



Appeal Decision

Site Visits made on 2 and 27 September 2021

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/W4515/W/21/3279311

Hadrian Yard A B And C, Hadrian Way, Wallsend NE28 6HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Chris Richardson (Smulders Projects UK Ltd.) against the decision of North Tyneside Council.
 - The application Ref 21/00739/FUL, dated 12 March 2021, was refused by notice dated 20 May 2021.
 - The application sought planning permission for the erection of 2no gantry cranes and 1no ringer crane without complying with conditions attached to planning permission Ref 16/01595/FUL, dated 13 January 2017.
 - The conditions in dispute are Nos 5 and 6 which state that:
Condition 5
The 2no gantry cranes and 1no ringer crane are to be operated only between 07:00 - 23:00 hours Monday to Sunday.
Condition 6
Prior to the operation of the 2no gantry cranes and 1no ringer crane a noise scheme must be submitted to and approved in writing by the Local Planning Authority in order to assess the impact of crane movement and overloading and uploading of goods. The noise assessment shall include for a re-assessment of the existing daytime background noise levels, without the cranes operating, at the boundary of the nearest sensitive residential premises about Railway Terrace and Coquet Gardens and Alwin Close and should be carried out at different periods of the day early morning, daytime and late evening. The noise assessment shall be carried out in accordance with BS4142, and appropriate mitigation measures taken where necessary to ensure the rating level of the cranes does not exceed the background noise.
 - The reasons given for the conditions are:
Condition 5
To protect the occupants of nearby residential properties from noise disturbance having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.
Condition 6
To protect the occupants of nearby residential properties from noise disturbance having regard to policy H13 of the North Tyneside Unitary Development Plan 2002.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no gantry cranes and 1no ringer crane at Hadrian Yard A B And C, Hadrian Way, Wallsend, NE28 6HL in accordance with the application Ref: 21/00739/FUL, dated 12 March 2021, without compliance with conditions Nos.5 and 6 previously imposed on planning permission 16/01595/FUL, dated 13 January 2017, but subject to the conditions set out in the attached Schedule of Conditions.

Application for costs

2. An application for an award of costs was made by Smulders Projects Ltd against the North Tyneside Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Planning permission¹ (the 2017 permission) was granted in January 2017 for the erection of 2no gantry cranes and 1no ringer crane at the site now known as Hadrian A, B and C Yard, Hadrian Way. That permission was subject to a number of conditions, of which Nos. 5 and 6 are disputed and the subject of this appeal. The ringer crane, which was included as part of the scheme for which permission was granted conditionally in 2017 has subsequently been removed from the site.
4. Taken together, the disputed conditions set out restrictions on the hours of operation of the cranes (condition 5) and required the submission of a noise assessment (condition 6) to ensure that the rating level of the cranes does not exceed measured background noise levels. The appellant sought to remove the provisions of condition 5 to allow the cranes to be operated 24 hours a day, Monday to Sunday. The noise assessment submitted in respect of the requirements of condition 6 concluded that 'in the worst case' the rating level of the crane would not exceed background sound levels.
5. A statutory Noise Abatement Notice (the Notice) was served by the Council in 2017 upon the appellant company arising from night time working activities within the site, but in particular in relation to 'Yard B', the closest 'yard' within the site to residential properties on Hadrian Mews. The Notice imposes a night time noise limit in relation to background noise and a maximum noise level for operations and remains in force.
6. Visits to the site and surrounding area were conducted on two separate occasions. On the first occasion to access and view the site and the surrounding area and the second to view the appeal site from a neighbouring property and the surrounding area.

Main Issue

7. The main issue is therefore whether disputed conditions are reasonable and necessary in the interests of the living conditions of occupiers of nearby residential properties.

Reasons

8. The appeal site's long history as a marine and off-shore construction and fabrication facility is not disputed by the main parties. Although the focus of construction and fabrication activities within the site appears to have evolved over time to reflect particular areas of focus on construction and fabrication activities, I have no evidence before me to suggest that it has been anything other than continuous.
9. In 2005 planning permission was granted at appeal for the development of 91 dwellings on land to the north of the appeal site. In the time since, further planning permissions have been granted for activities relating to the

¹ LPA Ref No: 16/01595/FUL

fabrication, assembly, repair and decommissioning of onshore and offshore traditional and renewable energy projects at the appellant's Yards A, B and C.

10. A large number of properties within the Hadrian Mews site back on to the appeal site atop a steep embankment. The elevated location of these properties affords full views across the site from their upper floors and whilst substantial timber fences screen direct views from ground levels, the private rear garden spaces of a number of properties are situated close to the embankment. This, nearby residents state, means that operations at the appellant's site are a significant influence upon the noise environment experienced from these areas.
11. It is clear from the extensive evidence submitted by local residents that there is an uneasy relationship between the appellant's site operations and neighbouring residential properties. Continuing noise incidents are also noted by the Council, notwithstanding the presence of the Notice, albeit that the frequency of complaints to the Council's Environmental Health team has reduced. Nor do I doubt that the concerns of neighbours regarding the effects of the operation of the site on the enjoyment of their properties that have been expressed have been genuinely made.
12. However, the appellant's business is already able to operate on an unrestricted 24 hour / Monday to Sunday basis. Whilst there have been instances where noise incidents have been recorded overnight, as the operation of the gantry crane (and rigger crane had it still been present) is currently prohibited by condition it is unlikely that the crane itself would be the source of overnight noise concerns.
13. The appellant's 'Gantry Crane Noise Assessment' report² (SLR report) concluded that the rating level of the operation of the gantry crane would not exceed background sound levels at any of the three noise sensitive receptors, day or night. This is what the provisions of condition 6 sought to ensure.
14. Although the Council contend that the SLR report should also have taken into account other operations associated with the operation of the gantry cranes, it is noted that the crane operation would be significantly below the upper levels specified in the Notice. Moreover, the SLR report's methodology was accepted by the Council's Environmental Health team, as were the findings and conclusions of that report.
15. It may well be the case, as the Council contend, that there may be activities associated with the operation of the gantry crane through the night that would give rise to the generation of noise. However, the yard is already allowed unrestricted operation through the night and those noises, and others, may and will continue to occur. I am satisfied that it has been adequately demonstrated that the operation of the gantry crane would not exceed overnight background noise levels. Notwithstanding the concerns and misgivings of nearby residents regarding operations more widely at the appeal site, I have not been presented with compelling evidence that the operation of the gantry crane during the hours originally prohibited by disputed condition 5 would be responsible for harm to the living conditions of residential occupiers of nearby properties.

² Gantry Crane Noise Assessment: Hadrian's Yard, Wallsend' prepared for Smulders Projects UK by SLR (November 2018)

16. Local Plan policy DM5.19 states that proposals that may cause, amongst other things, pollution through noise will be required to incorporate measures to prevent or reduce pollution so as not to cause nuisance or unacceptable harm to people. Potentially polluting development will not be sited near to sensitive areas (such as residential) unless satisfactory mitigation measures can be demonstrated. For the reasons I have set out, I am satisfied that the appellant has demonstrated that the variation of the 2017 permission in the manner sought would not give rise to additional levels of noise above background levels. Noise arising from other activities carried on by the appellant at the appeal site are not within the scope of the appeal proposal and do not alter my conclusion in respect of the main issue.

Other Matters

17. I have carefully considered the concerns and objections of local residents in relation to operations and activity at the appeal site. Whilst I sympathise with local residents in terms of the site's 24-hour operation, exposure to activities within the site such as light, noise and particulate matter these are all matters that have, and are currently, being experienced. The dismissal of this appeal, had I been so minded, would not alter many aspects of the neighbour's concerns and these therefore remain matters between residents, the appellant and the Council.

Conditions

18. The appeal before me relates to conditions 5 and 6 of the 2017 permission. That permission was subject to a total of 11 conditions, the remainder of which, the appellant advises, have been discharged where necessary to do so. In turn, the Council have not disputed the appellant's statement in this respect and has provided a list of suggested conditions. I have considered those conditions in light of the Framework and Planning Practice Guidance.
19. I agree that a plans condition is necessary in order to provide certainty and in the interests of good planning. As the noise survey carried out and submitted by the appellant relates only to the operation of the gantry crane and not the ringer crane also referred to in the original permission's description, conditions relating to the hours of its operation and submission of a noise scheme relating to the ringer crane are reasonable and necessary in the interests of the living conditions of nearby residents.
20. Conditions relating to the fitting of obstacle lights to the gantry crane and accordance with the previously submitted flood risk assessment are proportionate and necessary as their requirements remain on-going. I have attached both in the interests of aviation safety and to reduce the risk of flooding, respectively.

Conclusion

21. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed. In reaching this conclusion I have also considered the matter of other conditions imposed upon the 2017 permission and the uncontested position that, where necessary, other conditions have been discharged. I therefore allow the appeal and accordingly amend the permission previously granted by the deletion of conditions 5 and 6

of that permission and the imposition of conditions as set out in the schedule of conditions, below, which have been framed accordingly.

G Robbie

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the following approved plans: Site location plan; Crane elevations and Crane locations.
- 2) The ringer crane shall only be operated between the hours of 07:00 to 23:00 hours Monday to Sunday.
- 3) Prior to the operation of the 1no ringer crane a noise scheme must be submitted to and approved in writing by the Local Planning Authority in order to assess the impact of crane movement and overloading and uploading of goods. The noise assessment shall include for a re-assessment of the existing daytime background noise levels, without the cranes operating, at the boundary of the nearest sensitive residential premises about Railway Terrace and Coquet Gardens and Alwin Close and should be carried out at different periods of the day early morning, daytime and late evening. The noise assessment shall be carried out in accordance with BS4142, and appropriate mitigation measures taken where necessary to ensure the rating level of the cranes does not exceed the background noise. The operation of the cranes shall thereafter only be undertaken in accordance with the approved mitigation.
- 4) The cranes shall include dual fitting medium intensity red steady obstacle lights to be fitted to the top of the cranes and the lights arranged so that they indicate the highest points or edges of the cranes relative to the crane surface.
- 5) The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) and the mitigation measures detailed within the FRA as submitted with application reference 16/01595/FUL. The mitigation measures shall be fully implemented prior to use and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.