



Appeal Decision

Site Visit made on 12 August 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2021

Appeal Ref: APP/D0121/W/21/3268882

**P J Hare Ltd, Havyatt Road Trading Estate, Havyatt Road, Wroughton
BS40 5NL**

- 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 under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Sharon Haskell against North Somerset Council.
 - The application Ref 20/P/1075/FUL is dated 18 May 2020.
 - The application sought planning permission for development of land for light industrial purposes without complying with a condition attached to planning permission Ref 97517, dated 7 March 1979.
 - The condition in dispute is No.8 which states that: Before the development is commenced a landscape planting scheme along the southern, eastern and western boundaries of the site shall be submitted to and approved by the District Planning Authority and shall be carried out within nine months of the date of commencement of the development and the trees/shrubs shall be protected, maintained and replaced as necessary.
 - The reason given for the condition is: The District Planning Authority wish to reserve the right to exercise control over the matters referred to in the interest of visual amenity.
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Decision

1. The appeal is dismissed and planning permission for development of land for light industrial purposes without complying with a condition attached to planning permission Ref 97517, dated 7 March 1979 is refused.

Applications for costs

2. An application for costs has been made by Mrs Sharon Haskell against North Somerset Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The application made to the Council was as described above. The planning permission, ref 97517, appears to have two Decision Notices. That referred to in my heading and another, dated 4 October 1974. The parties appear to have agreed that the 1979 permission was not implemented and so the appeal should proceed on the basis of the 1973 one. As both contain the disputed condition No.8, no injustice would arise to any party from this approach.
4. During consideration of the application, the Council requested the inclusion of condition 7 which requires 'the existing railway embankment within the curtilage of the site [to be] retained in its entirety'. The Council do not appear to have consulted upon this agreed amendment, although the neighbouring

residents have had the opportunity to comment through the appeal process. In any case, my reasons will explain why consideration of the railway embankment does not affect my conclusions.

5. The Council also requested the inclusion of condition No.3 from planning permission ref 15/P/1697/F, which was for the installation of solar panels. Following this approach, I am effectively being asked to grant two permissions for different things without complying with conditions on two previous permissions. While the appellant appears to have accepted the Council's request, it is wholly unclear how this could be done through a single application and appeal.
6. There is evidence concerning the use of the site and position of the boundary between the site and adjoining residential properties. Those matters are not before me. Nor is the extent of any breach of planning control that may or may not have occurred and nothing in my decision should be taken to provide confirmation, or otherwise, in that regard.
7. I have, therefore, confined my decision solely to the matter at hand, as applied for. That is condition 8 (the disputed condition), attached to planning permission ref 97517 (the original permission).

Main Issue

8. With regard to the above, the main issue is whether the disputed condition is necessary to protect the living conditions of the occupiers of Fairview and Little Ridge, with particular regard to outlook and noise; the effect on the character and appearance of the area; and the effect on biodiversity.

Reasons

Living conditions

9. Little Ridge and Fairview are located alongside the site, close to the boundary. The proximity of both residential properties to the site is such that their outlook is influenced by the nature of the boundary to the appeal site, the industrial building thereon and the external areas around it. A good landscaping scheme would provide screening, enclosing the residential properties so that they were visually and physically separated from activity on the appeal site. Such is necessary to provide a good outlook and suitable general residential ambience, which could otherwise leave the occupiers feeling as though they were living within the industrial site.
10. Condition 8 is, therefore, necessary to protect the living conditions of neighbouring residents. The proposal would vary the condition such that alternative landscaping to that which has, until recently, been in existence at the site could be planted. From the evidence before me, it appears that there was previously limited tree planting along the boundary line with Little Ridge and Fairview. However, a denser area of vegetation existed along a former railway line that traverses the site, between the boundary and main industrial building.
11. There is an embankment broadly to the south of the dwellings. Between the dwellings and building at the site, though, the plans and evidence now on the ground indicate that the railway was in a cutting, not on an embankment. The relevant land around the former railway is, therefore, lower than the majority

- of the appeal site and considerably below the adjoining dwellings. The embankment referred to in condition 7, therefore, has no role to play in protecting the living conditions of the adjoining residents.
12. Historic drawings indicate that existing planting around the railway cutting was to be maintained where practicable. Aerial photographs show this planting in situ until 2017, indicating significant retention, as per the drawings. While proposed new planting along the boundary line itself may have been limited, there is no particular alternative evidence that the landscaping previously secured by condition 8 did not include the large area of planting around the former railway line described on the plans.
 13. The proposed new planting scheme, by contrast, would include a single row of trees. They would be planted at the bottom of the bank of the former railway cutting that slopes up towards the dwellings, with hedgerow planting on the sloping section. While the Council's Tree Officer may have indicated that the species and mix are appropriate and will grow in time to produce a habitat and screen, it has not been demonstrated that the limited planting would adequately safeguard the outlook of the neighbouring residents or allow those residential properties to feel separate to the industrial site. The effects during the winter are likely to be significant when leaf cover is limited.
 14. The Council's Environmental Protection Officer has indicated that the former vegetation would have had little effect on attenuating noise from the appeal site, although rustling leaves could have had some masking effect. While there is anecdotal evidence of increased noise now, there is no robust evidence that there would be a particular increase in noise disturbance once the proposed landscaping had taken effect. I, therefore, attribute limited weight to this matter.
 15. However, the reduced width of landscaping now proposed would allow outdoor activities and vehicle movements to take place close to the residential boundaries. This had occurred at the time of my site visit with large vehicles having been parked on the formerly planted area around the old railway line. This would further compound the sense of living within the industrial site, harming the outlook and general living conditions of neighbouring residents.
 16. Therefore, a condition requiring provision and maintenance of a landscaping scheme alongside the residential properties is necessary to protect living conditions, in accordance with those aims of Policy CS3 of the North Somerset Core Strategy 2017 (CS) that seek to protect amenity. The disputed condition achieves this aim and there is no scheme before me that would have sufficient screening effect to do the same.

Character and appearance.

17. The site is between buildings, be they the residential properties described above or other industrial units. The area has an industrial character and the landscaping subject to the disputed condition is not needed to assimilate it into the wider area. Tree planting would soften hard edges to the site, whether achieved by the older scheme or that now proposed. Therefore, there would be no harm to the character and appearance of the area and no conflict with the aims of Policies DM10 or DM32 of the North Somerset Development Management Policies Sites and Policies Plan Part 1 2016 (DMP) which seek to secure high quality places with sensitivity to local character and avoid adverse

impacts on landscape character. While DMP Policy DM9 encourages the retention of existing trees, this is no longer possible in any replacement planting scheme, regardless of my decision in this appeal.

Biodiversity

18. The previous vegetation could have provided valuable habitat for various species. However, there is no evidence that species, protected or otherwise, used this habitat, only that it had potential. The Council's Tree Officer has confirmed that the new landscaping scheme would provide replacement habitat, and in the absence of clear evidence about historic usage I cannot identify any particular harm from the proposal. There would, therefore, be no demonstrable conflict with the aims of CS Policy CS4 or DMP Policy DM8 that seek to maintain and enhance biodiversity and protect habitats.

Other Matters

19. The appellant has explained that the tree removal took place in good faith having carried out checks with the Council. I also note the appellants frustration with the Council's handling of the planning application. However, those matters do not affect the planning merits of the case before me.
20. The Council has alleged a conflict with DMP Policy DM47 concerning economic development proposals, but as the proposal concerns only landscaping conditions attached to a previous permission these are not relevant to my conclusions.

Conclusion

21. For the reasons given, I conclude that the disputed condition is necessary. Therefore, the appeal is dismissed.

M Bale

INSPECTOR