



Appeal Decision

Site visit made on 20 February 2024

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Appeal Ref: APP/V1505/W/23/3327072

Unit 1A-6A, Bruce Grove, Wickford, Essex, SS11 8BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Drainfast against the decision of Basildon Borough Council.
 - The application Ref is 22/00931/FULL.
 - The development proposed is demolition of Units 2A, 3A, 4A, 5A and 6A Bruce Grove and change of use of site at 1A-6A Bruce Grove to E(g)/B2/B8 Use (Business/General Industrial/Storage and Distribution) and layout parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of Units 2A, 3A, 4A, 5A and 6A Bruce Grove and change of use of site at 1A-6A Bruce Grove to E(g)/B2/B8 Use (Business/General Industrial/Storage and Distribution) and layout parking at Unit 1A-6A, Bruce Grove, Wickford, Essex SS11 8BP in accordance with the terms of the application, Ref 22/00931/FULL, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Drainfast against Basildon Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant's details given on the appeal form differ from those stated on the planning application. The applicant (Drainfast) has confirmed that Panther VAT Properties Limited has submitted the appeal on its behalf. However, the right of appeal rests with the original applicant, and this is reflected in the heading above.
4. The description of the development provided on the planning application form has been replaced by a fuller version on the decision notice and in subsequent appeal documents. I consider that subsequent description to be usefully more comprehensive and I have therefore used it within this decision.
5. The appellant requested that the appeal be determined by a Hearing. However, the appeal has progressed on the basis of written representations, and I have sufficient evidence to determine the appeal on that basis.
6. The government published a revised National Planning Policy Framework (the Framework) in December 2023. This does not materially change the planning policy context in respect of the main issue and I have determined the appeal on the basis of the new Framework.

Background and Main Issue

7. The Council has indicated that it does not have an objection to the principle of the development, subject to conditions including hours of operation. The evidence suggests that the hours of operation had previously been agreed with an agent of the appellant, however subsequently a dispute has arisen between the main parties regarding operating hours that exceed those originally agreed. This dispute relates to noise and disturbance which may affect residential properties in the vicinity of the site, particularly in the early morning.
8. On that basis, the main issue in this appeal is the effect of the proposal on the living conditions of nearby residents with regards to noise and disturbance.

Reasons

9. The appeal site consists of 3 large detached buildings containing a total of 6 units located within the Wickford Business Park and Shotgate Trading Estate. The permitted use of the site is for B1¹/B2 industrial uses. The appeal proposal includes the demolition of all of the buildings except for Unit 1A, which would be retained with a new loading bay and the remainder of the site used for a storage and distribution yard. That said, the description of the development refers to the use of the site for business, general industrial, and storage and distribution uses. The application was submitted on behalf of Drainfast, but it has subsequently been confirmed that this company has withdrawn its interest in occupying the site.
10. There are a group of flats on Bridge Road which are located in close proximity to part of the northern boundary of the appeal site. The flats are arranged so that the rooms in the elevation overlooking the site consist of kitchens and bathrooms as well as service and circulation areas. The bedrooms and living rooms which are more sensitive to noise impacts face away from the appeal site looking onto the flats' courtyard. The flats are separated from the appeal site by car parking and landscaped external amenity areas.
11. The crux of this appeal relates to the effect of noise from the appeal proposal on the flats, particularly with regards to hours of operation early in the morning. The evidence suggests that the Council would accept hours of operation of 07:00–19:00 hours Monday to Friday and 07:00–13:00 hours on Saturday with no operation on Saturday afternoon after 13:00hrs, Sundays or Bank Holidays. The start time of 07:00 reflects typical start of 'daytime' referred to in BS:4142² and BS:8233³.
12. The appellant wishes to extend the proposed hours of operation to start from 05:00 on Monday to Friday. The Council has objected to this on the basis that such an early start time has the potential to cause disturbance to the sleep and rest of nearby residents of the flats.
13. The appellant has submitted a Noise Assessment⁴ which concludes that noise levels would be below the adverse effect level during both day and night, subject to a number of mitigation measures. It goes on to state that this is an indicator that the predicted levels would be below the Lowest Observed

¹ Under a previous version of the Use Classes Order.

² BS 4142:2014 - Methods for rating and assessing industrial and commercial sound.

³ BS 8233:2014 - Guidance on sound insulation and noise reduction for buildings.

⁴ Sharps Acoustics, 12 July 2022.

Adverse Effect Level (LOAEL) at all times. The Noise Policy Statement for England (NPSE) states that the LOAEL is the level above which adverse effects on health and quality of life can be detected.

14. However, the Council has expressed concern about the Noise Assessment which it considers is non-specific about broadband reversing alarms and does not address other noise sources which may occur including raised voices or unintended effects from the transfer of goods and materials, such as items being dropped.
15. When assessing the 'Rating Level', the Noise Assessment states that any character present is unlikely to be noticeable due to the other sounds present, so no penalty is considered to be necessary in this instance.
16. However, the Noise Assessment refers to operations at another Drainfast site where a loud short lived impact noise was observed when pipes which were loose were dropped onto a vehicle's loading deck. This is typical of the impactive noise that can occur from loading and unloading operations. Broadband reversing alarms can also be intermittent, and the Noise Assessment only refers to them in respect of tonality. Having regard to these matters, I do not consider that the Noise assessment is suitably robust in assessing the nature of the noise that could arise from the proposal, particularly in respect of intermittency and impulsivity. It has therefore not been demonstrated that the noise environment early in the morning is such that the character of noise from the proposal would not be noticeable.
17. This would be the case even allowing for operations at a nearby bus depot which include engine noise and reversing alarms early in the morning. I also note that comments raised from a third party at the appeal stage indicate that the bus depot operates in a different manner to the appeal proposal, with different noise effects. Furthermore, it would not be sensible to add another noise source early in the morning which could add to the disturbance arising from an existing use.
18. There are no limitations on the hours of operation of the industrial uses on the existing site. However, the Council refers to a history of complaints relating to noise from previous uses on the site, which indicates a sensitive relationship between the appeal site and nearby residents. Furthermore, the Noise Assessment refers to Drainfast operations, but this company has subsequently withdrawn its interest in occupying the site. A wider range of activities could therefore be introduced onto the site compared to those considered by the Noise Assessment. The proposed loading bay would be located on part of the site that is further away from the flats, but it has not been demonstrated that this would be effective in mitigating noise from operations at the site early in the morning. Even allowing for the fallback of the existing permitted uses at the site, it is appropriate to assess the proposal as an agent of change and manage its operation accordingly, including limiting the hours of operation.
19. The Noise Assessment has predicted that noise levels would be below the LOAEL at all times. However, due to the nature of noise from the site and the proposed hours of operation, I consider that there is significant potential for sleep disturbance early in the morning resulting in premature awakening of nearby residents and difficulty in getting back to sleep. This would result in a

Significant Observed Adverse Effect Level (SOAEL), which in accordance with the Noise Exposure Hierarchy Table⁵ should be avoided.

20. The appellant has submitted a Rebuttal Statement on noise issues in response to the Council's Statement. This includes further detailed evidence in respect of matters including internal noise levels from sound breaking into the nearby flats through open bedroom and kitchen windows, and which refers to the context provided by BS:8233.
21. However, the figures given in BS:8233 for flats in residential use refers to noise sources without a specific character, previously termed "anonymous noise". Given my conclusions about the assessment of the characteristics of the noise arising from the appeal proposal, including in respect of intermittency and impulsivity, it is realistic to conclude that the noise would have a specific character. This significantly reduces the weight I give the indoor ambient noise levels given in BS:8233, and undermines the conclusions of the rebuttal in respect of the effect of noise on residents' sleep during the early morning. This is the case even allowing for the appellant's evidence being based on a worst case scenario of the windows facing the appeal site being open.
22. The Council has referred to the effect on the external amenity area of the flats. However, this is unlikely to be used very early in the morning, and the noise levels arising from site operations during the day are unlikely to lead to a significant adverse effect on users of the amenity area. However, this does not lead me to a different conclusion in respect of the potential for noise to affect residents of the flats early in the morning.
23. Drawing the above together, I conclude that the hours of operation as proposed by the appellants would lead to significant harm to the living conditions of nearby residents in respect of noise and disturbance early in the morning. Based on what I have observed and read, the most appropriate method of avoiding a SOAEL would be through limiting the hours of operation of the site to reflect the typical hours of daytime early in the morning as referred to in relevant British Standards.
24. Subject to such a condition, the proposal would not conflict with the Framework which seeks to achieve a high standard of amenity for existing and future users of land and property and to avoid noise giving rise to significant adverse impacts on the quality of life. The Council's decision does not refer to any development plan policies, but this does not negate my conclusions in respect of the Framework.

Other Matters

25. The appeal site is unsightly and has attracted anti-social behaviour. Bringing the site into a productive use would therefore be of great benefit. However, it has not been demonstrated that that can only be achieved on the basis of the operating hours as suggested by the appellant, and this therefore carries no more than very limited weight in favour of those hours of operation.
26. I have had regard to the appellant's concerns regarding the Council's handling of the planning application, including those of the Environmental Health consultee. I note that the appellant entered into discussions with the Council and consultees so that amendments could be made and further evidence

⁵ Included in Paragraph: 005 Reference ID: 30-005-20190722 of the Planning Practice Guidance.

provided with a view to addressing the Council's concerns. However, these matters do not alter or outweigh my findings on the proposal before me, which I have considered on its merits.

27. In my reasoning I have referred to a history of complaints about noise from previous uses on the site. It may be that these complaints could have been addressed through separate controls regarding statutory nuisance, as could any future complaints. However, this does not mean that the history of noise complaints and the consideration of potential noise issues should be set aside.

Conditions

28. The Council has provided a list of suggested conditions, and the appellant has also commented on these. I have considered the list and comments against the advice in the Planning Practice Guidance, and as a result have reworded some of the conditions.
29. In addition to the standard 3 year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans and documents in the interests of certainty.
30. The submission of a Construction Management Scheme is required in the interests of the living conditions of residents, highway safety and environmental impact. A condition in respect of surface water drainage is required to ensure that the site is properly drained, the interests of addressing flood risk and highway safety. Due to the history of the site, conditions to deal with contamination are required to ensure that risks to occupants, property and other receptors are minimised. Details in respect of these conditions should be submitted to and approved by the local planning authority at the pre-commencement stage as they relate to matters which need to be established before the commencement of building operations.
31. Conditions in respect of the hours of operation of the site, noise controls on plant, compliance with noise mitigation measures, delivery and servicing, hours of demolition and construction, and reversing alarms on forklift trucks are required in the interests of the living conditions of nearby residents. In respect of plant, I have used the wording as suggested by the appellant as this is more comprehensive and reflects comments made by the Council's Environmental Protection Officer.
32. A condition in respect of an acoustic fence is required in the interests of the amenity of nearby residents. Exceptionally, due to the sensitive location of the site in respect of nearby uses, a condition limiting the future use of the site is necessary to prevent incompatible uses being introduced into the area.
33. The submission of a landscaping scheme is required in the interests of character and appearance. A condition regarding boundary treatment is appropriate in the interests of character and appearance, preventing anti-social behaviour, the living conditions of nearby residents with regards to outlook and noise, and highway safety.
34. Conditions in respect of vehicular access gates, turning facilities, parking provision and the use of unbound material are necessary in the interests of highway safety. In relation to vehicle parking, I have reworded the condition from that suggested by the Council as the standards referred to in the suggested condition were imprecise.

35. A condition in respect of hard landscaping is required in the interests of character and appearance and drainage.
36. I have had regard to the conditions suggested by the Council's Environmental Protection Officer and the Essex County Council Director for Highways and Transportation, the majority of which I have included in the conditions. However, a separate condition in respect of dust control is not required as this would be addressed as part of the Construction Management Scheme. A condition in respect of the burning of materials is also not necessary as this is addressed by other regulatory controls. Separate conditions in respect of the discharge of surface water onto the highway and boundary fencing are not required as these are addressed by other conditions.

Conclusion

37. Based on the evidence before me, the Council does not object to the principle of the development. Rather, the area of dispute is the proposed hours of operation, particularly early in the morning. I have concluded that the Council's concerns on this matter are well-founded, and that any benefits arising from the hours of operation as proposed by the appellant would not outweigh those concerns. I will therefore allow the appeal, but with a condition which reflects the operating hours that the Council has indicated are suitable.
38. For the reasons given above the appeal should be allowed.

David Cross

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be completed in accordance with the following approved plans and assessment, unless otherwise agreed in writing with the Local Planning Authority:
 - PL-001 Rev A – Location Plan
 - PL-010 Rev A – Existing Site Plan
 - PL-020 Rev A – Demolition Plan
 - PL-100 Rev A – Proposed Site Plan
 - PL-110 Rev A – Proposed Site Plan and Vehicle Tracking
 - Sharps Acoustics Noise Assessment dated 12th July 2022
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. construction traffic management;
 - ii. the parking of vehicles of site operatives and visitors;
 - iii. details of access to the site;
 - iv. loading and unloading and the storage of plant and materials used in constructing the development;

- v. the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - vi. wheel washing facilities;
 - vii. measures to control the emission of noise, dust and dirt during construction;
 - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - ix. details of a nominated developer/resident liaison representative with an address and contact telephone number to be circulated to those residents consulted on the application by the developer's representatives. This person will act as first point of contact for residents who have any problems or questions related to the ongoing development.
- 4) No development shall take place until a desk-top study has been carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). One PDF copy of the desk-top study and a non-technical summary shall be submitted to and approved in writing by the Local Planning Authority without delay upon completion.
- 5) If identified as being required following the completion of the desk-top study, a site investigation shall be carried out prior to commencement of development to fully and effectively characterise the nature and extent of any land contamination and/or pollution of controlled waters. It shall specifically include a risk assessment that adopts the Source-Pathway-Receptor principle, in order that any potential risks are adequately assessed, taking into account the sites existing status and proposed new use. One PDF copy of the site investigation and findings shall be forwarded to the Local Planning Authority without delay, upon completion.
- 6) A written method statement detailing the remediation requirements for land contamination and/or pollution of controlled waters affecting the site, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development and all requirements shall be implemented and completed to the satisfaction of the Local Planning Authority. No deviation shall be made from this scheme without the express written agreement of the Local Planning Authority. If during redevelopment contamination not previously considered is identified, then the Local Planning Authority shall be notified immediately and no further work shall be carried out until a method statement detailing a scheme for dealing with the suspected contamination has been submitted to and approved in writing with the Local Planning Authority.
- 7) Following completion of measures identified in the remediation scheme, one PDF copy of a full closure report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved Method Statement(s). Post

remediation sampling and monitoring results shall be included in the closure report to demonstrate that the required remediation has been fully met. The closure report shall include a completed certificate, signed by the developer, confirming that the required works regarding contamination have been carried out in accordance with the approved written method statement. A sample of the certificate to be completed is available in Appendix 2 of Land Affected by Contamination: Technical Guidance for Applicants and Developers.

- 8) The hours of operation/opening shall be restricted to 07:00-19:00 hours Monday to Friday and 07:00-13:00 hours on Saturday with no operation on Sundays or Bank Holidays.
- 9) The rating level of noise emitted by all fixed plant installed on the site shall not exceed 45dB between 07:00-23:00 hours and 43dB between 23:00 and 07:00 hours at any noise sensitive premises. The measurement and assessment shall be made according to BS 4142:2014+A1:2019.
- 10) The development hereby permitted shall be carried out in accordance and maintained in perpetuity with details and noise mitigation measures as contained in the Sharps Acoustics Noise Assessment dated July 2022.
- 11) The development shall not be occupied until a Delivery and Servicing Plan for the site has been submitted to and approved in writing by the Local Planning Authority. The Delivery and Servicing Plan shall include details of HGV best practice, loading and deliveries to and from the site. The Delivery and Servicing Plan shall seek to ensure HGVs and fork lift trucks use the latest technology in terms of noise mitigation best practice. The Delivery and Servicing Plan shall be implemented in accordance with the approved details and maintained thereafter.
- 12) Demolition and construction work and associated activities are only to be carried out between the hours of 08:00 and 18:00 Monday to Friday and 08:00-13:00 Saturday with no work on Sundays or Public Holidays other than internal works not audible outside the site boundary without the prior written permission of the Local Planning Authority.
- 13) The use shall not commence until the acoustic fencing as outlined in drawing no. PL-100 Rev A has been installed in full and shall thereafter be permanently retained as such as long as the development remains.
- 14) The premises shall be used for Business/General Industrial/Storage and Distribution only and for no other purpose (including any other purpose in Class E of the Schedule to The Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and reenacting that Order with or without modification).
- 15) Prior to first operation, electric forklift trucks fitted with noise reduction equipment comprising white noise reversing sound shall be used and their use maintained in perpetuity.
- 16) The development hereby permitted shall not be occupied until there has been submitted to and approved by the local planning authority a scheme of landscaping which shall include a tree survey. All planting, seeding and

turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following occupation of the buildings, or completion of the development, whichever is sooner. Any trees or shrubs or other elements of landscaping dying within five years of planting, shall be replaced by the developers or their successors in title.

- 17) Any gates provided at the vehicular accesses shall be sliding or inward opening only.
- 18) Prior to occupation of the development, a vehicular turning facility, of a design that shall have been approved in writing by the Local Planning Authority, shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- 19) Prior to occupation of the development, vehicular parking, of a design that shall have been approved in writing by the Local Planning Authority, shall be constructed, surfaced and maintained free from obstruction within the site at all times for that sole purpose.
- 20) No unbound material shall be used in the surface treatment of the vehicular accesses within 6 metres of the highway boundary.
- 21) No development above ground level shall take place until a scheme showing those areas to be hard landscaped and the details of that hard landscaping have been submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be carried out prior to the occupation of the development and thereafter permanently retained.
- 22) No development above ground level shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the position, design, materials and type of boundary treatment to be erected. No part of the development shall be occupied until the approved boundary treatment for that part has been provided. The approved boundary treatment shall be retained unless the Local Planning Authority gives prior written approval for its removal.
- 23) No development shall take place until a Surface Water Drainage Scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The Scheme shall subsequently be implemented in accordance with the approved details before the development is occupied.

End of Schedule