



Appeal Decision

Site visit made on 11 July 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2023

Appeal Ref: APP/E2734/W/23/3320119

Land south Of Barnaby Way, Off Wetherby Road, Boroughbridge, North Yorkshire

- 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 Tappenden & Co Ltd against the decision of Harrogate Borough Council.
- The application Ref 21/04240/FULMAJ, dated 22 September 2021, was approved on 20 October 2022 and planning permission was granted subject to conditions.
- The development permitted is the erection of two detached blocks of 8no. Class E(g) (ii) research and development and E(g) (iii) industrial uses and/or B8 storage and distribution units.
- The conditions in dispute are Nos 6, 7, 8 and 24 which state that:
 - (6) *No deliveries or despatches shall be made to or from the site, and no delivery or despatch vehicles shall enter or leave the site (whether laden or unladen), before the hours of 07:30 nor after 1800 Monday to Friday and before the hours of 08:00 nor after 13:00 Saturday, or at all on Sundays and Public Holidays.*
 - (7) *No noise generating machinery or plant shall be operated, or process carried out except between the hours 07:30 and 18:00 Monday to Saturday and at no time on Sundays, Bank or Public Holidays.*
 - (8) *Before each unit is brought into use, a noise mitigation scheme shall be submitted in writing and approved in writing by the local planning authority detailing measures that will be implemented to ensure that any noise associated with the development does not cause detriment to amenity or a nuisance, especially to those living and working in the vicinity. The assessment shall be made in accordance with the methodology of BS 4142:2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Such an agreed noise mitigation scheme shall be implemented prior to the development being brought into use and fully maintained thereafter. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.*
 - (24) *Prior to the installation of air source heat pumps, details shall be submitted to the LPA for approval. These should include but are not limited to, technical details, visual appearance, details of location and position and ground surface material, a noise assessment report undertaken by a competent person including cumulative impacts and impact in relation to background noise and any noise attenuation measures required. The rating level of sound emitted from any fixed plant or multiple fixed plant associated with the development shall not exceed the background sound levels between the hours of 0700- 2200 (taken as a typical one hour LA90 at the sound sensitive premises) and shall not exceed the background sound level between 2200-0700 (taken as a typical 15 minute LA90 at the sound sensitive premises). All measurements shall be made in accordance with the methodology of BS 4142:2014+A1:2019 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property. The air source heat pumps shall be installed in accordance with the approved details and maintained and retained as such in*

accordance with the details submitted and approved above, for the lifetime of the development.

- The reasons given for the conditions are:
 - (6) To protect the amenities of nearby noise sensitive residents.*
 - (7) To protect the amenities of noise sensitive residents.*
 - (8) To protect the amenities of noise sensitive residents.*
 - (24) To safeguard the environment and mitigate climate change.*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 1 April 2023 Harrogate Borough Council merged with a number of other Councils to form a new Unitary Authority known as North Yorkshire Council. Regulation 26 of The Local Government (Boundary Changes) Regulations 2018, allows for any extant development plans to have effect as if adopted by the new Unitary Authority until such time as the new Unitary Authority adopts a plan covering the whole of its area. For the purposes of this appeal the development plan comprises the Harrogate District Local Plan 2020 (LP).

Background and Main Issue

3. Planning permission has been granted for the erection of two buildings which would provide eight units within use classes E(g)(ii) and E(g)(iii). The appellant seeks to delete conditions 6 and 7 which restrict the hours during which deliveries can be made and during which noise generating machinery can be operated, condition 8 which requires noise mitigation schemes and condition 24 which requires the approval of details of air source heat pumps before they are installed. Three replacement conditions are suggested.
4. The main issue is the effect that varying the conditions would have on the living conditions of the occupiers of nearby dwellings, with particular reference to noise and disturbance, and whether or not the conditions meet with the 6 tests set out in paragraph 56 of the National Planning Policy Framework (the Framework).

Reasons

Living conditions

5. The appeal submission includes a Noise Impact Assessment April 2023 (NIA) which assesses the impact that the proposed development would be likely to have on the living conditions of the occupiers of the dwellings nearest to the appeal site, these being those on Hereford Way, Lawson Avenue, Fothergill Way, Barnaby Way, Battle Close and on a nearby residential caravan park. The assessment supplements a previous assessment dated May 2022 which was provided in support of the planning application.
6. The NIA concludes that the operation of the approved units and the addition of air source heat pumps would generate noise levels that would have no observed adverse effect on the occupiers of the nearest residential properties. This is because levels would be no higher than the adopted background sound level and below the ambient levels typically, and on consideration of the standard thresholds for residential amenity as well as the development being in keeping with a neighbouring use and given the likely use of the vacant appeal

site that is anticipated. The assessment is predicated on the basis of heavy vehicles over 7.5 tonnes visiting the site and being permitted to do so between 05:00 and 23:00 Monday to Saturday only and subject to a number of recommendations and site management controls being put in place.

7. As the end users are not known at this point in time, the NIA is made based upon assumptions as to how the occupiers of the approved units might operate. This provides little certainty that noise levels would be limited to the levels it sets out. Indeed, the NIA accepts that it could be that noisier activities occur at times, but caveats that such would be unlikely to be for a prolonged period or occur in all units at the same time. Furthermore, the NIA assumes that a 2.5 metre high acoustic barrier would be erected on the western boundary. Whilst an acoustic barrier was approved on the southern boundary, such a barrier has not been approved to the west of the development. This casts considerable doubt on whether the anticipated noise level figures at the nearest dwellings to the west would be as outlined in the NIA.
8. The suggested site management controls set out that roller shutter doors should be closed as much as possible during the day, and at all times at night, except when deliveries are being made. The NIA also assumes that internal activities will halt during deliveries where roller shutter doors are required to be open at night. These controls would be difficult to enforce, and the deletion of conditions 6 and 7 would remove control as to when deliveries in general could take place and when machinery or plant could be operated. This would allow those activities to take place during the most sensitive times when nearby residents are likely to be sleeping and there is insufficient comfort provided that this would not be at a level that would cause significant harm to living conditions from noise and disturbance. For these reasons, I find that conditions 6 and 7 are reasonable, necessary and relevant to the development permitted.
9. Condition 8 requires the submission of a noise mitigation scheme, prior to each unit being brought into use. This would be a specific scheme devised and developed relative to the occupiers of each unit and would set out how operations could take place in order to ensure that there was not a harmful effect on the living conditions of the occupiers of nearby dwellings. Given the uncertainty with respect to conditions 6 and 7 and in general as outlined above, condition 8 too is reasonable, necessary and relevant to the development permitted. Condition 24 also meets these tests on the basis of the evidence that is available at the current time, because of the assumption in the NIA that there would be a 2.5 metre high acoustic barrier on the western boundary when in fact this was not approved as part of the development that was permitted.
10. The appellant suggests that the matter relating to the 2.5 metre high acoustic barrier on the western boundary could be resolved by the addition of a new condition requiring a barrier to be erected. However, given the variation in ground levels both on the appeal site and in relation to the nearest dwellings, it is unclear above which ground level the 2.5 metre high barrier would need to extend in height. If it were to be directly on the common boundaries with the adjacent dwellings, it would appear that such a barrier would exceed the height of the existing fences and be solid rather than the existing hit and miss fence which allows some vision and light through that is currently present.

11. To add the condition suggested would potentially impose a 2.5 metre high barrier directly on those residential boundaries, without the occupiers of the properties having had the benefit of being consulted on such a proposal during the course of a planning application or being able to view and consider plans showing development to that effect. For that reason and because a barrier of that height exceeds what could be erected as permitted development, a condition requiring an acoustic barrier of that height could not reasonably and fairly be imposed as a variation to the original permission.
12. For the reasons set out above, I conclude that conditions 6, 7, 8 and 24 are reasonable, necessary and relevant to the development permitted.

Enforceability, precision and relevance to planning

13. The appellant considers that conditions 7 and 8 are neither enforceable nor precise, and as such would not meet those tests as set out in paragraph 56 of the Framework. Specifically, they contend that condition 7 does not define which machinery or plant is captured by its provisions, as all machinery and plant generate noise. The condition therefore does not provide a basis for establishing what 'noise generating' means in the context of the need to protect amenities. On this basis, in their view condition 7 is not clear as to what is required, making it difficult to detect a breach.
14. Condition 8 is said by the appellant to be unenforceable and imprecise as it provides no mechanism whereby the Council can monitor the effectiveness of the approved noise mitigation schemes after each unit is brought into use. They further consider that this condition is imprecise as it is not clear whether its provisions relate to the first use of each unit, and/or subsequent changes in tenants which may lead to a change in operating characteristics and/or use, but one which is within the terms of the planning permission.
15. The wording of condition 7 does in effect prevent the operation of all machinery and plant during the times specified, as all such equipment would generate some degree of noise. It is not however imprecise in setting out this requirement and is not unenforceable, as the Council would be able to establish if machinery and plant was being used outside of the times permitted.
16. Condition 8 would require details relating to noise mitigation from each unit, prior to it being brought in to use. It does not provide for subsequent amendment of the approved details, but there is no apparent reason why a mitigation scheme approved by the Council would not serve its purpose in protecting living conditions. The absence of an amendment mechanism does not mean that the condition is either imprecise or unenforceable, and the Council would have the approved noise mitigation schemes as a baseline for monitoring and enforcement.
17. Whilst subsequent occupiers may operate in different ways, they would be aware that they would be bound by the mitigation scheme that had been approved for their unit. They would therefore know and understand the requirements that they would need to meet to safeguard living conditions due to the proximity to residential dwellings, and whether they would be able to operate on that basis before they chose to occupy the unit. As a whole, I conclude that condition 8 is also both precise and enforceable.

18. There is no dispute between the appellant and the Council that all four of the conditions meet the test of being relevant to planning. I find no reason to take a different view on that matter.

Alternative suggested conditions

19. The appellant has suggested three replacement conditions if conditions 6, 7, 8 and 24 were to be deleted. However, as I have set out, there is insufficient evidence available to demonstrate that replacement condition one which would permit delivery vehicles under 7.5 tonnes to deliver at any time would not result in harm to living conditions. The other two conditions are not precise in what they require, as they refer to provisions set out in the NIA such as reminding occupiers that they are close to residential properties, keeping external noise to a minimum and only that roller shutter doors should be closed where possible at night. These two suggested alternative conditions therefore do not meet with the test of precision, and equally would not be enforceable.

Other Matters

20. The appellant states that no equivalent conditions were attached to the previous outline and reserved matters approval for a similar development, which is said to be extant. However, I have been provided with only very limited details of that previous permission and have no basis to undertake a meaningful comparison of the relative circumstances. Therefore, I have assessed the case before me upon its own merits. No substantive evidence has been provided to demonstrate that the approved units would not be economically viable with the conditions as they have been imposed.
21. The appellant considers that no evidence has been provided by the Council to counter the findings of their NIA. However, I consider that the representations made by the Council in their defence of the appeal have adequately explained and substantiated the position that they have taken.

Conclusion

22. For these reasons, on the basis of the evidence that is before me I conclude that all four conditions as imposed are required to prevent harm to the living conditions of the occupiers of the adjoining residential properties from noise and disturbance. Consequently, they are needed to ensure that there is no conflict with Policy HP4 of the LP, which seeks to safeguard living conditions, and the Framework, where it seeks to create places with a high standard of amenity for existing and future users. I am also satisfied that the conditions as imposed meet all of the six tests set out in paragraph 56 of The Framework.
23. Therefore, the appeal should be dismissed.

Graham Wraight

INSPECTOR