



Appeal Decision

Site visit made on 22 February 2022

an Inspector appointed by the Secretary of State

Decision date: 27th June 2022

Appeal Ref: APP/A0665/W/21/3279078

FP McCann Ltd, Byley Road, Northwich, Cheshire, CW10 9RJ

- 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 FP McCann Ltd against the decision of Cheshire West and Chester Council.
 - The application Ref 19/04471/FUL, dated 06 December 2019, was refused by notice dated 18 June 2021.
 - The development proposed is change of use of land to industrial use (Class B2) for extension to existing product storage yard and creation of earth bund.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to industrial use (Class B2) for extension to existing product storage yard and creation of a earth bund at FP McCann Ltd, Byley Road, Northwich, Cheshire, CW10 9RJ in accordance with the terms of the application, Ref 19/04471/FUL, dated 06 December 2019, subject to the conditions in the attached schedule.

Applications for costs

2. An application for an award of costs was made by Mr Paul Hammill of FP McCann Ltd against Cheshire West and Cheshire Council. That 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 residential occupiers of neighbouring properties, with particular regard to noise and disturbance.

Reasons

4. The appeal site comprises approximately 0.8 hectares of former agricultural land towards the edge of a large industrial complex (the Byley site) in the open countryside. The Byley site was originally an RAF base but it has been used for manufacturing since the end of World War II. The operational site is currently used for the production of precast concrete products and it includes hangars and warehouses, production sheds and office buildings, travelling cranes, outside storage areas, car parking and associated structures. The appeal site is currently open landscaping between the outside storage areas and the internal access road and earth bunds along the site boundaries.
5. The proposal would be an extension to the existing product storage yard. An earth bund would be created alongside the existing bund adjacent to the B5081 access. An oak tree would be removed and there would be replacement tree

planting. The storage area would be used for the long-term storage of moulds and large manufacturing items. Frequently moved items would be stored closer to the existing operational areas, with larger and less frequently moved items stored towards the outer edge of the appeal site. The application form indicates the operating hours would be 0800-2000 Monday to Friday, 0800-1400 Saturday, and not on Sundays or bank holidays. This is consistent with permissions relating to existing external activities in the operational area.

6. The north-west corner of the Byley industrial site is bounded by the B5081 Middlewich Road to the west and King's Lane to the north. The B5081 connects Middlewich and Knutsford and it is characterised by generally intermittent, fast and free flowing traffic. King's Lane is a local road with generally low levels of intermittent vehicle movements. There are a relatively small number of neighbouring residential dwellings, including Earnshaw Cottage, Stublach Cottage and Stublach House on the B5081 and The Croft and Croft Cottage on King's Lane. These are on the opposite side of the road to the appeal site, which is set back behind earth embankments. The appeal site is approximately 70m from the closest residential dwelling.
7. The third party representations evidence that the existing operations at the Byley site result in noise and disturbance to nearby residential occupiers. Recurrent complaints relate to irregular and unpredictable noise including crashes and bangs, the scraping of metal on concrete, concrete breakers, reversing alarms, and floodlighting. Notwithstanding that the permitted hours of operation avoid the overnight period, local residents report that the industrial activity is a significant cause of stress, irritability and anxiety.
8. Submitted plans (ref PD-04 rev A – Proposed Operational Area) illustrate that the appeal site is bounded by operational areas and an internal access road that primarily serves the employee car park. As the appeal site is currently not in operational use, the proposal would be a spatial extension of industrial activity. The closer approach of operations to neighbouring residential dwellings, which are sensitive noise receptors, has the potential to result in detrimental impacts on residential amenity.
9. A noise assessment¹ submitted with the planning application was revised following concerns raised by the Council and third parties (the PDA report)². The revised noise assessment (the HL report)³ was subsequently reviewed by the Council's Environmental Protection Team (EPT) and by an independent consultant (SRL)⁴ commissioned by the Council. Although the HL assessment does not include potential bangs and crashes from loading and unloading, both the EPT and SRL are satisfied that the HL report is robust and reliable. Based on the evidence before me, I see no reason to disagree.
10. The HL report adopts the background noise levels measured by PDA over several days in January to February 2020 at 2 locations corresponding to the nearest neighbouring residential dwellings. As this pre-dated the first national coronavirus pandemic lockdown, the measurements are representative of background noise at the sensitive receptors. The background noise climate derives from distant traffic noise and it is also affected by bird song in the

¹ Proposed Extension to Storage Yard Noise Impact Assessment, Hoare Lea, revision 2 – 12 November 2019.

² Review & Re-assessment of Environmental Noise, PDA, 24 February 2020.

³ Proposed Extension to Storage Yard Noise Impact Assessment, Hoare Lea, revision 3 – 24 June 2020.

⁴ Letter from SRL Technical Services Ltd, ref 43050-SRL-CO-YA-001-S2-P2, 29 January 2021.

morning. The typical daytime L_{A90} value was 44dB for both Croft Cottage and Stublach. Intermittent noise was audible at the nearby dwellings including vehicle movements, reversing alarms, hydraulic peckers and unspecified crashes and bangs from within the Byley site. Maximum noise levels, such as occur at start-ups and loading, are usually brief in duration.

11. A maximum of 3 16-ton stacker trucks would operate in the appeal site, entering and exiting via the existing yard to the south. HGVs would be loaded and unloaded in the areas to the south already used for these purposes. The 3 trucks would operate for a maximum of roughly 15 minutes in any one hour period. Forklift operators would be trained to minimise noise generation during loading and unloading, which includes avoiding dragging forks on the ground, careful handling of materials to minimise damage and noise, minimising reversing time with associated alarms, and turning off engines when not in use.
12. Sound levels of the stacker trucks driving forwards and reversing were measured at a distance of 3m. Taking account the sound power level, and distance and barrier attenuation, the noise level at the closest residential properties is predicted to be around 34dB L_{Aeq} . Factoring in tonal and impulsivity character corrections, the HL report concludes that the noise levels would be 5dB below the measured background noise levels. In accordance with BS4142:2014 Methods for rating and assessing industrial and commercial sound, this would result in a low impact at the nearest residential dwellings. Moreover, noise levels would not exceed the acceptable daytime internal or external noise levels at the neighbouring dwellings, in accordance with the recommendations of BS 8233:2014 Guidance on sound insulation and noise reduction for buildings. There would be no impact in the overnight period.
13. Subject to mitigation, including timber skids and careful material handling, the conclusions of the HL report are accepted by both the EPT and SRL. Notwithstanding, the Council considers that it would not be possible to prevent all bang and crash impact noises nor to ensure compliance with the control measures at all times. The Council concludes that additional sporadic and unpredictable noises not accounted for and the perception of increased noise would, by itself and cumulatively with existing site noise, cause significant adverse harm to residential amenity.
14. The HL report does consider the potential for maximum and cumulative noise impacts. Stacker trucks and product storage are a feature of the existing operational site. The proposal would not be a novel source of noise in this location. Any discernible noise from vehicles or sporadic impulsive sounds would be experienced in the context of the similar existing noise environment. While there could be unpredictable noise events, there is little before me to demonstrate that any such events would be anything other than occasional or that they would result in significant or cumulative adverse noise impacts.
15. The Council's suggested planning conditions include maximum acceptable sound levels at the nearest dwellings, restriction on operating hours, the site to only be used for storage with no HGV loading or unloading, and a noise management plan specifying the stacker trucks, operator training, white noise sounders instead of reversing alarms, use of timber skids and an inventory of storage products. In the absence of any substantive evidence to the contrary, I am satisfied that these measures would mitigate adverse impacts on the

neighbouring residents and the conditions would meet the tests for conditions, including in relation to enforceability.

16. Therefore, I conclude that the proposal would not harm the living conditions of neighbouring residential occupiers, with particular regard to noise and disturbance. It would not conflict with Policy SOC5 of Cheshire West & Chester Council Local Plan (Part One) Strategic Policies Adopted January 2015 (the LP1) or Policy DM2 of the Local Plan (Part Two) Land Allocations and Detailed Policies Adopted July 2019 (the LP2). These require, among other things, that development avoids significant adverse impacts and safeguards health, quality of life and residential amenity of neighbouring occupiers. It would not conflict with the social or residential amenity aims of the National Planning Policy Framework (the Framework).

Other Considerations

17. There are numerous third party representations both objecting to and in support of the proposal. In some cases, multiple representations have been made from the same property setting out the ways in which the various occupiers are affected by the existing industrial operations. The neighbours refer to the intensification of use and the encroachment of operations towards site boundaries, the felling of woodland and trees, failed landscaping, breaches of permitted operational hours, increased noise and light pollution, and an increase in traffic. The activities within the Byley site have resulted in a considerable degree of stress and anxiety to neighbouring occupiers. The neighbours consider that the existing scale and nature of the operations is incompatible with the relatively undeveloped countryside location. They are understandably concerned that further development would exacerbate the adverse impacts that arise as a result of proximity to a large industrial site.
18. Matters relating to earlier planning permissions and the previous felling of trees are not issues for this appeal. The proposal would not harm highway safety. Notwithstanding the concerns in relation to the previous intensification of industrial activity and the associated disturbance, each scheme must be considered on its own merits. In this regard, and while I understand they might perceive otherwise, there is little substantive evidence that the proposal would harm the living conditions of the neighbours or that it would contribute to cumulative harm in this location. Consequently, while I have taken account of the representations, they do not weigh significantly against the scheme.
19. The representations also raise concerns that the proposed change of use to B2 generalised industrial, rather than B8 storage or distribution, might allow other industrial uses without any further assessment of impacts. However, I am satisfied that the conditions suggested by the Council would be adequate to secure the proposed storage use.
20. The appeal site was formerly used for grazing but it is currently only sparsely vegetated and it is isolated by the operational site and internal access road. It is of limited biodiversity value and it does not support populations of protected or priority species. The oak tree contains features with limited bat roosting potential and nesting birds could be present. Subject to the implementation of soft-felling measures, avoidance of impacts on nesting birds, and replacement tree planting, impacts on biodiversity would be mitigated.

21. The oak tree is subject to a Tree Preservation Order to prevent further tree loss at the Byley site and in recognition of its amenity value. It is a high quality mature tree with a normal life expectancy such that its retention would be desirable. However, it is screened in public views by the boundary embankments and vegetation. Consequently, it is not a prominent landscape feature and it is not of significant public amenity value, either alone or as part of a group of trees. I am satisfied that, with replacement planting, its loss would not conflict with the relevant development plan policies.
22. The Byley site manufactures drainage and storm attenuation products used by water utility providers, residential and industrial developments to mitigate climate change and to alleviate flood risk. There would be no new employment opportunities, but the proposal would help secure the future of the business and the continued provision of employment opportunities. On the evidence before me, these matters carry limited weight in favour of the proposal.

Conditions

23. The Council has suggested planning conditions, including pre-commencement, in the event the appeal was allowed. The appellant has reviewed them and he states that they are acceptable in principle. I have assessed the conditions against the relevant tests set out in the Framework and I have amended the wording accordingly where I consider this is necessary.
24. In addition to the standard condition limiting the lifespan of the planning permission, I have specified the approved plans in the interests of certainty. I have not attached suggested condition 18 which specifies the products that can be stored as this duplicates condition 5, which I have imposed in the interests of certainty and to protect the living conditions of neighbouring residents.
25. Planning conditions relating to noise levels and noise management, hours of construction and operation, vehicle movements, HGVs loading and unloading, deliveries, dust control and lighting are necessary to protect the living conditions of neighbouring residential occupiers. A condition requiring details of surface water drainage is necessary to secure sustainable drainage and to manage the risk of flooding and pollution. However, as the proposal does not include any buildings or welfare facilities, a condition relating to foul water drainage is not necessary or relevant to the development. A condition relating to unexpected contamination is necessary to ensure the development can be carried out without unacceptable risks to human health or the environment.
26. A landscaping condition requiring replacement tree planting is necessary to compensate for the loss of the oak tree and in the interests of visual amenity. However, as the proposal does not include habitat creation, I have not imposed a condition requiring a long-term habitat management plan. Soft tree felling measures and the avoidance of impacts on nesting birds are necessary for the avoidance of impacts on protected species.

Conclusion

27. For the reasons set out above, I conclude that the appeal should be allowed.

Sarah Manchester INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Ref BYL/SY/PD-01 Rev A Location Plan; Ref BYL/SY/PD-02 Rev A Site Plan; Ref PD-04 Rev B Proposed Landscaping details.
- 3) The level of noise emitted from the operational use of the storage area shown in approved drawing Ref BYL/SY/PD-02 Rev A shall not exceed a level 5dB(A) LAeq, t below measured background noise levels at the closest elevations of neighbouring residential dwellings. The noise levels shall be measured in accordance with BS4142:2014 Method for Rating and Assessing Industrial and Commercial Sound, or any subsequent guidance that supersedes it.
- 4) Machinery, activities, operations and vehicular movements shall be carried out within the development hereby approved, as shown in drawing Ref BYL/SY/PD-02 Rev A, only between 08:00-20:00 hours Mondays to Fridays and 08:00-14:00 hours on Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
- 5) The development hereby approved shall be used only for the storage of completed concrete products awaiting dispatch and casting moulds. There shall be no storage of faulty or damaged products or moulds, or works to repair, alter or dismantle concrete products or moulds, within the development hereby approved.
- 6) There shall be no loading or unloading of HGVs within the development hereby approved. There shall be no vehicle movements in the development hereby approved with the exception of the 3 stacker trucks specified within the Noise Management Plan required by condition 7.
- 7) Prior to the first use of the development hereby approved, a Noise Management Plan shall be submitted to and approved in writing by the local planning authority. The Plan shall include but not be limited to the following details:
 - Specific identification of the 3 16-ton stacker trucks to be used in the storage area.
 - The stacker trucks to be operated only by appropriately qualified drivers.
 - Up-to-date details of all relevant training received by stacker truck drivers in order to ensure correct and considerate use of the specified stacker trucks in the storage area.
 - Specified stacker trucks, including any vehicles obtained to replace them, shall not be used in the development until and unless they have been fitted with white noise sounders instead of reversing beepers.
 - Clear methods and procedures for minimising noise as a result of use of the storage area, including periodic reviews of operations.
 - Use of timber skids beneath stored products and moulds.
 - Maintenance of an inventory identifying the products and moulds stored and their locations within the storage area.

The approved Plan shall be implemented in full.

- 8) Demolition or construction works shall take place only between 08:00-18:00 hours on Monday to Friday, 08:00-13:00 hours Saturdays, and shall not take place at any time on Sundays or Bank or Public Holidays.
- 9) Deliveries shall be taken or dispatched only between 08:00-18:00 hours on Mondays to Fridays, 08:00-13:00 hours Saturdays, and not at any time on Sundays or on Bank or Public Holidays.
- 10) No development shall commence until a scheme for the control of dust shall have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall be carried out in accordance with the approved details.
- 11) Prior to the first use of the development hereby permitted, details of lighting shall be submitted to and approved in writing by the local planning authority. The details shall include but not be limited to: the hours of operation of lighting; the location, size and design of luminaires and fittings; the type and output of light sources with lux levels and isolux drawings to demonstrate the levels of illumination with the site and the amount of light spill beyond the site boundaries. The approved lighting details shall be implemented in full and retained thereafter.
- 12) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported to the local planning authority and development on that part of the site affected shall be suspended until measures for the remediation of the contamination shall have been submitted to and approved in writing by the local planning authority. The approved remediation shall be carried out in full before the development is continued.
- 13) No development shall commence until details of soft-felling measures of trees within the site shall have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full.
- 14) All hard and soft landscape works, as shown on approved plan ref PD-04 Rev B, shall be carried out in the first planting and seeding season following the completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 15) No development shall commence until details of a surface water drainage scheme shall have been submitted to and approved in writing by the local planning authority. The drainage scheme shall include:
 - i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent version). The investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
 - ii) A restricted rate of discharge of surface water agreed with the local planning authority, if it is agreed that infiltration is discounted by the investigations; and
 - iii) A timetable for its implementation.The approved scheme shall be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

The development hereby permitted shall be carried out in accordance with the approved drainage scheme details.

- 16) No vegetation clearance works shall take place during the bird nesting season, which runs from 1 March to 31 August inclusive unless the absence of nesting birds has been confirmed in advance by an appropriately qualified ecologist. Where nesting birds are found to be present, mitigation measures shall be formulated and implemented in full.