



Appeal Decision

Site visit made on 18 January 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday 23 February 2022

Appeal Ref: APP/J1860/W/21/3279817

Building at Northington Farm, Farm Lane, Holt Heath WR6 6NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs G Probert (c/o Moule & Co) against the decision of Malvern Hills District Council.
 - The application Ref 20/01471/CU, dated 23 September 2020, was refused by notice dated 12 February 2021.
 - The development proposed is Change of use of ground floor from agricultural to Class E (Light Industrial) and B8 (Storage).
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr & Mrs G Probert against Malvern Hills District Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupiers of the Old Farmhouse, with regard to disturbance.

Reasons

4. The appeal site is a brick-built building within a yard adjacent to Northington Farm. The surrounding area is agricultural land and open countryside.
5. The Old Farmhouse is located on the other side of the track directly opposite the appeal site. This consists of the main dwelling and two former outbuildings that have been converted into residential annexes positioned on the boundary nearest to the appeal site.
6. The proposal is for a change of use from agricultural use to Class E (light industrial) and B8 (storage). Use Class E was brought into effect in September 2020 and covers a broad category of 'commercial, business and service' uses. The new Class E provides greater flexibility by allowing change between operations within the same use class as permitted development. However, the parties are in agreement that the Class E use should be restricted by a condition to Class E (g) i, ii, iii uses only. The type of uses within this category include offices, research and development of products or processes, and light industrial. Such uses can be carried out in residential areas without detriment to its amenity. However, the appeal site is a rural location and would be more sensitive to change than an urban residential area.

7. The appeal site is the subject of an enforcement case following the previous tenant's use of the site. It is therefore evident that there is a history of disturbance from activities relating to the appeal building from the previous use. I am therefore mindful of the impact that the proposal would have on the living conditions of the neighbouring occupiers.
8. The type of uses the proposal for Class E (g) and B8 would generate would create a greater number of noise sources because of the increased activity and additional people using the site. This would include staff, delivery drivers and maintenance workers using the premises, arriving and departing at various times of the day, which potentially could be during anti-social hours. The potential noise disturbance from vehicles accessing, turning and manoeuvring on site, vehicle doors slamming, and the disturbance from staff and visitors conversing, including shouting, would result in patterns of activity that are disruptive to the occupants of the Old Farmhouse. In addition, the noise from industrial machinery on site would also generate noise levels different in nature to agricultural use. This would lead to increased disturbance to the occupiers of the neighbouring dwelling.
9. The appellant refers to the current levels of agricultural noise. However, it is accepted that agricultural use will create some degree of noise. For the reasons above, the proposal would generate an increase in activity in close proximity to the neighbouring dwelling, which would be different in nature to the agricultural use. This would result in noise and disturbance that is above and beyond what the residents are accustomed to in this sensitive rural location. The proposal would therefore be harmful to the living conditions of the occupants at the Old Farmhouse due to its close proximity to the site.
10. The appellant refers to a hedge separating the appeal building from the Old Farmhouse and claims this would act as a substantial barrier to noise. However, the residential annexes are located on the boundary of the site located directly behind the hedge. Therefore, the boundary planting will not have a significant impact in terms of acoustic protection for the neighbouring occupiers.
11. Worcestershire Regulatory Services (WRS) stated no objection in terms of noise based upon criteria linked to statutory nuisance. However, there was a caveat within their response that forklift trucks should be electrically powered and reversing beepers should be of white noise type due to the close proximity of the residential dwellings. They also recommended opening times being restricted and the doors to the proposal should be kept closed apart from ingress and egress. In my judgement, this shows there was some concern regarding noise nuisance and therefore restrictions to mitigate the noise impact on the neighbouring residential properties was suggested.
12. The appellant argues that these suggested restrictions could be enforced by conditions. However, the proposed condition to keep doors closed apart from ingress and egress would be compromised by the actions of the future occupants of the appeal building. This is because it is likely that they would open their doors, and indeed their windows, on fine weather days (or would wish to do so), and if they did, the noise would escape out of the building. Due to the proximity of the neighbour's property, there is a risk that the noise could escape beyond the appeal site boundary. It would be difficult to enforce such a condition, particularly on hot days. It would also be unreasonable to prevent

the future occupiers of the building opening their doors/windows on fine/hot weather days. Not being able to enforce this condition would result in noise escaping from the building in close proximity to residential properties. The proposal would therefore conflict with paragraph 185 of the Framework, which requires new development to mitigate and reduce to a minimum any potential adverse impacts resulting from noise from new development. As the proposal would not be able to adequately address the effect of noise from its premises, this would cause unacceptable harm to the occupants living conditions of the Old Farmhouse.

13. The issue is further compounded, by the fact that the future occupant of the building is likely to be a third party, which would make it difficult for the appellant to control and adequately address the effect of noise from the building. It would also be difficult to establish exactly when ingress and egress was taking place and separate this from other activities in the building. Therefore, such a condition could not be reasonably controlled or enforceable to make this proposal acceptable. In addition, closing the doors would not mitigate the outside disturbance the proposal would cause to the occupiers of the neighbouring property, which would include site traffic entering and leaving the facility.
14. It is understood that the proposal would take place at ground floor level only. However, this would not change the concern regarding ingress and egress, which would occur at ground floor level.
15. The appellant argues that the condition could be considered as enforceable because the current owners of the Old Farmhouse would be inclined to make the local authority aware should the owners/tenants of the building not comply with the condition. However, I consider this an unreasonable request to expect the current owners of the neighbouring property to act in this manner. This would fail to accord with paragraph 56 of the Framework, with particular regard to not being enforceable and reasonable. Whilst it is understood that the appellant's live in a dwelling to the north-east of the site, this is not directly opposite the appeal building, as is the case with the Old Farmhouse.
16. The appellant refers to statutory noise nuisance and the response from WRS. However, whilst the WRS objection is a material consideration, it does not change the status of the development plan or the legal requirement to determine the proposal in accordance with the policies in the development plan. Therefore, the proposal must be considered and tested against the policies of the development plan as a whole. Although WRS suggested conditions to mitigate noise, for the reasons given above, it would not be possible to mitigate it to an extent that would prevent significant adverse impact on the living conditions of the occupants of the neighbouring property. The proposal therefore fails to accord with Policy SWDP31.
17. I conclude that the harm caused by the proposal's increased activity and noise disturbance in close proximity to the Old Farmhouse would be unacceptable to the occupants living conditions, which for the reasons stated above could not be mitigated by the use of conditions. The proposal therefore fails to accord with SWDP31 of the SWDP (2016), which requires development proposals to be designed to avoid any significant adverse impacts from pollution including noise, on human health and wellbeing.

18. The proposal also fails to accord with paragraph 185 of the Framework that seeks to ensure new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions.

Other Matters

19. There is some support for the B8 (storage) use by residents and the Parish Council, along with support for farm diversification. For the reasons given, I have found the proposed use of the site to cause harm to the neighbouring occupants living conditions.
20. Interested parties have raised highway safety concerns in relation to the proposal. However, I note that there was no objection from the local highway authority. On the evidence before me, I have no reason to form a different view.
21. I note the references made to the previous tenant and their use and activities on site. However, I have determined this appeal on its own individual merits having regard to the particular characteristics of the site.
22. The appellant has claimed no action has been taken under the Environmental Protection Act 1990 and no mention of the complaints was made in the Environmental Health Officer's representation. However, from my observations on site, the previous tenant's use is no longer present on site, as the building has been emptied. I am therefore unable to form an opinion on the previous use.
23. My attention was drawn to the historical use of the site for hop storage. However, this is a form of agricultural use that the neighbouring properties are accustomed to living next to. The storage of hops would give rise to seasonal work and therefore any disturbance caused would not be all year round.
24. The appellant claims there would be economic gain and job creation from the proposal's non-farming activities. However, the weight of this economic benefit would not be sufficient to justify the harm I have identified.
25. The two fallback positions suggested by the appellant are noted. The first fallback position suggested the use of the building for pigs. The brick building does not seem suitable for this type of activity. The appellant states this option would not be a preferable option for them. I am therefore not convinced that a clear desire has been demonstrated by the appellant to develop this fall back as a real prospect. The second fallback position suggests that the building should be considered as a non-designated heritage asset and the use of Class R. However, the Council has not designated the building as a non-designated heritage asset. In addition, a prior approval application would still need to consider noise impact. I therefore give little weight to these two fallback positions.
26. The Council have raised no objection to the proposal in respect of the effect it would have on the setting of the Grade II listed building, the Old Farmhouse. Based on the evidence before me and the observations I made during my site visit, I find that it would have a neutral effect on the significance of the listed building and therefore would preserve its setting. However, this is a neutral effect and does not weigh in favour of the proposal.

Conclusion

27. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
28. For the reasons given above I conclude that the appeal should be dismissed.

Helen Smith

INSPECTOR