



Appeal Decision

Site Visit made on 23 November 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2021

Appeal Ref: APP/D0840/W/21/3279612

Kea Downs Business Park, Blackwater, Truro TR4 8HU

- 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 P Button-Stephens and Alpha Pension Fund against the decision of Cornwall Council.
 - The application Ref PA21/00652, dated 21 January 2021, was refused by notice dated 23 June 2021.
 - The application sought planning permission for Redevelopment of existing sawmills site and the erection of seven industrial/warehouse units - use classes B1 & B8 without complying with a condition attached to planning permission Ref PA04/0962/06/B, dated 6 September 2006.
 - The condition in dispute is No 16 which states that: With the exception of office uses that are ancillary to the principal business activity being undertaken in each Unit within the designated office areas of each Unit hereby approved, no business or maintenance activities, including associated vehicle movements on the site or by-ways used to access the site, may be undertaken other than during the following periods:
0700 to 1900 hours Monday to Friday
0800 to 1300 hours Saturdays.
At no time on Sundays or Bank Holidays.
 - The reason given for the condition is: To protect occupants of nearby dwellings and users of the access byways from disturbance outside normal working hours, and to preserve the rural character of the area, in accordance with Policies 3A, 5K and 8B of the Carrick District Wide Local Plan 1998.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021. However, the main parties submitted appeal documents after this and therefore had the opportunity to comment on its relevance to the appeal proposal. Consequently, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Background and Main Issue

3. The Council previously granted planning permission PA04/0962/06/B for Redevelopment of existing sawmills site and the erection of seven industrial/warehouse units - use classes B1 & B8. The appellant subsequently applied to the Council under Ref PA21/00652 to, as detailed in the submitted application form and set out in the title of the appellant's appeal statement, remove condition 16 of that permission.

4. Condition 16 states: "With the exception of office uses that are ancillary to the principal business activity being undertaken in each Unit within the designated office areas of each Unit hereby approved, no business or maintenance activities, including associated vehicle movements on the site or by-ways used to access the site, may be undertaken other than during the following periods: 0700 to 1900 hours Monday to Friday. 0800 to 1300 hours Saturdays. At no time on Sundays or Bank Holidays." The reason for the condition, as detailed in permission, is to protect occupants of nearby dwellings and users of the access byways from disturbance outside normal working hours, and to preserve the rural character of the area.
5. The main issue is therefore whether the condition is necessary with regard to noise disturbance in relation to the living conditions of adjoining occupiers, users of the byway and the character of the area.

Reasons

6. Accessed via a public byway, the appeal site contains two relatively large warehouse type buildings, known as Kea Downs Business Park, providing a number of separate warehouse and industrial units. Planning permission PA04/0962/06/B allows for use of the site under Classes B8 and B1(b&c)¹ and office use ancillary to the principal business activity of each of the units. The site is situated in close proximity to some residential properties, including in particular Holly Farm and Primrose Farm which are located to the side and rear and are only a short distance away. Given its countryside location and the reasonably limited extent and scattered nature of development in the locality, the surrounding area has a rural and, despite the A30 providing some low level and reasonably constant background noise, relatively quiet character.
7. With the exception of the ancillary office use associated with each unit, condition 16 limits use of the units and vehicle movements associated with the business or maintenance activities of the units to, broadly, weekday daytimes and Saturday mornings. Removing the condition to allow operation of the units and associated vehicle movements throughout the day and night would inevitably lead to an increase in noise and activity on the site and from vehicles accessing it at times which the condition currently prohibits. Considering the limited degree of separation to Holly Farm and Primrose Farm and combined with the area's rural and relatively quiet nature, this would clearly therefore result in adjoining occupiers being exposed to potentially increased levels of noise disturbance which could harm their living conditions.
8. In support of the proposed removal of the condition, a noise assessment has been submitted which provides details on, amongst other aspects, existing background noise levels at the site and "considers a hypothetical operational scenario". In light of the various different types of use that can occur on the site, it seems reasonable to take such an approach and section 5.2.6 of the report states that the assessment considers the 'effects of the presumed, most potentially acoustically significant operations within the Development'. Identifying that the probable noise emissions from activities associated with the site would likely give rise to low levels of audibility at the closest residential properties, it predicts that noise levels arising as a result of probable

¹ Class B1 has now been revoked from the Town and Country Planning (Use Classes) Order 1987 (as amended) and has effectively been replaced with the new Class E(g).

operations would be at a level defined as a Low Impact at the closest off-site noise-sensitive receptors.

9. However, elsewhere, the assessment sets out that there is 'a potential tenant interested in taking on the premises, to operate a low impact storage and distribution business', and it appears that the assessment sets out various operational assumptions associated more with this type of use than with other uses which could have different characteristics. Accordingly, it seems to me that the hypothetical operational scenario does not necessarily take into account potentially more noisy operations that could be carried out on the site, and I have little substantive evidence that the operational assumption of 65 dB(A) for internal sound levels within the internal spaces represents the most potentially acoustically significant operations on the site.
10. In addition, the operational assumptions include the roller shutter doors being maintained in a closed position except for loading. However, loading could theoretically last quite some time and thus the assumption seems to be somewhat ambiguous and open to interpretation. The reality may also be quite different to the predicted scenario, and this could clearly have consequences on the noise levels generated at the site. In addition, given the types of uses that could occur on the site, incorporating a calculation uncertainty factor of +1 dB appears to be rather low, while I have little substantive evidence that general noise associated with the use of the site and vehicles coming and going, such as in relation to vehicles idling, reversing sounds, the closing of doors, the use of radios, people talking outside etc have also been accounted for. Furthermore, the Council identifies in its appeal statement that only light goods vehicles and cars have been accounted for in the sound source data and heavy good vehicles or articulated lorries have not been covered, and this has not been disputed by the appellant.
11. Even discounting the above matters, the noise assessment finds that there is an excess rating of 0 dB for Holly Farm and -4 dB for Primrose Farm for weekend night-times. This indicates that should some of the assumptions in the noise assessment not be borne out in reality, the occupiers of the closest residential properties to the site would experience noise disturbance as a result of condition 16 being removed. Given that adjoining occupiers have already previously complained about noise disturbance under the current restrictions, removing the condition would clearly be likely to increase the chances of neighbours experiencing further noise disturbance. The lack of a noise assessment from the Council does not lead me to a different conclusion.
12. An unrestricted use of the site and access to it on a 24 hour basis, given the proximity of residential properties and the nature of the locality, would therefore harm the living conditions of adjoining occupiers. In coming to this view, I have taken into account the: permitted uses on the site, including the ancillary office uses with no restrictions on operating hours and associated vehicle movements; the design, layout and floor levels of the buildings including their fully enclosed side and rear elevations; the layout of the site, including for example the location of the parking/turning forecourt; landscaping including planting and bunding on the site's boundaries; and the position of the adjoining properties in relation to the site and to the section of byway used by vehicles to access it. The previous use as a sawmills, that new B2 uses on the site would require planning permission and that Class B1 uses now come under the new Class E use do not lead me to a different conclusion. Just because the

B1 (now Class E(g)) uses are generally considered acceptable in residential areas does also not mean that restrictions on the operating hours of such uses would inevitably be unreasonable or unnecessary.

13. Although users of the public byway would also be likely to experience increased noise disturbance from unrestricted operation of the units and associated vehicle movements, it seems to me that the effect on byway users would be relatively fleeting as they either pass the site and/or are passed by a vehicle. Any noise disturbance experienced by byway users would therefore not be significant. However, the unrestricted operation of the units and associated vehicle movements would, particularly at night, harm the character of the area through increased noise disturbance in what is an otherwise relatively tranquil rural locale. This would of course be experienced by users of the public byways as well as others in the locality.
14. Recognising the sensitivity of the residential amenity of adjoining residents, the appellant has proposed various additional restrictions – or amendments to the existing condition – that could be implemented to offset the removal of the restrictions in condition 16 and which are not factored into the submitted noise assessment. This includes, as detailed in the submitted Planning Statement, restricting heavy/commercial vehicle movements to broadly weekday daytimes and Saturday mornings only. It is suggested that a boundary noise condition could also be imposed to provide additional noise mitigation for residents, particularly at night.
15. However, while preventing the movement of commercial/heavy vehicles at certain times would clearly reduce the potential for noise disturbance, particularly at night, enforcing this would be difficult. Even if it were enforceable, allowing the units to operate 24 hours a day, with staff and non-heavy/non-commercial vehicles coming and going at any time, would still give rise to noise disturbance – over and above that associated with the ancillary office uses – that would harm the living conditions of adjoining occupiers and the character of the area. With little substantive evidence as to how the boundary noise condition would work and without a precise figure to include in it, I have limited confidence that it would be sufficient to avoid the above harms from occurring. It seems to me that further soft landscaping on the site would also be ineffectual in sufficiently mitigating noise disturbance.
16. I note that the Council's Public Protection Officer did not object to the planning application and suggested various measures to protect the living conditions of adjoining occupiers. However, a planning condition requiring no noisy activities on site would neither be precise nor enforceable while preventing loading/unloading, lorry/van movements and the opening of roller doors at certain times would not necessarily prevent other noisy activities from occurring during these times. Such restrictions would therefore be insufficient to avoid the harm I have identified above.
17. It has been put to me that the appeal proposal should be considered against the former use of the site as a sawmills and that the exclusion of Class B2 uses represented a significant planning gain. However, the sawmills use no longer exists, having ceased several years ago. Accordingly, I have considered the proposed development on the basis of its own merits and in relation to the current circumstances on the site and surrounding area.

18. My attention has been drawn to the need for a level playing field and that other industrial estates in Cornwall and nationwide operate in close proximity to residential development without such restrictions. However, the industrial estates listed are in different locations to the appeal site and as I do not have full details of many of those schemes, I cannot determine whether the circumstances are analogous to the case before me. The available evidence also indicates that the closest example (Cornwall Business Park at Scorrier) is located in a more developed, built-up setting, which is not the case at the appeal site and which is therefore likely to have a different noise background for example. Consequently, I attach limited weight to the examples put to me. It is also a well-accepted principle that each proposal is considered on the basis of its particular circumstances. I have therefore dealt with the appeal on its individual merits.
19. For the above reasons, I conclude that the condition is necessary with regard to noise disturbance in relation to the living conditions of adjoining occupiers and the character of the area. The other conditions put to me could not offset or mitigate the harm and thus make otherwise unacceptable development acceptable. Removing the condition would therefore conflict with Policies 12, 16 and 23 of the Cornwall Local Plan Strategic Policies 2010 - 2030 (CLP) and Policies QD1 and EJ7 of the Chacewater Parish Neighbourhood Development Plan 2018-2030. Amongst other aspects, these seek to: protect the wellbeing of Cornwall's residents and sustain local distinctiveness; require development to maintain the character of the area and protect individuals from unreasonable noise and disturbance; and set out that proposals will be supported where they protect residential amenity. The proposal would also be inconsistent with the provisions in the Framework in relation to achieving well-designed places and conserving and enhancing the natural environment.

Other matters

20. The site is within the Cornwall and West Devon Mining Landscape World Heritage Site (WHS) and near to a grade II listed building (Primrose Farm). However, the Council does not allege that the development would have an adverse effect on the designated heritage assets. Having considered the development and visited the site, I concur with that view and find that the development would preserve the WHS and listed building and their significance as designated heritage assets.
21. My attention has been drawn to the presumption in favour of sustainable development set out in the Framework. However, the evidence before me does not indicate that the development plan policies which are most important for determining the application are out-of-date. Accordingly, the approach set out in paragraph 11d) of the Framework does not apply in this instance. I have therefore determined the appeal proposal in accordance with the development plan and material considerations.

Planning Balance

22. It has been put to me that condition 16 is over zealous and presents a barrier to the occupiers of the site effectively and efficiently operating their businesses. The condition is also said to have been imposed by the former Carrick District Council without any consultation with the applicant or consideration of its impact on the viability of the speculative employment space development and the ability of future occupiers of the units to operate.

23. I recognise that potential future occupiers of the units and the companies currently occupying the site, which are said to generate significant added value through business investment and higher value employment, would be likely to benefit from greater flexibility. Allowing the site to operate without restrictions on hours of operation would also be likely to result in increased economic benefits through improved productivity and more employment for example. In relation to this, paragraph 81 of the Framework sets out that planning decisions should help create the conditions in which businesses can invest, expand and adapt and that significant weight should be placed on the need to support economic growth and productivity. In-line with Framework paragraph 82, the supporting text to CLP Policy 5, recognising the growing economy and changing business needs, also advocates a flexible approach to ensure that there are a range of premises of the right type to meet the business needs of the growing economy without unnecessary barriers to help the economy remain competitive.
24. It has been put to me that condition 16 also fails the tests in Framework paragraph 56. However, for the above reasons, the condition is necessary in order to avoid unacceptable levels of noise disturbance in relation to adjoining occupiers and the character of the area. The condition, including it allowing the ancillary office uses outside of the restricted hours, is also sufficiently precise, enforceable and relevant to planning and the development. In addition, although the appellant indicates that the restrictions in condition 16 represent a significant impediment to the letting of the property and that the units have been let on the basis that the appellants challenge condition 16, the submitted evidence does not indicate that the condition is so restrictive that the site is unpractical and has been left disused for any significant period of time.
25. Accordingly, although the Covid-19 pandemic has led to changes in the highly competitive market, different operational needs and increasing demand for 24 hour shift systems, the condition does not create an unnecessary barrier. Instead, it strikes a reasonable balance between the operation of the business units and the legitimate needs and expectations of adjoining occupiers in relation to their living conditions and preserving the character of the area. The condition is therefore reasonable and thus accords with the tests in the Framework. In coming to this view, I have taken into account that noise pollution is also covered by other statutes, such as the Environmental Protection Act, and that no technical objection to the appeal proposal has been made by statutory consultees. The benefits of the appeal proposal also neither outweigh the harm I have identified nor the conflict with the development plan. In addition, given my findings that the development would harm the living conditions of adjoining occupiers and the character of the area, which in turn conflict with the social and environmental objectives set out in the Framework, the proposal cannot reasonably be described as sustainable development.

Conclusion

26. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR