



Appeal Decision

Site visit made on 12 April 2024

by R J Redford MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal Ref: APP/L1765/W/23/3328527

Three Gables, Stapleford Lane, Durley, Hampshire SO32 2BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mayus Karia against the decision of Winchester City Council.
 - The application Ref 22/01853/HOU was approved on 1 March 2023 and planning permission was granted subject to conditions.
 - The development permitted is a vehicle access to Snakemoor Lane with gates; boundary fence works; driveway and paths; helipad; remedial works to lake; basketball court with ball-stop netting (some works part-retrospective; alterations to dwelling submitted separately within ref 22/01715/HOU).
 - The condition in dispute is No 2 which states that: *The use of the helipad is for private-purposes only, with the number of round-trip landings restricted to no more than 2 times per calendar month, and landings to occur within the hours of 8am-6pm.*
 - The reason given for the condition is: *To protect the amenities of the occupiers of nearby properties.*
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Decision

1. The appeal is allowed and the planning permission Ref 22/01853/HOU for a vehicle access to Snakemoor Lane with gates; boundary fence works; driveway and paths; helipad; remedial works to lake; basketball court with ball-stop netting (some works part-retrospective; alterations to dwelling submitted separately within ref 22/01715/HOU) at Three Gables, Stapleford Lane, Durley, Hampshire SO32 2BU granted on 1 March 2023 by Winchester City Council, is varied by deleting condition 2 and substituting it for the following condition:
 - 1) The helipad hereby approved shall be used for purposes ancillary to the residential use of the dwelling known as Three Gables. The helipad shall be used a maximum of 24 times per calendar year to land a helicopter, and a maximum of 24 times per calendar year for a helicopter to take off from. The use of the helipad shall be limited to daylight hours only.

Procedural Matters

2. It is noted that separate to this appeal, the Council has refused a subsequent application, reference 23/01342/FUL, which sought to remove condition 2. Nevertheless, I have dealt with this appeal on its own merits.
3. Helicopter flight is controlled by regulations separate to planning and set out within the Civil Aviation Act 1982 (CAA) and the Air Navigation Order 2000 (ANO), as cited in 'Section 2 – Aviation Law' of the British Helicopter Association 'The Civil Helicopter in The Community' (BHA Doc). The BHA Doc was submitted by the appellant and, although the CAA and ANO have not been submitted, both the main parties consider its contents as providing adequate

information in relation to these matters. Accordingly, I have taken the BHA Doc into consideration within this decision.

Background and Main Issue

4. The planning permission included a series of elements all related to the land attached to the residential dwelling 'Three Gables', including a helipad. Various conditions were attached to the permission with Condition 2 specifying the use of the helipad and the frequency and timings of flights to and from it.
5. It is not disputed by the main parties that the helipad constitutes development and therefore planning permission was sought and approved. Accordingly, Section 70(1)(a) of The Act¹ empowers the local planning authority, in this instance the Council, to grant planning permission subject to conditions which relate to the development permitted. In this case the Council have attached condition 2. The Council's officer report indicates that the condition is necessary to protect the living conditions of the occupants of nearby residential properties by controlling noise. Although it is noted that no specific development plan policy is cited within the reason for the condition, it is clearly stated within the officer report that Policy DM20 of the Winchester District Local Plan Part 2 (LP) specifically relates to noise.
6. The appellant objects to the imposition of Condition 2. They do not consider that the flight of helicopters to and from the site requires planning permission and accordingly does not form part of the development permitted, as a result, Condition 2 is not relevant.
7. The main issue is, therefore, whether the condition is relevant to the development permitted, reasonable, and necessary in the interests of the living conditions of occupants of nearby residential properties regarding impact from noise.

Reasons

8. It is evident from the officer report and Council's statement of case that Condition 2 was intended to control the use of the helipad and not the flying of helicopters. Consequently, to make the condition relevant to the permitted development the wording would need to be amended to explicitly refer to the helipad. However, it is first necessary to consider whether the imposed limitations are in fact reasonable and necessary.
9. There is a series of houses on Stapleford Lane which are close to the appeal site, and further dwellings just beyond the lane's junction with Snakemoor Lane. Although the appeal site is reasonably large, it was observed on site that day-to-day noise from these neighbouring properties, such as cars starting and front doors slamming, was clearly audible on the site. As such, it stands to reason that noise originating from the site would be audible at those properties. It also is not disputed that the use of the helipad for helicopters to land or take off from would generate a level of noise considerably louder than that created by normal day-to-day activity.
10. Consequently, I am satisfied that noise from the use of the helipad could have a detrimental impact on the occupants of those nearby residential properties.

¹ The Town and Country Planning Act 1990

Therefore, to make the development acceptable it would not be unreasonable to attach a condition to limit noise generated from the helipads use.

11. LP Policy DM20 states noise generating development should include an assessment to demonstrate how it prevents, or minimises to an acceptable level, all adverse noise impacts. However, in this instance, the Council's Environmental Health Officer (EHO) did not require such an assessment. They stated that the proposed use of the helipad for approximately 2 round trips a month should be limited to daytime hours to reduce the potential of a significant adverse impact on neighbouring properties. Consequently, the EHO recommended using a condition to limit the use of the helipad and thus ensure the proposal would accord with LP Policy DM20, insofar as it requires new development to not have an unacceptable impact on human health or quality of life.
12. It stands to reason that by specifying hours of use for the helipad, along with limiting how much it can be used would provide some certainty to neighbouring occupants as to when they could expect the noise from helicopters to occur and thereby when they can expect respite from such noise, with specific regard to nighttime and thus sleep.
13. Therefore, as there is no specific technical assessment to contradict the EHO's conclusions, and taking a precautionary approach, I consider it necessary to limit the use of the helipad in accordance with the EHO's recommendations and thus reduce the potential of a significant adverse impact on the living conditions of the nearby residents from noise. Nevertheless, the limitations set out in Condition 2 are more specific than that proposed by the EHO. Consequently, the condition would need to be amended to limit use to daylight hours, and to alter the frequency to the equivalent of 24 round trips a year, to allow for the approximation of monthly usage.
14. Condition 2 currently limits the use of the helipad to 'private-purposes only'. This use is undefined by planning policy thus would likely be unenforceable. It is acknowledged that there are concerns the helipad may be used for business clients of the appellant but the proposal before me has not sought to change the use of the appeal site from anything other than residential. Therefore, it would be reasonable that the use is limited to purposes ancillary to the existing residential use.
15. For the reasons given above, a condition relating to the use, frequency and operational times of the helipad would be relevant to the development permitted, reasonable, and necessary to ensure the living conditions of occupants of nearby residential properties are not unacceptably impacted by noise. The use of such a condition would comply with LP Policy DM20, and LP Policy DM17 which amongst other things, requires new development to not cause unacceptable levels of noise pollution for neighbours.
16. The Council has also referred to LP policy DM19 within the officer report, which relates to development and specific forms of pollution but does not specifically refer to noise. So, in this instance I do not find it relevant.
17. Interested parties have highlighted concerns relating to the proximity of the helicopters to surrounding land uses, namely residential and the keeping of animals. It is noted in section 2.3 of the BHA that the ANO limits how close helicopters can fly to persons, vessels, vehicles, and structures.

Conclusion

18. I have found that the wording of Condition 2 is imprecise and in some respects not relevant to the development permitted. However, were Condition 2 to be removed entirely and the helipad's use unrestricted I find that the potential impact of noise on the occupants of neighbouring properties could be unacceptable. Consequently, a condition limiting the use of the helipad is reasonable and necessary.
19. Therefore, for the reasons given above I conclude that the appeal should succeed but I will vary the planning permission by rewording condition 2 to reflect the ancillary nature of the helipad and its use.

RJ Redford

INSPECTOR