



Appeal Decision

Site visit made on 28 April 2021

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 July 2021

Appeal Ref: APP/T0355/W/20/3248271

**Hythe End Farm, Hythe End Road, Wraysbury, Staines-Upon-Thames
TW19 5AW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Fowles Crushed Concrete Limited against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 16/02366, dated 15 July 2016, was approved on 11 September 2019 and planning permission was granted subject to a condition.
 - The development permitted is detached building for the maintenance of plant and machinery associated with the storage before and after processing and processing of waste materials which is the subject of a Certificate of Lawful Use dated 9 September 1998 (retrospective).
 - The condition in dispute is No.1 which states that: *The building hereby approved shall be used only used for the servicing and maintenance of plant and machinery used in conjunction with the lawful use of the site as a waste transfer/sorting facility. The building shall be completely removed from the application site when it is no longer required for such purposes.*
 - The reason given for the condition is: *To safeguard the Green Belt from inappropriate development as the building is only acceptable in conjunction with the use of the site as a waste transfer/sorting facility. Relevant Policies Local Plan GB1, GB2.*
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Decision

1. The appeal is allowed and the planning permission Ref 16/02366 for a detached building for the maintenance of plant and machinery associated with the storage before and after processing and processing of waste materials which is the subject of a Certificate of Lawful Use dated 9 September 1998 (retrospective) at Hythe End Farm, Hythe End Road, Wraysbury, Staines-Upon-Thames TW19 5AW, granted on 11 September 2019 by the Royal Borough of Windsor and Maidenhead Council, is varied by deleting condition 1 and substituting for it the following condition:

The building hereby approved shall be used only for the servicing and maintenance of plant, machinery and vehicles used in conjunction with the lawful use of the site as a waste processing facility or any other lawful use of the site.

Application for costs

2. An application for costs made by Fowles Crushed Concrete Limited against the Royal Borough of Windsor and Maidenhead was initially withdrawn by letter dated 4 February 2021 but has subsequently been reinstated. This is the subject of a separate Decision.

Procedural Matter

3. The appeal was due to be considered at a Hearing. The appellant and the Council concurred that this would not be necessary if an agreed replacement planning condition is substituted for the condition the subject of this appeal. The agreed replacement condition is:

The building hereby approved shall be used only for the servicing and maintenance of plant, machinery and vehicles used in conjunction with the lawful use of the site as a waste processing facility.

Main Issue

4. The main issue is whether the disputed condition satisfies the tests for planning conditions, particularly in relation to the period of time the building has been in existence.

Reasons

5. The appeal relates to a detached building approximately 25m long, 16m wide and 8.7m high. It is located in the northern part of a large site used as a waste processing facility. At the time of my visit the building was in use for the maintenance of vehicles and plant used on the site and for the storage of tools.
6. The tests for planning conditions are set out in Paragraph 55 of the National Planning Policy Framework: *"Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable"*.
7. The planning application form claimed that the building was erected in July/August 2015. As such, it would have existed for more than 4 years and become lawful when the Council took its decision on the application in September 2019. At the time of the decision, as the building was lawful, it would have become immune from enforcement action. Enforcement action requiring the removal of the building, as operational development, could not be taken due to the passage of more than 4 years since the building's construction. Therefore, the inclusion of a clause in condition 1 requiring the building to *"be completely removed from the application site"* when no longer required for specified purposes would fail the test of being enforceable. The condition as drafted also fails the test of being necessary to make the development acceptable. If it had not been imposed, it would not have been necessary to have refused permission for a proposal to use the building in connection with the lawful use of the site.
8. The condition as drafted states the approved building *"shall be used only"* for purposes specified in the condition. It precludes the building being used for other purposes which could arise from a non-material change of use not requiring a grant of planning permission. The appellant has provided an illustration of a possible change to the existing lawful use as a waste processing centre *"to a use comprising the importation of land won minerals and the processing of such minerals in some manner as to render them more beneficial as builders' materials"*. The condition would not only preclude the building being used for purposes in connection with this or other similar alternative lawful uses but would also require its removal in these circumstances. In these respects, the condition would fail the test of being reasonable.

9. The condition as drafted refers to the "*lawful use of the site as a waste transfer/sorting facility*". The evidence before me confirms that the lawful use also includes the processing of waste products. There is also ambiguity about whether the phrase "*servicing and maintenance of plant and machinery*" also includes vehicles. In this respect the condition repeats a phrase on the planning application form. However, it would be entirely appropriate for vehicles used on site to be serviced and maintained in the same way as other plant and machinery operated in accordance with the lawful use of the site. It would be possible to rectify and clarify these matters through the substitution of the replacement planning condition in paragraph 3 above, agreed by the appellant and the Council in setting aside the need for an appeal hearing.
10. Notwithstanding the parties' cooperation in negotiating this replacement condition as a compromise on their starting positions on this appeal, this condition would still preclude the use of the building in association with an alternative lawful use of the wider site. An expanded condition to include "*or any other lawful use of the site*", as suggested as another option by the appellant, would address this concern. Planning Practice Guidance advises that conditions restricting future changes of use may not pass the test of reasonableness or necessity.¹
11. It is usually not possible to rely just on the description of a development to control or restrict that development. A planning condition may be necessary to do this. A planning condition that reiterates the description of a development, in this case the building and its use, would also enable the Council to pursue a different and unacceptable unauthorised use of the building through a breach of condition notice, should it be expedient to do so.
12. Whilst the appellant favours the complete removal of the disputed condition without substitution, in my judgement the appellant's alternative preferred condition, if a condition is to remain, is warranted under all the circumstances of the case.

Other Matters

13. Several residents have raised objections to the appeal in relation to the building being detrimental to the openness of the Green Belt. Indeed, the reason for the condition as imposed by the Council related to Green Belt concerns. However, as the building is now lawful its impact on the Green Belt cannot now be challenged. The Green Belt does not need to be safeguarded against the contingency of one lawful use being replaced by another. Moreover, the building is not unduly large in relation to the size of the site and height of processed material and it is relatively well screened from outside the site.
14. Some have questioned why repairs to machinery cannot be undertaken outside. I think it reasonable that such repairs and the storage of associated tools and equipment takes place under cover with protection from adverse weather conditions.
15. Others have objected on the grounds of flooding; I concur with the findings of the Council that the application demonstrates that the building will not affect flood flow and storage capacity as the structure is floodable and therefore flood storage will not be affected.

¹ PPG paragraph 21a-017-20190723

16. Several residents have objected to the impact of lorries coming to and from the site and to noise and dust arising from waste processing operations. But these activities are in accordance with the lawful use of the site and measures are in place to control the entry and exit of vehicles at the site in the interests of highway safety.

Conclusion

17. I have concluded that the condition is only necessary and reasonable to clarify inclusion of vehicle maintenance in the building's use and that its use should be in conjunction with the lawful use of the site as a waste processing facility or any other lawful use of the site. I shall replace the condition the subject of the appeal with one to confirm these matters.
18. For the reasons given, the appeal should succeed, and the planning permission varied as set out in the formal decision.

Rory MacLeod

INSPECTOR