



Appeal Decision

Site visit made on 12 April 2022

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/E2001/W/21/3287513

Home Farm, Main Street, Spaldington DN14 7NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Dean Murphy of Salko UK Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 21/02281/VAR, dated 11 June 2021, was refused by notice dated 22 September 2021.
 - The application sought planning permission for 'retention of building for use as an office' without complying with condition 3 (lighting) and condition 6 (acoustic fence) attached to planning permission Ref 19/02829/PLF, dated 18 December 2019.
 - The conditions in dispute are Nos 3 and 6 which state that:
 - Condition 3: *No external lighting shall be installed on site unless agreed in writing by the Local Planning Authority. Any approved lighting equipment shall then be installed in accordance with any the approved details and thereafter retained.*
 - Condition 6: *Within 1 months of the date of this decision details of an acoustic fence to be erected on the eastern boundary of the site shall be submitted to the Local Planning Authority for approval, together with a programme of implementation. Following the approval of the submitted details and implementation programme by the Local Planning Authority, the acoustic fence shall be installed in accordance with the approved details and the approved programme of implementation.*
 - The reasons given for Condition 3 are: *This condition is imposed in accordance with policies ENV1 and S4 of the East Riding Local Plan in order to ensure that the visual amenities of the area are not adversely affected by light spillage.*
 - The reasons given for Condition 6 are: *This condition is imposed in accordance with Policy ENV1 of the East Riding Local Plan and in the interests of the residential amenities of the locality.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The conditions imposed on the planning permission are drafted to reflect the retrospective nature of the application, given that the development was already in place at the time of the Council's decision. I have determined the appeal accordingly.
3. Whilst the application form refers to conditions 2 and 5, it is clear from the appellant's submission and the Council's decision notice that the conditions that the appellant is seeking to remove are actually condition 3 and condition 6. I have determined the appeal accordingly.

4. Condition 6 was imposed by an Inspector at an appeal against a grant of planning permission subject to conditions¹. The Inspector allowed the appeal and varied the original permission by deleting conditions 5, 6, 7 and 8 and replacing conditions 5 and 6 with a condition controlling opening hours (condition 5) and a condition requiring submission of details of an acoustic fence to be installed along the eastern boundary of the site (condition 6). This was a change from the original condition 6 which required the fence to be installed on the eastern and southern boundaries.

Background and Main Issues

5. Condition 3 was imposed to accord with Policies ENV1 and S4 of the East Riding Local Plan 2012 - 2029 Strategy Document adopted April 2016 (the Local Plan) *'in order to ensure that the visual amenities of the area are not adversely affected by light spillage'*.
6. Policy ENV1 supports development that meets several criteria including having regard to the specific characteristics of the site's wider context and the character of the surrounding area and having regard to the amenity of existing or proposed properties. Policy S4 states that outside of development limits land will be regarded as Countryside with development in these areas restricted to those meeting specific criteria. Proposals are required to respect the intrinsic character of their surroundings and, at 4.52, the policy justification states that proposals will be required to be considered against Policy ENV6 with due regard to be had to *'the impact of lighting which can often be detrimental to the visual amenity of the Countryside'*.
7. The Council's reasons for refusal of the application that led to this appeal, are that removal of the conditions would adversely affect living conditions through noise arising from air conditioning units and light pollution from installed lighting.
8. Taking the above into account, the main issues are whether conditions 3 and 6 are reasonable and necessary in the interests of preserving the living conditions of the occupiers of neighbouring properties and the character and appearance of the area.

Reasons

Condition 3

9. The appeal site is located outside of the development limits of Spaldington and is within the Countryside for the purposes of the Local Plan. Spaldington comprises of a modest sized ribbon development of residential properties to either side of the road, surrounded by open farmland. Streetlighting here is limited and sporadic, whilst I observed background noise levels to be reasonably low and reflective of the tranquil rural setting.
10. The office building is located within a group of industrial buildings and agricultural buildings facing onto a hardsurfaced car parking area. The site is located to the north of a fold yard associated with an adjacent dwelling, Home Farm, a Grade II Listed building.

¹APP/E2001/W/20/3249525

11. The appellant has supplied a plan indicating the location of lighting within the site and a further supporting document detailing the type of lighting. I saw on site that the lighting was already in place and its location was broadly consistent with the numbered locations shown on the plan. The lighting consists of nine individual lighting units, with four of these (3, 4, 5, and 6) operated by motion sensors and attached to the office building. Two switch operated floodlights are located on Unit C (1 and 2) whilst a further three sensor operated units are located around the site (7, 8, and 9).
12. Whilst the lights were not in operation on my site visit, which was during the day, my impression was of a large number of lighting units concentrated in a reasonably small area. Although the appellant argues that the lighting is all domestic standard, in my view, it would be rare to find such a concentration of lighting units in a domestic situation.
13. Policy ENV6 seeks to ensure that development does not result in unacceptable consequences to its users, the wider community, and the environment. With regard to external lighting the policy justification sets out that it will be necessary to ensure that external lighting levels are appropriate to the need, lights are aimed where required, and do not result in unacceptable light pollution or nuisance through light spillage. Developers will be expected to ensure that lighting installations are fully shrouded. In order to consider potential light pollution, it will be necessary to submit an assessment of light spillage if floodlighting is proposed.
14. Based on the information before me, the lighting installed is not shrouded although I note that the units, including the floodlighting, are directed downwards. Nonetheless, no details have been supplied to confirm the extent of the light spillage. In this regard I note third party comments allege that the lighting currently spills into the garden and adjacent fold yard at Home Farm whilst unit 6 which is located above a door adjacent to the walled patio area, shines onto the façade of Home Farm. This has not been disputed by the appellant.
15. Whilst seven of the units would operate on sensors I have not been provided with details of the range within which the sensors would be activated. With this in mind it is difficult to assess the likely frequency of the lights being triggered as I cannot determine whether activity outside of the appeal site would be likely to activate the lighting. Furthermore, whilst the hours of operation of the office are limited by condition, it does not appear that the agricultural use of the adjacent buildings are subject to the same limitations. As such, activity associated with these buildings are also likely to activate the sensors which could be outside of the hours of operation of the office building.
16. As such, given the lack of information with regard to light spillage and the sensors, the high concentration of the units, lack of shrouding and the rural location, I cannot be certain that the lighting scheme does not adversely affect the visual amenity of the countryside or the living conditions of the occupiers of neighbouring properties.

For the above reasons I therefore conclude that condition 3 is reasonable and necessary in in order to ensure that the visual amenities of the area are not adversely affected by light spillage and to preserve the living conditions of the occupiers of neighbouring properties. This approach would ensure compliance with Policies ENV1 and S4 of the Local Plan which together seek, amongst other

things, to ensure new development protects the visual amenity of the countryside and preserves living conditions.

Condition 6

17. Four air conditioning units (ACUs) have been installed to the rear of the office building facing the eastern boundary with an extended garden area serving Home Farm. This lies a short distance away and, aside from sporadic low shrub planting, there is no discernible intervening boundary treatment along this section of the boundary. Whilst the closest dwellings, Home Farm and its neighbour Hawthorne House, are located in excess of 30 metres away from the ACUs, the extended garden area is nonetheless very close. Given the likely background noise levels in this rural location, the ACUs could be a significant source of noise to this area. On this basis the previous Inspector determined that *'a level of noise attenuation would be needed if the air conditioning units are to remain in their current location'*.
18. The appellant has provided a noise assessment (the Report) which was not available to the Inspector at the previous appeal. This measured sound levels at the boundary of the site with the extended garden area over a period of seven days. However, I cannot be certain that this has correctly assessed noise as Appendix C of the Report and the Noise Model drawing at 5.1.6 incorrectly identifies Hawthorne House as the closest residential property to the appeal site when this is actually Home Farm. Furthermore, at Appendix C it classifies the extended garden area as including the immediate garden of Home Farm, whilst what is identified as the garden of Home Farm is actually that of Hawthorne House. It is unclear therefore whether conclusions in respect of the extended garden area relate to the actual extended garden area or both the extended garden area and the immediate garden of Home Farm. The effect on the dwelling at Home Farm is also not entirely clear.
19. Nonetheless, with regard to the extended garden area, the Report demonstrates that the noise levels of the area adjacent to the ACUs is above the guideline value of 50dB² for external amenity space as set out in BS8233. However, whilst it states that this represents only a small part of the extended garden area, this would still result in a substantial effect on this area. Furthermore, the Noise Model indicates that the areas subject to increases of 10dB (the significant adverse effect level) and 5dB (the lowest adverse effect level) above the average background noise levels would be greater still. Indeed, notwithstanding the aforementioned errors in the Report, it appears from the plan that noise levels of greater than or equal to 45dB are experienced on the fringes of the immediate garden of Home Farm.
20. Taking this into account, alongside the rural context, such noise levels are greater than the occupants of Home Farm could reasonably expect within their extended garden area and immediate garden area. As such this will have likely resulted in an adverse effect on their enjoyment of these spaces, to the detriment of their living conditions.
21. No calculations have been provided as to whether the above effects could be satisfactorily reduced through provision of an acoustic fence. Nonetheless, in my experience, such a structure placed along this boundary could have a marked mitigating effect. Furthermore, I note that calculations demonstrating

² For external amenity spaces

how noise levels would be mitigated could be provided in support of details provided to discharge condition 6.

22. There has been disagreement over how the land referred to as extended garden has been used. However, I saw that this land includes a trampoline and planting, with a clear link to the immediate garden of Home Farm indicating that this has been used for domestic activities. Whilst the Council refer to the land as a paddock, I saw no evidence of any agricultural activities here. I have not been provided with any convincing evidence by either party to take a different view to the previous Inspector in respect of this matter, and my view, as above, is that the occupants of Home Farm would expect to see the low background noise levels protected within this area.
23. Whilst reference has been made to grain drying facilities, it is not clear how these facilities operate and, in my experience, such facilities are only likely to operate for short periods at certain times of the year. Therefore, noise arising from here is not likely to be indicative of high background noise levels.
24. I therefore conclude that the noise arising from the ACUs causes disturbance to the enjoyment of the neighbouring land. Condition 6 is therefore reasonable and necessary in the interests of living conditions to preserve the residential amenities of the locality. This approach would ensure compliance with Policy ENV1 of the East Riding Local Plan Strategy Document (2016) which seeks, amongst other things, to ensure new development preserves living conditions.

Conclusion

25. For the reasons given above I conclude that the conditions are reasonable and necessary, and that the appeal should be dismissed.

Paul Martinson

INSPECTOR