



Appeal Decision

Site visit made on 4 April 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2022

Appeal Ref: APP/F0114/W/21/3281221

**Unregistered Units 1-4, Old Station Yard, Avon Mill Lane, Keynsham
BS31 2UG**

- 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 Jamie Britt on behalf of 4Concrete Bristol Ltd against the decision of Bath and North East Somerset Council.
 - The application Ref 21/01412/FUL, dated 23 March 2021, was refused by notice dated 4 August 2021.
 - The development proposed is the erection of 3no. acoustic barriers; permission to allow the filling of concrete mixing vehicles between 6:30am and 5:30pm (Monday-Friday) 8:00am-1:00pm Saturday and 7:30am-5:30pm (Bank Holidays); permission to allow other specified operations at the site between 7:30am and 6:30pm (Monday-Friday) and 8:00am and 1:00pm (Saturday) and 7:30am-5:30pm (Bank Holidays); and permission to store materials in external yard area (re-submission of planning application 20/02008/FUL).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3no. acoustic barriers, permission to allow the filling of concrete mixing vehicles between 0630 and 1730 hours Monday to Friday, between 0800 and 1300 hours on Saturdays and between 0730 and 1730 hours on Bank Holidays, permission to allow other specified operations at the site between 0730 and 1830 hours Monday to Friday, between 0800 and 1300 hours on Saturdays and between 0730 and 1730 hours on Bank Holidays, and permission to store materials in external yard area at Unregistered Units 1-4, Old Station Yard, Avon Mill Lane, Keynsham BS31 2UG in accordance with the terms of the application, Ref 21/01412/FUL, dated 23 March 2021, subject to the conditions set out at the end of this decision.

Applications for costs

2. An application for costs was made by Jamie Britt on behalf of 4Concrete Bristol Ltd against Bath and North East Somerset Council. That application is the subject of a separate decision.

Preliminary Matter

3. It was apparent upon inspection that the two northernmost acoustic barriers of the three proposed have already been erected. The proposal is thus part-retrospective, and I shall consider the appeal on this basis.

Main Issue

4. The effect upon the living conditions of nearby occupiers, having particular regard to noise.

Reasons

5. The site is occupied by a business that specialises in the production and delivery of ready-mixed concrete and is comprised of a complex of industrial buildings that are positioned around an external yard used for storage and circulation purposes. To the south of the estate's access road, and thus opposite to the external yard, is situated a car park bound to its southern side by a retaining wall and a buffer of established planting. Various sensitive receptors are located southward from the site. These include the residential occupiers of terraced properties that front Van Dyck Avenue, as well as the occupiers of a nursing home and residential properties located off Avon Close.
6. The evidence before me indicates that, by virtue of historic planning conditions, working hours at the site are currently restricted to between 0730 and 1730 hours on Mondays to Fridays and to between 0800 and 1300 hours on Saturdays, with no working on Sundays. Thus, the proposal that is before me would result in weekday morning operations extending by an hour (to allow for the filling of concrete mixing vehicles) and weekday evening operations also extending by an hour (to allow for other specified operations).
7. I note the existence of a 2020 planning permission¹, whereby the extended hours of operation now being reapplied for were permitted on a temporary basis. This was in the context of differently arranged acoustic barriers when compared to the proposal now before me. Indeed, it was envisaged that a 6-metre barrier would run the southern boundary of the site. However, various constraints/costs associated with implementing the 2020 permission have led the appellant to seek to justify an alternative solution.
8. A Site Management Plan (June 2021) (the SMP) supports the proposal and is where a detailed and timed breakdown of the intended on-site operations is set out. This includes setting up arrangements during the 15 minutes prior to the commencement of vehicles being filled. It is stated that a maximum of four concrete mixing vehicles would be filled and depart the site between the weekday hours of 0630 and 0730, and that operations between 1730 and 1830 hours on weekdays would be restricted to such activities as closing the site and maintaining/cleaning vehicles. It is also set out in the SMP that only in exceptional circumstances would it be necessary for such activities to be carried out after 1830, or for the filling of vehicles to be carried out after 1730. Various general provisions are also laid out.
9. Two noise reports are before me, each produced by qualified noise consultants. The first² was commissioned by the appellant, whilst the second³ was produced on behalf of a local resident. Both reports utilise a methodology endorsed by BS4142:2014, whereby, in simple terms, a calculated background noise level is deducted from measured sound levels (adjusted to take account of character corrections) to produce Assessment Levels for the purposes of evaluation.

¹ 20/02008/FUL

² Noise Impact Assessment, Matrix Acoustic Design Consultants, March 2021

³ Noise Study Report, Acoustic Consultants Ltd, Version 2.0, May 2021

10. Concerns have been raised by interested parties that the first report is supported by limited survey work and that measurements were not taken at nearby noise sensitive addresses. It has also been suggested that not all activities carried out have been accounted for. Nevertheless, when the contents of the first and second reports are compared, there is broad consistency between calculated Assessment Levels. Indeed, there is an agreed understanding that current noise emissions from the site indicate a significant adverse noise impact for sensitive receptors. This is not inconsistent with my own experiences upon inspection, whereby activities on-site (including the filling and manoeuvring of concrete mixing vehicles) were clearly audible on a continuous basis at nearby residential addresses.
11. It is the appellant's stance that the arrangement of acoustic barriers intended would deliver the necessary standard of mitigation to satisfactorily safeguard living conditions. Maximum Assessment Levels of 5dB for 0630 to 0730 hours, and of 10dB for other operational times have been used for the purposes of evaluation. The Council's Senior Environmental Health Officer, in his role as a specialist internal consultee, has indicated his agreement to these levels being used and, having considered all the evidence that is before me, I am content that the specified 5dB and 10dB thresholds are reasonable. Moreover, given the context of the site and the presence of other noise sources, it would be unrealistic to require that the typical background noise level is not exceeded to any limited degree.
12. I am led to understand that the second noise report was informed by data gathered after the existing acoustic barriers were erected. Nevertheless, these existing barriers are positioned with a sizeable gap to allow uninhibited access to and from the main yard for commercial vehicles of large size. The consequence of this is that, as acknowledged by the appellant, any noise mitigation currently offered by these barriers in isolation is necessarily limited.
13. It is suggested in the second noise report that the revised acoustic barrier arrangements will not achieve any significant improvement over and above the current situation. However, the proposed acoustic barrier yet to be erected is intended to be 0.5m taller than the barriers already installed and would run continuously alongside the estate's access road for a not insignificant distance. Indeed, it would be logically sized and positioned when bearing in mind the layout of the site, changing land levels and the locations of the closest noise sensitive receptors. It is thus reasonable to anticipate that the additional barrier proposed would provide a stepped change in mitigation performance.
14. Whilst the 6-metre tall barrier approved in 2020 would have been of larger size/length when compared to the southernmost barrier now proposed, it would have been positioned at a greater distance from the site's main yard. As such, it would appear not unreasonable to predict that a broadly comparable standard of mitigation (to that permitted in 2020) would be achievable. This is even when factoring the intended introduction of a doored opening of 3m height and width.
15. I am aware that numerous noise complaints have been made to the Council with respect to recent activities at the site and, in general terms, there is heightened sensitivity associated with early morning operations. As such, full adherence to the various measures/arrangements set out in the SMP would appear integral to any successful future implementation of the proposal. It

would be especially important for the intended start and finish times to be fully complied with (barring specified activities beyond finish times in genuinely exceptional circumstances), for all vehicles to be filled from 0630 hours to be parked in the main yard overnight, for intended operations between 0615 and 0730 hours to be restricted without exception to those set out, and for the gate to the car park to remain closed other than at the specific points in time when vehicles enter or depart the car park. To my mind, it would be possible for adherence with such measures to be actively monitored and enforced.

16. Planning Practice Guidance indicates that a temporary permission may be appropriate where a trial run is needed to assess the effect of a development on an area. I consider this to be the case here. A temporary permission would offer the opportunity for the effectiveness of the acoustic barriers to be monitored over a one-year period in advance of the potential future consideration of a proposal to extend operating hours on a permanent basis.
17. For the above reasons, based on extended operating hours being permitted on a temporary basis, the proposal would have an acceptable effect upon the living conditions of nearby occupiers having particular regard to noise. The scheme accords with Policies D6 and PCS2 of the Bath and North East Somerset Placemaking Plan (July 2017) in so far as these policies set out that development will only be permitted where it does not cause unacceptable increases in levels of noise.

Other Matters

18. The complex of industrial buildings and external areas that are under consideration fall outside of the Keynsham Conservation Area (the CA), but adjacent to it and thus within its setting. Given that the acoustic barriers are/would be experienced in the context of inherently industrial immediate surroundings, I am satisfied that the CA's character and appearance would be preserved.
19. Interested parties have queried whether the site's current use is lawful. However, it is not my role to come to a determination on this point. Indeed, the appeal proposal is focussed purely upon the retention/erection of acoustic barriers and the extension of operating hours for specified purposes. I am considering the appeal on this basis and in the context of planning permission having previously been granted by the Council for development/operations very similarly described to that/those now before me for determination.
20. In terms of highway safety considerations, the additional hours of operation that are proposed would be reasonably anticipated to necessitate only a limited number of additional trips including by concrete mixing vehicles. I note that the car park to the south of the access road is presently signposted for staff and visitor parking only, and such circumstances would remain following any future construction of the final acoustic barrier yet to be erected. In this context, notwithstanding the space constraints that apply to the site and upon the estate road that serves it, I find that the proposal would not prejudice highway safety. This is a view shared by the Highway Authority, subject to the site being managed in accordance with the SMP.
21. The matter of potential dust pollution has been raised. However, given the modest number of additional operational hours under consideration as well as the constraints that would apply to working practices by virtue of the SMP, I

find there to be no reason to anticipate that possible pollution effects would be exacerbated to any material degree.

22. The suitability of including intended acoustic barriers and extended operating hours under a single planning application has been questioned. However, I see no clear reason why separate applications should necessarily have been submitted and it has not been convincingly substantiated otherwise.
23. The proposal accords with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conditions

24. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the National Planning Policy Framework (July 2021) (the Framework) and Planning Practice Guidance. As a result, I have amended some of them for consistency and clarity purposes. As the proposal is part-retrospective, it is not necessary to impose a condition setting out a time limit for commencement. In the interests of certainty, a condition specifying the approved plans is required.
25. In the interests of safeguarding the living conditions of local residential occupiers, conditions are reasonable and necessary to impose that secure the installation and subsequent testing of the acoustic barriers (prior to the onset of extended operating hours), ongoing compliance with the relevant Assessment Levels/maximum noise levels identified to be acceptable, and full compliance with the SMP. The SMP condition would also be in the interests of highway safety, due to the document specifying delivery/movement restrictions at certain times as well as other vehicle related provisions.
26. The acoustic barrier condition contains a requirement for a methodology document to be submitted to and approved in writing by the Council prior to the preparation of an acoustic report. As such, the Council's Environmental Health officer(s) would have the opportunity to guide the precise procedures to be followed in the interests of promoting that on-site noise sources are comprehensively considered and that the operations to be surveyed do indeed accurately represent day-to-day activities. The specific positioning of survey equipment would also be anticipated to be agreed via the methodology document. In this context, I do not find it necessary to control the origination of the professional acoustic report required to be submitted.
27. I have added a condition to secure that the extended hours of operation are hereby permitted on a temporary basis in accordance with my reasoning set out above. For the avoidance of doubt, I am satisfied that such a condition meets the relevant tests listed at paragraph 56 of the Framework. Whilst this condition does not require the removal of the acoustic barriers hereby also permitted, these would offer noise mitigation during existing working hours and would thus serve a legitimate purpose beyond the conclusion of the temporary period even should the extended hours of operation cease in perpetuity.
28. In the interests of promoting and protecting biodiversity, a condition to secure full adherence with the various mitigation and enhancement measures contained within the submitted Ecological Assessment is reasonable and necessary to impose. To ensure that existing trees, where intended to be retained, are properly safeguarded, a condition requiring full adherence with

the method statement and protection measures contained within the submitted Arboricultural Impact Assessment and Method Statement is also reasonable and necessary to apply.

Conclusion

29. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall only be implemented in accordance with the following approved plans: P19-1252_01 E; P19-1252_02 D; P19-1252_04D; P19-1252_05 (Sheet Nos 02, 03, 04).
- 2) Operations at the site between 0630 and 0730 hours Monday to Friday and between 1730 and 1830 hours Monday to Friday shall not commence until the acoustic barriers hereby permitted have been fully erected and installed in accordance with the approved plans nor until an acoustic report demonstrating that noise generated by activities at the site do not exceed the following limits when assessed in accordance with BS4142:2019 at the nearest residential receptor has been submitted to and approved in writing by the Local Planning Authority:

0730 to 1830 hours Monday to Friday and 0800 to 1300 hours on Saturdays: Assessment Level <10dB.

0630 to 0730 hours Monday to Friday: Assessment Level ≤5dB and L_{Amax,F} 57dB at the nearest bedroom window.

Prior to the preparation and submission of the acoustic report, a document outlining the methodology by which the acoustic report shall be undertaken shall be submitted to and approved in writing by the Local Planning Authority.
- 3) Noise generated by activities at the site shall not exceed the following limits when assessed in accordance with BS4142:2019 at the nearest residential receptor:

0730 to 1830 hours Monday to Friday and 0800 to 1300 hours on Saturdays: Assessment Level <10dB

0630 to 0730 hours Monday to Friday: Assessment Level ≤5dB and L_{Amax,F} 57dB at the nearest bedroom window.
- 4) The operations hereby permitted shall be carried out only in full accordance with the submitted Site Management Plan referenced DM/P19-1252 and dated June 2021.

- 5) The development hereby permitted shall be implemented only in full accordance with the ecological mitigation and enhancement measures as detailed within Section 5 of the submitted Ecological Assessment (March 2021). Within six months of the completion of the development hereby permitted, a report produced by a suitably experienced Ecologist confirming and demonstrating, using photographs, the implementation of the Ecological Assessment's recommendations shall be submitted to and approved in writing by the Local Planning Authority. This submission shall include confirmation that precautionary measures for nesting birds have been followed and that bird boxes and native planting have been implemented.
- 6) No development or operations hereby permitted shall take place other than in complete accordance with the submitted Arboricultural Impact Assessment and Method Statement (March 2021). Within 28 days of the completion of development, a compliance statement signed by the appointed arboriculturist shall be submitted to and approved in writing by the Local Planning Authority.
- 7) The operation of the site between 0630 and 0730 hours Monday to Friday and between 1730 and 1830 hours Monday to Friday shall cease one year after confirmation is received from the Local Planning Authority that the required sound attenuation levels have been met as required by the details prescribed by Condition 2, and the extended operating hours hereby permitted shall thereafter be discontinued.

-----END OF SCHEDULE-----