The Planning Inspectorate

Appeal Decisions

Site visit made on 27 June 2023

by S Crossen BA (Hons) PgCert PgDip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 October 2023

APP/P1615/W/22/3312746
33 Ford House Road, The Scarr, Newent, Gloucestershire GL18 1LQ

- 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 Mr & Mrs T Godfrey against the decision of Forest of Dean District Council.
- The application Ref P1216/22/FUL, dated 23 August 2022, was refused by notice dated 19 October 2022.
- The application sought planning permission for change of use from agricultural and equestrian land to caravan park to include up to 9 No. static holiday homes without complying with condition attached to planning permission Ref P1667/21/COU, dated 1 June 2022.
- The condition in dispute is number 13 which states that: *Within three months of the date of this permission the acoustic noise barrier shall be installed and maintained strictly accordance with the details as shown on revised drawing No. 2m received on the 21st February 2022 and thereafter retained in perpetuity.*
- The reason given for the condition is: *To protect and safeguard future users of the site from the adjoining commercial use and the general amenities of neighbouring dwellings in the area and in accordance with the National Planning Policy Framework, National Planning Policy Guidance and Core Strategy Policy CSP.1*.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was also made by Forest of Dean District Council against Mr and Mrs T Godfrey. This application will be the subject of a separate decision.

Preliminary Matters

3. I have also dealt with another appeal (Ref: APP/P1615/W/22/3313050) on this site. That appeal is the subject of a separate decision.

4. Both the application and appeal form for P1667/21/COU seek to removed condition 13 from planning application. However, the appeal statement refers to both conditions 13 and 14. Having had regard to 'Wheatcroft'[1] I am considering the appeal on the basis of the scheme which was before the Council when it made its decision.

[1] *Bernard Wheatcroft Ltd v SSE* [1982] JPL P37

Background and Main Issues

5. Planning permission[2] was granted for a change of use of the appeal site from agricultural and equestrian land to a caravan park to include up to 9 No. static holiday homes subject to conditions, none of which related to noise mitigation measures.

6. A subsequent planning application[3] was withdrawn and sought to extend the capacity of static holiday homes allowed by the original appeal, to 15. As part of the evidence of this appeal I have a copy of a noise assessment which quotes this application reference.

7. A section 73 permission[4] varied and discharged conditions of the original planning permission. The Council in issuing the decision attached additional conditions, one of which is subject of this appeal, following the receipt of new information regarding the effects of noise and following planning permission for a new building at the neighbouring employment site.

8. The main issue of this appeal is whether the condition is necessary and relevant to the development permitted, having regard to the effects of noise from an existing neighbouring employment use on the occupiers of static holiday homes and the effects of the proposal on that employment use.

Reasons

9. The appeal site is accessed off a narrow road which provides access to other sites, some with holiday touring caravan use, private homes and commercial businesses. The appeal site is a field which has an access track with a row of 9 static holiday homes. Directly to the rear is a tall hedge which defines the boundary to a business providing steel frame buildings called RLH. During my site visit I could hear noise from both RLH. I could see that the static holiday homes were in close proximity to the boundary with RLH.

10. The noise report states that the method for assessing industrial and commercial sound is to assess whether these noise sources can potentially affect the health and well-being of those exposed to them. The noise report concludes that it is the open amenity areas which are most affected by noise from RLH and that a 2.4m high acoustic grade fence is required to provide suitable mitigation. Although the scope of the noise report was in relation to an application for additional static holiday homes, the measurement position for the report was conducted between two of the existing units so the conclusions are relevant to this appeal.

11. The planning policy guidance[5] states that "In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission", condition 13 does not materially alter the development and could have been attached to the earlier permission.

12. I note there is some dispute between the parties as to which application the noise report was intended to support. Although there is some conflict between

[2] P0243/18/COU
[3] P1290/20/FUL
[4] P1667/21/COU
[5] Paragraph: 040 Reference ID: 21a-040-20190723

the evidence, it is still clear that the report existed prior to the determination of the section 73 application and that the information was relevant to that decision.

13. Noise with the potential to harm the health and well-being of occupiers would not only be harmful to occupiers but could also result in complaints against RLH, and the Council is concerned that separate noise nuisance legislation could affect this neighbouring business. The condition is therefore necessary to protect the health and wellbeing of occupants and in the interests of protecting a neighbouring business. Furthermore, paragraph 55 of the National Planning Policy Framework (the Framework) advises that conditions can be used to make unacceptable development acceptable.

14. I recognise that the timing of the additional conditions, considered necessary by the Council have occurred after a recent application to expand the RLH site. However, RLH was already an existing business when the original 9 caravans were approved and paragraph 187 of the Framework states that "Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed". Consequently, RLH is an existing business, and the Framework requires that existing business uses are protected through mitigation as necessary.

15. The appellant suggests that there is a fallback position of the original permission, however the Council state that the location of the development has been built closer to the boundary than was approved, which is not disputed, so it can be reasonably assumed that this additional distance to the noise source would result in less harm to occupiers of the static holiday homes. On this basis, it seems that the later permission has been implemented on the site and it is not clear that it would be possible to revert to the previous permission. Consequently, I give limited weight to this alternative.

16. I conclude that the conditions are reasonable and necessary having regard to the effects of noise on the occupiers of static caravans and the retention of an existing neighbouring employment use. As such there would be compliance with Policy CSP.1 of the Forest of Dean Core Strategy adopted February 2012, policies AP 1 and AP 4 of the Forest of Dean Allocations Plan adopted June 2018, the Framework in particular chapters 2, 6, 12, and 15, and Planning Practice Guidance. These policies and this guidance amongst other things seek to mitigate the effects of pollution and make environmental improvements where existing problems occur.

Other Matters

17. I have had regard to the suggestion that the condition was not necessary or required on granting the original permission and that it was unreasonable to add condition 13 permission P1667/21/COU. However, this appeal is against a later planning decision which forms the determinative issues of this appeal.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

S Crossen

INSPECTOR