



Appeal Decision

Site visit made on 11 January 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2022

Appeal Ref: APP/R0660/W/21/3282694

Weston Hall Commercial Complex, Main Road, Weston, Crewe, Cheshire CW2 5ND

- 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 Land Recovery Enterprises Ltd c/o WSP Indigo against the decision of Cheshire East Council.
 - The application Ref 20/1132N, dated 11 March 2020, was refused by notice dated 28 July 2021.
 - The application sought planning permission for a change of use of buildings and areas of hardstanding to B8 (Storage & Distribution) use, replacement of redundant buildings and erection of new buildings and areas of hardstanding for B8 (Storage & Distribution) use, ancillary offices, and associated works without complying with a condition attached to planning permission Ref 18/4123N, dated 30 November 2018.
 - The condition in dispute is No 9 which states that:
Operations on the site including deliveries shall be restricted to the following hours:
Monday – Friday 07.30 hrs until 19.00 hrs, Saturday 08.00 hrs until 17.00 hrs, Sunday 08.00 hrs until 17.00 hrs.
 - The reason given for the condition is:
To avoid noise from giving rise to significant adverse impacts on health, quality of life and amenity.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The original permission¹ granted the change of use of buildings and areas of hardstanding to B8 (Storage & Distribution) use, replacement of redundant buildings and erection of new buildings and areas of hardstanding for B8 (Storage & Distribution) use, ancillary offices, and associated works subject to a number of conditions. Condition No 9 of that permission restricted operations and deliveries on the site to particular days and hours. This appeal seeks to vary the original permission by removing condition No 9 in its entirety, to allow operations on the site to occur 24 hours a day and 365 days a year.
3. Accordingly, the main issue is whether the condition is necessary having regard to the living conditions of neighbouring residents, with particular regard to noise and disturbance.

¹ Ref: 18/4123N

Reasons

4. The appeal site is an existing commercial complex comprising of a number of warehouse buildings. The site is located within a rural setting with residential properties within close proximity to the south and north east.
5. Noise from daytime operations heard at the neighbouring properties is long established, as it is understood that the appeal site had a former agricultural use as a grain processing facility and indeed the original permission for the change of use and erection of additional warehousing was granted some time ago. However, as the hours of operation are currently significantly restricted, the introduction of noise throughout the night would be a considerable change from the current arrangement.
6. The proposal is therefore supported with a noise impact assessment² (the NIA) which has been informed by a background sound survey. Noise levels are taken from similar operations in order to predict the impact of the commercial operations upon the aforementioned residential properties. I note that the Council's Environmental Health officer previously accepted the methodology, conclusion and recommendations of the NIA.
7. The NIA establishes that the main source of noise at the appeal site is from plant operations and vehicle movements, namely forklifts and HGVs. An assessment of mobile plant has been carried out, with calculations of noise levels being undertaken individually for both the daytime and night-time periods. However, the calculations of the specific noise level at the receptors in the night-time does not include forklifts as a noise source thus it is not clear to me whether this may have affected the calculation of the predicted combined specific sound level at the receptors. There is nothing before me to suggest that forklifts would not be operational at night.
8. I also do not have a copy of Figure 3, as referenced in the NIA, which is stated to show the predicted combined specific sound level for the nearest residential properties. Furthermore, I note that the tables and supporting text of the night-time assessments contradictorily reference the daytime. Although the latter may reasonably be a typographical error, this and the other discrepancies raise concerns in my mind.
9. Notwithstanding this however, I note that the cumulative effect caused by the mobile plant and the proposed limits on plant noise emissions has not been carried out. Accordingly, I do not know what the combined impact from all operations associated with the commercial premises would be and, as such, despite the individual calculations provided, I cannot be certain that the various sources of noise associated with the appeal site would not have an adverse impact on neighbouring occupiers.
10. I acknowledge that the appeal site was previously a grain processing factory and various submissions indicate that, at times, it operated at unsociable hours. Other than assumptions from the main parties and neighbouring residents, it is not clear to me exactly what hours the previous use was operating under or how often its operations occurred during the night-time. I also do not have substantive evidence before me on the exact noise impact of the former use which would enable me to make a reasoned comparison with

² Addendum Noise Impact Assessment, Weston Hall Commercial Complex, Weston, REC Reference: AC105005-2R0, Date: 29th November 2018

the proposal before me. Moreover, the site has since been operating as a storage and distribution site. Therefore, even if I were to accept that the proposal would be less intrusive than the former use of the site, the circumstances have long changed and I am considering this case on its own merits.

11. I note that the appellant has offered to erect an acoustic fence along the boundary with Weston Hall Cottages, despite this not being a recommended form of mitigation in the NIA. However, as no further details of a fence have been provided, I cannot afford this matter positive weight as I am unable to determine the effect it may have on noise. Furthermore, it would not be appropriate to leave this matter to a condition as it may impose an unrealistic and therefore unreasonable requirement upon the development such that it would nullify the benefit of any permission it was attached to.
12. Therefore, taking into consideration the presented figures in the noise impact assessment, along with the discrepancies and lack of information I have alluded to above, the proposed removal of condition No 9 of the original permission in order to allow the appeal site to operate with unrestricted hours would be likely to significantly harm the living conditions of neighbouring residents. It would therefore be contrary to Policies SE12 and EG2 of the Cheshire East Local Plan Strategy 2010-2030 (July 2017), Policy BE.1 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (February 2005), Policy E1 of the Weston and Basford Neighbourhood Plan 2015-2030 (made November 2017) and the National Planning Policy Framework (the Framework). Collectively these seek to ensure that developments do not have an adverse impact on residential amenity.

Other Matter

13. The evidence before me indicates that the site is not currently fully occupied, with one tenancy ending in September 2021 and another having recently ended in January 2022. The appellant has stated that they have struggled to secure long-term tenants at the site, despite marketing exercises, and the supporting marketing opinion suggests that the reason for this is directly related to the restricted operating hours at the site. I also note the statement from one prospective tenant.
14. I acknowledge that modern-day warehousing and distribution may now be driven by e-commerce and thus businesses may require flexible hours of operation. Accordingly, the removal of restrictions on hours of operation would no doubt make the site more attractive to prospective tenants. However, it was only until recently that units have become available at the appeal site and the evidence before me suggests that the Covid-19 pandemic and the partial stalling of the construction of the buildings has hit marketing to a degree and limited enquiries and the ability to inspect the site. Therefore, whilst securing long-term tenants would understandably be preferable, based on the limited evidence before me, I am not convinced that the challenges of securing long-term tenants is solely based on the current operational hours. I therefore afford this matter limited weight.

Planning Balance and Conclusion

15. The Framework supports a prosperous rural economy through the enabling of sustainable growth and expansion of all types of businesses in rural areas. This

is afforded positive weight in the planning balance. As noted above however, I am not satisfied, based on the limited evidence before me, that the removal of condition No 9 is essential to ensure the site operates at full capacity and thus generates economic benefits. Accordingly, I afford this matter limited weight.

16. I have found that the proposal would be likely to harm the living conditions of neighbouring residents, resulting in conflict with the development plan. I afford this harm substantial weight.
17. Consequently, the benefits of the proposal are insufficient to outweigh the harm identified. Material considerations do not therefore indicate that a decision should be made other than in accordance with the development plan, and I conclude that the appeal should be dismissed.

H Ellison
INSPECTOR