



Appeal Decision

Site visit made on 25 July 2023

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/C1950/W/22/3312971

172 Travellers Lane, Welham Green, Hatfield, AL9 7HN

- 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 Freshwater Group of Companies against the decision of Welwyn Hatfield Borough Council.
- The application Ref 6/2021/3278/VAR, dated 11 November 2021, was refused by notice dated 22 July 2022.
- The application sought planning permission for the use as a Warehouse at 172 Travellers Lane, Welham Green, Hatfield without complying with condition number 7 previously imposed on planning permission Ref S6/1979/651/FP, dated 1 November 1979 as varied by planning permission reference S6/0778/96/FP dated 22 November 1996.
- The appeal decision¹ outlines the conditions in dispute, which are No 3 and 4. These state that:
 - 3) Prior to the 24 hour use of the premises being effect, details of the traffic barriers to the eastern and western sides of the building shall be submitted to and approved in writing by the local planning authority and installed in accordance with the approved details and shall thereafter be retained permanently unless otherwise agreed in writing by the local planning authority. The barriers shall remain closed outside the hours of 07.00 to 17.30 hours on Monday to Fridays unless otherwise agreed in writing by the local planning authority or for security patrols and cleaning operations.
 - 4) Unloading operations at the bay on the west side of the building shall not take place outside of the hours of 07.00 to 17.30 hours on Mondays to Fridays.
- The reasons given for the conditions are to ensure the satisfactory use of the premises in the extended hours, including the loading/unloading activity and HGV movements at the site.

Decision

1. The appeal is allowed and planning permission is granted for the use as a Warehouse at 172 Travellers Lane, Welham Green, Hatfield without complying with condition number 7 previously imposed on planning permission Ref S6/1979/651/FP, dated 1 November 1979 as varied by planning permission reference S6/0778/96/FP dated 22 November 1996 at 172 Travellers Lane, Welham Green, Hatfield, AL9 7HN in accordance with application Ref 6/2021/3278/VAR, dated 11 November 2021 without complying with conditions 3 and 4 set out in appeal decision App/C1950/A/07/2036723 determined on 7 December 2007, but otherwise subject to the conditions set out in the attached schedule.

¹ APP/C1950/A/07/2036723 – 7 December 2007

Background and Preliminary Matters

2. Following the determination of the application by the Council, a new local plan was adopted on 12 October 2023, which superseded the Welwyn Hatfield District Plan 2005 (the District Plan 2005). As the Welwyn Hatfield Borough Council Local Plan 2023 (the Local Plan 2023) is now the Statutory Development Plan for the Borough, I have determined the appeal on this basis. Additionally, the National Planning Policy Framework (NPPF) was updated in December 2023. The main parties have had an opportunity to comment on both these changes in circumstances during the appeal process.
3. The appeal site was originally granted planning permission for use as a warehouse in 1979 (S6/1979/651/FP). This permission was varied in August 1996 and November 1996.
4. In 2006, planning permission was granted at appeal (S6/2006/0760/FP & APP/C1950/A/07/2036723) to allow 24 hour use of the warehouse building subject to 8 conditions and those other conditions imposed under the 1979 permission which are still subsisting and capable of taking effect.
5. In 2019, a subsequent temporary planning permission (6/2018/2765/VAR) was granted to allow the rear access of the site to be used between 07.00 and 22.00, from Monday to Friday. A temporary period of one year was granted to enable the Council to consider the impact on the living conditions of neighbouring residents, expiring in January 2020.
6. The proposal modifies two conditions from the appeal decision. Condition 3 to extend the operating hours of barriers from 07.00 to 22.00 on weekdays, and Condition 4 to allow unloading operations at the bay on the west side of the building from 07.00 to 22.00 on weekdays.
7. A variation of condition 3 is sought to increase the opening times of the barriers to between 07.00 and 22.00 hours Mondays to Fridays. A variation of condition 4 is sought to increase the permitted hours of unloading at this bay to between 07.00 and 22.00 hours on Mondays to Fridays.

Main Issue

8. The main issue is the effect of the development on the living conditions of neighbouring occupiers, with regard to the noise levels arising from the proposed variation of the conditions relating to the traffic barrier and unloading operations.

Reasons

Living Conditions - Traffic Barrier

9. The appeal site is located within the Travellers Lane Employment Area. It is in close proximity to residential properties beyond Pooleys Lane, which are already affected by the commercial and industrial activities in the surrounding area.
10. The appeal site was previously left vacant following the departure of that tenant. However, at the date of my site visit, I observed that the building is currently in use. As such, it is likely that nearby residents are no longer accustomed to hearing no noise from the site.

11. Acoustic fencing has been installed to screen neighbouring occupiers along Pooleys Lane, but it is unclear whether it was done in accordance with the details which were agreed with the Council since no drawings were provided for their consideration. Accordingly, as the appeal site has a permitted 24 hour use and the proposed variation would permit more vehicle activity at the appeal site in the evening, there is a risk of further disruption for nearby residents who may be seeking to relax in their homes.
12. In relation to the recently adopted the Local Plan 2023, the Council has referred to several new policies as superseding policy D1 of the District Plan 2005. Of those, Policy SADM 18 is the most relevant, which requires that pollution will not have an unacceptable impact on human health, general amenity or the wider natural environment. The policy states that a Noise and Vibration Impact Assessment is required for those proposals which have the potential to cause disturbance to people or the natural environment and for proposals which are considered to be sensitive to noise. Intrusive proposals which have an adverse effect on the quality of life will be resisted unless all feasible solutions have been fully implemented.
13. A Noise Assessment was conducted in October 2021 to assess the noise levels on Pooleys Lane, specifically in the areas where neighbouring residential properties are situated.
14. Accordingly, a Noise Assessment dated October 2021, included an assessment of noise levels along Pooleys Lane where the neighbouring residential properties are located. It utilised data from a noise monitoring exercise which was carried out in September 2018. It found that the operations of the tenant at that time were not generally clearly audible along the boundary where nearby residential properties are located. It also generated lower levels of noise compared to other surrounding industrial/commercial premises. The vehicles using the access road were noted to be a main source of noise, with the maximum noise levels typically attributable to vehicles braking as they negotiated the corners around the building. While audible, it found that the level of noise would be equivalent to vehicles travelling along Pooleys Lane.
15. This Noise Assessment stated that the ambient noise level during the evening period was typically 51 dB LAeq, 1 hour. The additional vehicle movements would result in an increase in the ambient noise levels of less than 1 dB(A). Consequently, the impact of the proposed variation on the noise environment along Pooleys Lane is expected to be minimal, with a low potential for any negative effects on nearby properties. The monitoring locations were in two locations and were relatively close to the properties on Pooley's Lane. Additionally, the baseline measurements were taken during the evening period prior to when covid lockdown measures was in place. As the measurements were taken unattended, it is possible that anomalous readings could not be reliably excluded. However, as the measurements were obtained over a period of 10 days, rather than 1-2 hours, I am persuaded that this data would be sufficiently robust to compensate for unusual activity. As the rear access and western loading bay were not in use in the evening period, there is no evidence before me that these readings were contaminated by site operations or were otherwise adversely affected by the acoustic fencing, which would have the effect of invalidating the above findings.

16. I have also considered the British Standard BS 8233 recommendations for external noise at living accommodation. With regard to gardens and patios during the daytime (07.00 – 23.00), it outlines the desirability of external noise levels to not exceed 50 dB LAeq,T, with an upper guideline value of 55 dB LAeq,T Aeq,T. As such, I am satisfied that the noise levels monitored at this location were representative of what would be heard at the nearby residential bungalows.
17. A new noise assessment was submitted in December 2022 in response to concerns raised by the Council. It acknowledges that the assessment used source noise information for vehicle movements from a previous tenant from 2018, rather than the current tenant. While there would be a variation in vehicle movements between tenants, it is argued by the appellant that this discrepancy would be mitigated by the assessment being based on worst-case conditions. The assessment found that if up to 6 heavy goods vehicles (HGVs) used the rear access per hour, the noise would still not have a negative impact on neighbouring properties, once the background noise levels are accounted for. There is no information before me that the vehicle movements around the site would be significantly different, with particular regard to evening activities. Accordingly, on the basis that the worst case scenario found no adverse noise impacts, I am satisfied that the noise break-out arising from vehicle movements would not be of a significant level. As such, there is nothing before me to substantiate that there would be significant harm to the residential amenity of nearby occupiers due to the extension of the operational hours of the vehicle barriers.
18. In reaching this view, I have considered that there were no noise related complaints received from local residents during the operation of the temporary planning permission (6/2018/2765/VAR). This extended the operational hours of the rear access to the site to between 07.00 and 22.00, from Monday to Friday. The proposed variation would allow the traffic barriers to remain open for the same period of time. Although this temporary planning permission was implemented, it ended early due to the covid pandemic, whereupon the tenant ceased using the site and the unit was left vacant. Nonetheless, although the appeal site became unoccupied during the duration of the temporary permission, the evidence before me was that it was in operation for a significant part of 2019. As the temporary permission represents a practical example of this proposed variation, I attach significant weight to the fact that no complaints were received when it was in operation. While a noise complaint was received in 2017 regarding loud noises and vehicle movement at the site, this was before the temporary planning permission was granted. Limited further information is available; however, I note that no further action was taken by the Council in relation to this complaint.
19. In conclusion, the proposed variation of the traffic barrier condition would not harm the living conditions of neighbouring occupiers in terms of noise. I have reached this decision after considering the evidence before me, the balance of risk, my own observations on site, and for the other reasons above. This is subject to a restriction in the number of vehicles to reflect the worst case scenario, as established by the appellant, which could be secured by condition. Without this new condition, the proposed variation would not meet the requirements of Policy SADM 18 of the Local Plan 2023, which seeks to ensure that proposals must not have an unacceptably adverse effect on human health, including noise amongst other considerations; and would also not comply with

the requirement for development to be appropriate for the location, taking into account the likely effects of pollution on living conditions including in respect of noise, contrary to Section 15 of the NPPF.

20. Policy SP11 of the Local Plan 2023 relates to the Protection and Enhancement of Critical Environmental Assets. There is no evidence before me that there are any such assets which affect the appeal site. Furthermore, the Council has referred to Policy SP9, SP10, SADM 11 and SADM 12 of the Local Plan 2023. However, these respectively relate to providing high quality design, sustainable construction, visual amenity and parking, servicing and refuse. They have no direct relationship with the living conditions of neighbouring occupiers. Accordingly, these policies have little direct bearing on the main issue relating to this appeal.
21. The Council's reason for refusal alleges a conflict with the Welwyn Hatfield District Plan Supplementary Design Guidance (2005), however, my attention has not been drawn to any wording in this document that relates to this main issue. It is not clear whether there is anything specific which is relevant to the proposed variation of these conditions.

Living Conditions - Unloading Operations

22. As the appeal site has a permitted 24 hour use, the proposed variation would permit more unloading activity at the appeal site in the evening, which could disrupt nearby residents who may be seeking to relax in their homes.
23. There is no clear evidence of commonality between the activities of the current and prior tenants in respect of associated equipment or goods. Furthermore, I have had regard to likely differences in noise production depending on the type of goods being unloaded. In this respect, the unloading of percussive material, such as the scaffolding relating to the current tenant's business activities, would be likely to cause significant noise effects in itself. Due to the nature of moving these objects, the sounds from unloading operations would have the potential to be loud, unpredictable, and sudden.
24. In contrast with the data used for vehicle movements, only generic source data was used for assessing unloading operations. No further information has been provided as to what form of generic source data was used. Furthermore, no evidence has been submitted which would demonstrate that it would be applicable to the specific unloading activities of the current tenant, regarding equipment, unloading techniques, vehicles and processes. While the noise assessments refer to the operation of the forklift truck fitted with a tonal reversing signal, there is no evidence before me that the actual material to be unloaded has been likewise considered, alongside the effect they would have on background noise levels.
25. As such, even though the background noise from vehicle movements has been measured to be relatively low, there is a significant risk that unloading activities would result in a significant and sudden increase in noise levels. This increase could be particularly disruptive for neighbouring occupiers, who may reasonably expect to be able to relax undisturbed. The proposed extension of unloading activities from 17:30 to 22:00 would significantly greatly impact nearby residents who are used to only hearing noise during the day. This could disrupt their domestic activities and could unreasonably require them to change their usual habits, by forcing them to close windows on warm evenings.

26. There is no evidence before me that the acoustic fencing would adequately mitigate this effect and I am not persuaded the noise impact of the unloading operations at the appeal site would accurately reflect the worst case scenario. As such, the variation of this condition would not make the development acceptable in planning terms.
27. I recognise that planning applications for such units may not necessarily be submitted with a particular tenant in mind. However, due to the type of material being unloaded, I consider that the noise assessments do not adequately address the increased risk of harm from noise from this tenant.
28. In conclusion, the proposed variation of the unloading operations condition would have an unacceptable effect upon the living conditions of the neighbouring occupiers, with regard to noise. As such, in respect of this matter it would not comply with Policy SADM 18 of the Local Plan 2023, which, as referred to previously, seeks to ensure that proposals must not have an unacceptably adverse effect on human health, including amongst other things, in respect of noise. It would also not comply with the requirement for development to be appropriate for the location, taking into account the likely effects of pollution on living conditions including in respect of noise, as outlined in Section 15 of the NPPF.

Other Matters

29. I have considered representations regarding the economic benefits of extending the hours of operation. I recognise that the proposed variations would modestly increase the viability of the 24 hour use of the appeal site, but there is not enough evidence to determine how much it would impact the overall value of the site. Nonetheless, this modest economic improvement does not outweigh the harm I have identified and the conflict with the development plan.

Conditions

30. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has started, it is not necessary to impose a condition requiring commencement.
31. Furthermore, I have also reimposed subsisting conditions which I consider relevant from the appeal decision APP/C1950/A/07/2036723, where they meet the tests of conditions as set out at paragraph 56 of the NPPF. In the event that further conditions have been discharged, that is a matter which can be addressed by the parties.
32. I have considered the 'Traffic Barrier' condition having regard to the tests in the NPPF and the advice in the Planning Practice Guidance. As such, I have made such amendments as necessary to comply with those documents, for the purposes of clarity and consistency. To that extent, I have removed those elements of the condition which require it to be retained in perpetuity. To ensure that vehicle movements do not exceed the worst case scenario set out in the noise assessment submitted by the appellant, I have limited the amount of HGV traffic to no more than 6 vehicles within any hourly period. This is necessary as anything exceeding this scenario may cause an unacceptable level

of disturbance. The main parties have had an opportunity to comment on these changes during the appeal process.

33. The conditions within the appeal decision (APP/C1950/A/07/2036723) includes a reference to subsisting conditions from the planning permission Ref (S6/1979/651/FP). To ensure that they are precise, I have restated them where reasonable as conditions 8 to 11.
34. With particular regard to condition 8, I have previously consulted the parties on permitting both B2 and B8 uses at the appeal site. However, after further consideration, I am satisfied that that the permitted use class should be restricted to B8. In reaching this view, I have considered condition 9 which limited the use of the appeal site to warehousing only and omitted any industrial process, reflecting the intended removal of permitted development rights. There is no evidence before me that B2 uses have been previously permitted at the site. As such, this alteration reflects the approved use of the appeal site as a warehouse. Furthermore, I have modified the references to reflect the relevant current legislation.
35. I have also omitted those conditions which are no longer necessary, such as the occupation condition which has since expired and the restriction on working hours which was removed by the above appeal decision. The main parties have had the opportunity to comment on both these changes during the appeal process.

Conclusion

36. Insofar as it relates to the traffic barrier condition, I have found that the proposed variation to extend the hours of operation would not harm the living conditions of neighbouring occupiers, subject to a restriction to the number of permitted vehicle movements. To ensure that this condition remains reasonable and necessary, I have modified the terms to ensure its enforceability and compliance with the NPPF.
37. However, in relation to the unloading operations condition, I have found that the proposed variation, would have an unacceptable effect upon the living conditions of the neighbouring occupiers, with regard to noise. As such, it would be contrary to the development plan as a whole. No material considerations have been demonstrated which would outweigh the development plan conflict.
38. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

S Lo

INSPECTOR

Schedule of Conditions

1. The acoustic barrier and the wall lining system measures shall be retained in accordance with the details as approved under application ref: S6/2006/0760/FP.
2. The traffic barriers shall be retained in accordance with the details as approved under application ref: S6/2006/0760/FP. There shall be no more than 6 heavy good vehicles entering the site per hour. The traffic barriers shall remain closed outside the hours of 07.00 to 22.00 hours on Monday to Friday, except for security patrols and cleaning operations.
3. Unloading operations at the bay on the west side of the building shall not take place outside the hours of 07.00 to 17.30 hours on Mondays to Fridays.
4. Loading shall only take place from the bays on the north side of the premises.
5. No more than 8 heavy goods vehicles shall visit the site during the period 22.00 hours to 07.00 hours the following morning.
6. During the night-time period of 22.00 hours until 07.00 hours the next morning, there shall be no tonal beeping reversing alarms used on site.
7. The rating level of the noise emitted from the site shall not exceed the existing background level determined to be 38dB(A) by more than 5dB(A) during the permitted hours of work as measured from the site boundary.
8. The premises shall be limited to uses within the Use Class B8 of the Town and Country Planning (Use Classes) Order (1987), but the permission shall not extend to include uses for retail and/or wholesale cash and carry purposes.
9. The use hereby approved shall be for warehousing only and shall not include any industrial process, including the servicing of vehicles on the site.
10. There shall be no access, vehicular or pedestrian onto Pooleys Lane.
11. The existing vehicular parking and turning areas and landscaped areas shall be maintained as such and there shall be no open storage of goods on the site.