to maintain the flow of deliveries. These times avoid most sleep patterns and also coincide with the peak in ambient noise, and could be secured by a condition, as suggested by the parties, if planning permission were to be granted. Notably, at the moment there are no restrictions which has led to movements during early mornings. The agent also confirms that the owners have adapted to a new way of working.

11. I note that a noise assessment (NA) by an independent specialist has been submitted, which monitored noise from 5 points, and identified that the main emissions came from the air handling unit (AHU) cooling the cold store. I saw on my site visit that the AHU is not shielded, leading to a dull noise, which is audible at the site boundaries. Both parties accept that the AHU can be shielded. Indeed, such fabrications are specifically designed, and built to specifications and materials, to contain noise from this type of equipment. Furthermore, such shielding being around the source, would mean that emissions are dealt with within that immediate localised area rather the wider environment. I note the Council's specialist adviser on noise had no objection and recommended a condition to require the shielding. If planning permission were to be granted, a condition could be so worded to require the approval of the precise specification of the shielding, so that its effectiveness can be ensured even when the AHU is operating in summer temperatures. I noted on my site visit that the opening of the cold store door and un/loading do not generate any significant noise.

12. I also noted that the forklift reversing bleepers were noisy, and the NA recommends a condition on limiting their noise, in the event of planning permission being granted. Similarly, the NA recommends a condition for the erection of a 3m high boundary fence to limit the spread of noise into the adjacent residential gardens.

13. In my judgement, suitably worded conditions in respect of the hours of operation, 3m high fencing, changing the forklifts to a white noise, and shielding to the AHU would serve to mitigate any adverse effects arising from the proposal were planning permission to be granted. These conditions would also apply to any other potential users of the site in the future.

14. The adjoining houses have large gardens. Consequently, the 3m high boundary fence would be away from the windows of the adjacent houses and the immediate sitting out areas, so that significant shadowing or overbearing would not arise.

15. The reason for refusal refers to fumes, but this is not particularly elaborated in the Council's case or indeed is reflected in the advice from the specialist officer who had a contrary view. Nonetheless the site is on a well-established industrial estate whereby vehicle/machinery use will be extensive. Indeed, the previous use for the site as Use Class B1 could have led to significant traffic as a light industrial and/or office use, with workers coming/going, as well as, raw materials incoming and goods leaving.

16. The proposal would not amend the size of the vehicle parking area so that the number of vehicles at any one time would not be increased. Similarly, the particular points in the buildings for discharging goods, where engines could idle, would not be changed.

17. Policy BDP1 of the Bromsgrove District Plan promotes sustainable development to improve the economic, social and environmental characteristics of the area. BDP14 seeks to protect and improve the quality of employment provision and BDP19 prevents noise and air pollution. Similarly, paragraph 180 of the National Planning Policy Framework (the Framework) highlights the need to consider noise and fumes on living conditions. The proposal would not be in conflict subject to the conditions suggested by both parties were planning permission to be granted.

Conditions

18. Paragraph 55 of the Framework and the Planning Practice Guidance (PPG) provide the tests for the imposition of conditions. The Council has suggested conditions and the appellant has confirmed his agreement except for the need for slightly longer working hours.

19. Conditions are imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the fence, AHU shielding, working hours, forklift bleepers before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met. These conditions are worded differently from the Council's to provide greater precision and certainty.

20. The appellant states a need to be able to receive/send out deliveries during those times set out above in paragraph 10 and as I have found above those times are not unreasonable. Slightly longer time is required on Saturdays for office work, but that would be inconsequential because such work by its nature would not generate significant noise/disturbance.

21. The NA recommends the shrouding of the AHU and this would be warranted. The new boundary fence would serve to ameliorate the noise and a condition is necessary to confirm its details and implementation. The Council's suggested wording has been changed to clarify implementation bearing in mind the AHU is in place already. Similarly, a condition on the implementation on the alternative to reversing bleepers is needed.

22. The appellant also suggests additional conditions on the position for the unloading of inbound deliveries and the weight limit of delivery vans. These would help limit disturbance and are so imposed, albeit with the wording adjusted to give more clarity bearing in mind the retrospective nature of the proposal.

23. The NA moots the possibility of a condition limiting the number of HGVs and their loading. The Council are concerned about the enforceability of such a condition. However, such a condition would be not be necessary as HGVs would only be present during the working hours, when background noise is highest and less likely to be a time for sleep.

24. As the proposal is retrospective, conditions on the timing for implementation or compliance with approved plans are not necessary. A personalised condition has not been suggested by either party and the description of development refers to the generality of a B8 use, consequently this would not be warranted. Furthermore, the conditions would be applicable to any other users in the future.

Conclusion

25. I therefore conclude that the appeal should be allowed.

John Longmuir

INSPECTOR

CONDITIONS SCHEDULE

1) Unless within 3 months of the date of this decision a scheme for 3 metre high acoustic fencing along the length of both the south western and northern western appeal site boundaries is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the cold storage facilities to the rear of the premises hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the cold storage facilities shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of

the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

2) Unless within 3 months of the date of this decision a scheme for all the external lighting is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3) As from 1 month of the date of this decision and thereafter in perpetuity the loading, unloading, moving, receiving and dispatching of all goods shall only take place during the following hours: Monday to Friday 08:30 to 17:00 and on Saturdays/Bank Holidays 08:30 to 13:00.

4) Unless within 3 months of the date of this decision a scheme for attenuation of noise from all forklift trucks operating at the premises is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5) Unless within 3 months of the date of this decision a scheme for the attenuation of noise from all the external air conditioning/chilling units on the appeal site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the cold storage facilities to the rear of the premises hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the cold storage facilities shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning

authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6) Unless within 3 months of the date of this decision a scheme for a height limiting barrier across the front of the side access drive is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

7) Unless within 3 months of the date of this decision a scheme to restrict the unloading of inbound deliveries to the front-loading bay and weight restriction on outgoing deliveries to 3.5 tonnes is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END OF SCHEDULE