



Appeal Decision

Site visit made on 29 March 2023

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/N1730/W/21/3285719

Land at Old School Road, Hook, RG27 9NJ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Stephen Buckland against the decision of Hart District Council.
 - The application Ref 21/01274/AMCON, dated 1 June 2021, was approved on 27 August 2021 and planning permission was granted subject to conditions.
 - The development permitted is described as Minor Material Amendment (S73 application) of planning permission (ref:95/00322/COU) granted on 31.07.2021 for Storage/parking of agricultural machinery and storage of timber: as varied by Minor Material Amendment (ref:97/00158/AMCON) dated 08.04.1997 to remove condition no.2 attached to planning permission (ref:97/00158/AMCON).
 - The condition in dispute is No 2 which states that: The site shall only be used for the consented storage purposes and no vehicles/machinery associated with the use shall enter or leave the site outside of the hours of 0730 – 1830 Monday to Saturday. No vehicular/machinery movements shall take place on Sundays.
 - The reason given for the condition is: In the interests of neighbouring residential amenity in accordance with adopted policy NBE11 of the adopted Hart Local Plan and Sites 2016 – 2032, saved local policy GEN1 of the Hart District Local Plan 1996 – 2006 and the NPPF 2021.
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Decision

1. The appeal is allowed and the planning permission Ref 21/01274/AMCON for the permanent use for storage/parking of agricultural machinery and storage of timber: as varied by Minor Material Amendment (ref:97/00158/AMCON) dated 08.04.1997 to remove condition no.2 attached to planning permission (ref:97/00158/AMCON) at Land at Old School Road, Hook, RG27 9NJ granted on 27 August 2021 by Hart District Council, is varied by deleting condition 2 and substituting it for the following condition:
 - 2) The site shall not be used and no vehicles/machinery associated with the use shall enter or leave the site outside 07.30 – 18.30 hours Monday to Saturday, with no use or movement of vehicles/machinery on Sundays, except there may be occasional vehicle/machinery movements of one vehicle a day to the site between 18.30 and 21.00 hours on Monday – Saturday and 1No. two-way vehicle/machinery movements between 07.30 and 21.00 hours on Sundays.

Main Issue

2. The main issue is whether condition 2 is necessary to protect the living conditions of local residents.

Reasons

3. Temporary Planning permission was first granted for the use of the appeal site for the storage/parking of agricultural machinery and the storage of timber in 1996 (06/01064/COU). In 1997 planning permission (97/00158/AMCON) was granted for the use to continue permanently.
4. The appellant has confirmed that they submitted the appeal application in order that the site could be used for the same purpose by any other person. As such the application only sought to remove the personal occupancy condition attached to the 2007 permission. They did not seek to modify the precise nature of the use of the site or the previously imposed condition relating to hours of operation and traffic movements. In particular they did not seek to vary or remove condition 3 of the 2007 planning permission, which states:

"The site shall not be used and no vehicles shall enter or leave the site outside the hours of 07.30 to 18.30 Mondays to Saturdays with no use or movement of vehicles on Sundays, except that there may be occasional vehicle movements of one vehicle to the site between 18.30 and 21.00 hours on weekdays and one vehicle movement on and off the site on Sundays."
5. In approving the appeal application, the council removed the personal occupancy condition and imposed three new conditions relating to the precise nature of the use, restrictions on traffic movements (condition 2) and restrictions on external lighting. The appellant has raised no concerns relating to the newly imposed conditions relating to the precise use of the site or external illumination. Their only stated concern relates to the additional restrictions on vehicle movements.
6. The appeal site is located in a rural area a short distance from the main built-up area of Hook. The immediate area is characterised by large areas of woodland, linear and scattered housing and sporadic commercial and community facilities.
7. The appeal site fronts onto a private access track with a woodland embankment and railway line just beyond. To the rear and on one side the appeal site is bordered by an area of land used for the storage of cars. Deliveries associated with this use and other purposes are not allowed outside the hours of 08.00 and 18.00 hours Monday to Saturday. On the opposite side the appeal site adjoins the domestic property 'Whytegates', which is a detached house that is separated from the appeal site by a tall fence and hedging plants.
8. Access to the appeal site is from a narrow vehicular track, which is flanked on both sides by two dwellings which occupy generous sized plots. One of the dwellings 'Thistledown' is owned by the appellant. The other dwelling 'Magnolia House' is sited several metres from the boundary with the access track and is separated from it by a tall close boarded fence and dense planting. It appears that the access track also serves the adjacent car storage sites. On the opposite side of Old School Lane is a car sales business.

9. Together and amongst other things Policy NBE11 of the adopted Hart Local Plan and Sites 2016 – 2032 (HLP32) and saved local policy GEN1 of the Hart District Local Plan 1996 – 2006 (LP), seek to ensure that development does not give rise to unacceptable levels of pollution or material loss of amenity for the occupiers of existing land and buildings, due to noise, dust, fumes or vibration.
10. Paragraphs 130 & 185 of the National Planning Policy Framework (the Framework) seek a high standard of amenity for existing and future users and to ensure that new development is appropriate for its location, taking account of likely effects of pollution on living conditions.
11. The appeal site is modest in size and the access to it is narrow. This restricts the nature of its authorised use and the size and number of vehicles/machines that can access and be stored on the site. It also restricts the intensity of use and the sites potential to be used by multiple operators.
12. In their delegated report the council stated that over the past 26 years the storage use has co-existed alongside the existing dwellings and close to a housing development constructed in the early 2000's without any apparent conflict. Also, that no objections were received from neighbours or the council's environmental health officer in relation to the appeal application.
13. As a result of these factors, I agree with the council that the removal of the personal occupancy condition should not have a materially adverse impact on the living conditions of the occupiers of the adjacent dwellings. This is subject to the imposition of appropriate conditions relating to the nature of the use and operating hours, to minimise the potential of the use of the site to generate undue noise or disturbance for local residents.
14. As stated by the appellant agriculture and forestry activities can be unpredictable and affected by weather, emergencies and general need. As such vehicles may need to be transported to or from the site outside normal core hours. Condition 3 of the 1995 and 1997 planning permissions reflected and accommodated this need for some flexibility, whilst limiting the number of such movements to a modest level.
15. The 2021 planning permission is similarly for the use of the site for the storage/parking of agricultural machinery and storage of timber. Condition 1 of that permission requires the use and operations to continue in accordance with the 1995 and 1997 planning permission.
16. For these reasons, given the acceptability and effectiveness of the operating/vehicle movement hours conditions imposed on the 1995 and 1997 planning permissions, I can see no need or justification to change the previously consented operating hours. I do however agree with the council that the condition should refer to the movement of both vehicles and machinery associated with the use. Both the council and the appellant have been consulted on the wording of a suggested replacement condition and neither have raised any concerns.
17. Finally, I agree that condition 3, which relates to illumination/floodlights is necessary to protect the living conditions of the occupiers of the adjacent dwellings and the habitats of protected species.
18. I conclude that condition No.2 is both unnecessarily restrictive and thus unreasonable. Its removal and replacement with a condition, which provides

greater vehicle/machinery movement flexibility would not have a materially adverse impact on the living conditions of local residents. The proposal would therefore comply with HLP Policy NBE11, LP Policy GEN1 and paragraphs 130 & 185 of the Framework.

Elizabeth Lawrence

INSPECTOR