



Appeal Decision

Site visit made on 23 May 2022

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2022

Appeal Ref: APP/B5480/W/21/3285722

A Plant, King George Close, Romford RM7 7PN

- 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 Sunbelt Rentals against the decision of the Council of the London Borough of Havering.
 - The application Ref P0832.21, dated 28 April 2021, was refused by notice dated 8 July 2021.
 - The application sought planning permission for the change of use from offices, storage, repair and distribution of scaffolding to light industrial use (B1C) and ancillary offices, storage and distribution (B8) and commercial vehicle hire (sui generis), without complying with conditions attached to planning permission Ref P0933.11, dated 1 August 2011.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - 2: No goods or materials shall be stored on the site in the open above height of 3 metres without the prior consent in writing of the Local Planning Authority.
 - 3: Except for the area designated (hatched) as "Area in which Plant / Machinery is to be stored for out of hours collection" as shown on Drawing number: Romford 2011-1, received 31st March 2011, the premises shall not be used for the purposes hereby permitted other than between the hours of 08:00 and 18:00 on Mondays to Saturdays and not at all on Sundays, Bank or Public holidays without the prior consent in writing of the Local Planning Authority.
 - The reasons given for the conditions are:
 - 2: In the interests of visual amenity, and that the development accords with Development Control Policies Development Plan Document Policy DC61.
 - 3: To enable the Local Planning Authority to retain control in the interests of amenity, and in order that the development accords with Development Control Policies Development Plan Document Policy DC61.
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Decision

1. For the reasons that follow, I find that there would be material harm as a consequence of the proposal insofar as it relates to condition 3. I find no harm, however, in relation to condition 2. The appeal is therefore allowed and planning permission is granted for change of use from offices, storage, repair and distribution of scaffolding to light industrial use (B1C) and ancillary offices, storage and distribution (B8) and commercial vehicle hire (sui generis) at A Plant, King George Close, Romford, in accordance with the application Ref P0832.21, dated 28 April 2021, without compliance with condition number 2 previously imposed on planning permission Ref P0933.11, dated 1 August 2011, but subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the judgement in *Finney*¹, the description of development in an existing planning permission cannot be amended as part of a s73 planning application or appeal. The original description of development from the original planning permission Ref P0142.11, dated 12 April 2011, is the “change of use from offices, storage, repair and distribution of scaffolding to light industrial use (B1C) and ancillary offices; storage and distribution (B8) and commercial vehicle hire (*sui generis*)”. I have therefore adopted this description for the appeal proposal.
3. A previous s73 planning permission, Ref P0933.11, was granted on 1 August 2011. The permission removed controls over the use of power tools and changed the permitted hours of use. This is a new, freestanding permission. The original permission remains extant and unaltered, along with the conditions attached to it. The s73 planning application that is the subject of this appeal relates to the later s73 permission, not the original permission. It is proposed to increase the maximum height at which material can be stored externally to 6 metres (m), from 3m, and to increase the operating hours on land outside of the hatched area to 06:00 to 18:00 hrs on Mondays to Saturdays, from 08:00 to 18:00 hrs. The extent of the hatched area, as shown on drawing Ref Romford 2011-1, would remain as existing, and would continue to be used for storage and out of hours collection.
4. At the time the appealed application was determined, the Core Strategy and Development Control Policies DPD was the relevant Development Plan document. This document has since been superseded by the Havering Local Plan 2016-2031, adopted November 2021 (the LP). The Council has confirmed which policies from the LP it considers to be most relevant to the appeal. The appellant has been afforded the opportunity to comment on the LP policies. I have therefore assessed the proposal against the policies in the LP.

Main Issues

5. The main issues are the effect of the proposal on:
 - the living conditions of the occupiers of neighbouring properties, in regard to noise and disturbance; and,
 - the character and appearance of the area.

Reasons

Living conditions

6. The nearest sensitive receptors to the appeal site in terms of noise and disturbance, are the occupiers of the residential properties along the southern side of Linley Crescent to the north. The properties, and their rear gardens, back onto open land between the appeal site and the homes, and are relatively close to the appeal site. There is a boundary wall and extensive vegetation along the boundaries between the appeal site and the open land. However, the wall is relatively low and insubstantial and there are gaps in the vegetation. A large part of the appeal site where noisy activity takes place is open land. The

¹ *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited* [2019] EWCA Civ 1868

occupiers of the homes could therefore be affected by activities from the appeal site during the earlier working hours proposed.

7. At present, the residual background noise for the residents is largely from the busy A12 road and the other commercial uses nearby, in particular the Selco Builders Warehouse. However, the road is fairly distant from the appeal site and even further from the residents on Linley Crescent. It generates a background hum of noise but does not generate significant noise levels, or noise of a particularly intrusive nature. The Selco warehouse is located further from the residents than the appeal site, with the majority of loading/unloading taking place to the front of the warehouse, on the opposite side – in effect, the Selco building provides a significant noise barrier between the related loading/unloading area and the residential properties. There is a car park to the rear of the Selco building, but that is for smaller trade vehicles, which are likely to create less noise and, in any event, it is further from the residents than the appeal site, with the intervening Magnet Trade warehouse providing some noise attenuation.
8. The 2011 planning permission allows storage, distribution and light industrial use of the appeal site. There are no controls through the permission regarding noise levels. Part of the site (the hatched area shown on the approved drawings) is already used for 24 hour collection of plant and machinery. Importantly, however, the part of the site that is time controlled currently includes activities such as jack hammering, pressure washing, and the use of forklift trucks to load/unload material. The proposal would allow for these activities to take place from 06:00 hrs onwards, compared with the currently permitted start time of 08:00 hrs, Monday to Saturday.
9. The appellant has submitted a Noise Impact Assessment (NIA). This concludes that, in the period of 06:00 to 08:00 hrs, the residual noise level is 40dB. The NIA then estimates that the noise that would be generated by activities on the appeal site during that time would be below 40dB, at 38.6dB, even allowing for dB penalties for the intermittent nature of the sound. The predicted effect is therefore considered as being within the No Observed Effect Level.
10. However, the evidence of the Council indicates that some of the activity on the site exceeds the appellant's stated background noise levels, such as use of a jack hammer, pressure washer (66-70dB at 45 metres), and the use of forklift trucks and reversing beepers. Whilst the dB levels quoted by the Council are uncalibrated and cannot be relied upon fully, they do provide an indication of the broad level of noise generated by these activities. The type of noise generated also has other characteristics that could increase annoyance, such as the intermittent jack hammer, the tonal/impulsive pressure washer, and the potential for loud bangs from loading/unloading with the forklift trucks.
11. The use of the appeal site therefore generates noisy activity that at times is clearly above general background noise levels. There are residential receptors nearby which, although afforded some protection from the boundary wall and vegetation, are likely to experience this noise. Importantly, the proposed extension of the operating hours would allow for this noisy activity to take place in the early hours of the morning, between 06:00 to 08:00 hrs. Noisy activity at this time would be particularly disruptive to residential occupiers.
12. Consequently, the proposed 'variation' of condition 3 would allow the potential for activity that could cause unacceptable harm to the living conditions of

nearby residents. The proposal would therefore fail to comply with Policy 34 of the LP which, amongst other criteria, requires development to not unduly impact upon residential amenity.

13. I have given consideration to the imposition of an additional condition to control activities on the site preventing hammering, jet washing and use of power tools before 08:00 hrs. However, there is still some ambiguity as to the precise operations that currently do and indeed could take place on the appeal site, and what operations create noise. The use of such a condition might not, therefore, fully restrict harmful noisy activity. In addition, the permission allows open light industrial and storage and distribution activity, both of which are capable of generating noisy activity beyond these specific activities. The condition would unfairly restrict the operation of the appeal site as defined by the original permission and would not, therefore, meet the test of reasonableness.

Character and appearance

14. The appeal site comprises a one storey commercial building including office floorspace, a large area of open land that is being used for storage, and a large industrial shed, open to the side elevations. To the north and west boundaries there is a concrete wall with barbed wire on top. It is accessed from an unnamed road that leads from King George Close.
15. The site lies within, but to the edge of, a large industrial and commercial area, including warehouses and trade retail units, such as Selco. These lie to the south and east of the appeal site. To the north is an area of open parkland with a row of houses beyond, the rear gardens to which back onto the parkland, facing the appeal site. To the east is a river with a large recreation ground beyond. There are some further houses to the other side of the recreation ground, but these are fairly distant from the site. Both the north and east boundaries have substantial vegetation and trees, largely screening the site from the park, recreation ground and houses beyond.
16. Condition 2 as proposed would allow the storage of goods and machinery up to a height of 6m, double the existing limit of 3m. This could be across the entire open part of the site during the period 08:00 to 18:00 hrs, Monday to Saturday, or it could be at anytime within the hatched area. The hatched area is towards the centre of the site, away from the northern boundary. It is therefore distant from the parkland and houses to the north. In any event, the combination of the boundary wall and extensive tree and other vegetation along that boundary, would almost entirely screen goods and machinery even up to 6m in height, and even outside of the hatched area. The combination of the existing industrial shed building and the boundary wall and extensive tree and other vegetation along the western boundary, would create a similar visual screen to the recreation ground and housing to the west.
17. There would therefore be very limited visual effects from allowing an increase in height from 3m to 6m of the storage of goods and machinery. Even where glimpsed through gaps in the boundary walls and vegetation, it would be seen in the context of the commercial and light industrial nature of the appeal site. This element of the proposal would not therefore harm the character and appearance of the area. It would comply with Policy 26 of the LP which, amongst other criteria, requires development to be of high quality design and

to respect and complement the distinctive qualities and character of a site and area.

Other Matters

18. A number of letters of objection have been submitted. These largely relate to the main issues as assessed above. Complaints are also made regarding the operation of the business on the appeal site breaching the existing planning permission. The Council has confirmed that it is currently investigating complaints of noise nuisance from the appeal site. However, whether or not these factors amount to a breach of the existing planning permission is not before me as part of the appeal. I have assessed the proposal on the basis of the appeal documentation, not the ongoing and unresolved noise nuisance and other complaints.

Planning Balance and Conclusion

19. I have found that the earlier operating hours would cause unacceptable harm to the living conditions of nearby residents. I place substantial weight on this harm because of the level of the potential noise and that it would be in the early hours of the morning, a particularly sensitive time of day. Whilst the proposed increase in operating hours could potentially improve the efficiency and adaptability of the appeal site, such as by allowing employees to arrive on site and prepare machinery for hire in time for morning collections, it is only proposed to increase the operating hours by two. The existing permission already allows operations between 08:00 and 18:00, Monday to Saturdays, and the appeal site is not heavily constrained by the existing restrictions. Therefore, although, as directed by paragraph 81 of the National Planning Policy Framework, I place significant weight on the economic growth the proposed change to the condition may afford, the level of growth would be very limited and does not outweigh the harm that I have identified.
20. However, I have found that there would be no material harm as a consequence of the proposed increase in height of stored material in terms of the character and appearance of the area. Consequently, I conclude that the appeal should be allowed, but only in relation to condition 2.

Conditions

21. Condition 2 is replaced with an amended version to reflect the proposed increase of the maximum height at which material can be stored. The other conditions, including condition 3, remain unaltered.

O S Woodward
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates must be commenced not later than three years from the date of this permission.
- 2) No goods or materials shall be stored on the site in the open above height of 6 metres without the prior consent in writing of the Local Planning Authority.
- 3) Except for the area designated (hatched) as "Area in which Plant / Machinery is to be stored for out of hours collection" as shown on Drawing number: Romford 2011-1, received 31st March 2011, the premises shall not be used for the purposes hereby permitted other than between the hours of 08:00 and 18:00 on Mondays to Saturdays and not at all on Sundays, Bank or Public holidays without the prior consent in writing of the Local Planning Authority.
- 4) Within the area designated (hatched) as "Area in which Plant / Machinery is to be stored for out of hours collection" as shown on Drawing nr. Romford 2011-1, received 31st March 2011, activities outside the hours of 08:00 to 18:00 Mondays to Saturdays shall be limited to be the collection and dropping off of plant / equipment only and shall not be used for any other purpose without prior consent in writing from the Local Planning Authority.