



Appeal Decision

Site visit made on 23 April 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th June 2024

Appeal Ref: APP/V2635/C/22/3300309

Land east of the sewage works, Fenway, Heacham, Kings Lynn, Norfolk

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Steve Plumb, Heacham Holidays Ltd against an enforcement notice issued by King's Lynn and West Norfolk Borough Council.
 - The enforcement notice was issued on 22 April 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of the Land to provide a vehicular accessway between the points marked A and B on the plan attached to this notice.
 - The requirements of the notice are:
 - 1) Cease the use of the Land as a vehicular accessway.
 - The period for compliance with the requirements is 4 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. The appeal was initially deemed to be suitable for determination by the written representations procedure. It was, nonetheless, subsequently linked to several nearby appeals by the same appellant which were deemed to be heard by the Inquiries procedure. This appeal was thus also switched to the Inquiries procedure. However, the appeals which justified the Inquiries procedure were subsequently withdrawn. It was therefore considered appropriate by the Planning Inspectorate to change the procedure back to written representations. The appeal proceeds by written representations accordingly.

Appeal on ground (a) and the deemed planning application

Preliminary Matters

3. Where an appeal on ground (a) is made, an application for planning permission is deemed to have been made under S177(5) of the Act. The terms of the application derived directly from the breach of planning control as stated in the notice.

4. My consideration of the deemed application is therefore solely in relation to the material change of use of the Land to provide a vehicular accessway between the points marked A and B on the plan attached to the notice. The alleged breach does not specify the land which the access serves. It solely relates to the provision of the access.
5. Thus, the appellant's proposed revised description to include reference to providing vehicular access to land associated with the use of Long Acre Holiday Park and the broader operation of the appellant's holiday parks business within Heacham, would not form part of the breach of planning control. My consideration of the deemed planning application is therefore solely in relation to the breach as alleged in the notice.

Main Issue

6. The main issue is the effect of the development on the living conditions of nearby occupiers on Fenway, in particular Nos 1-10, with regard to noise and disturbance.

Reasons

7. The breach of planning control comprises the material change of use of the Land to provide a vehicular access between the appellant's site to the west ("the yard") and Fenway. It is said the development took place in 2016. Fenway is a restricted byway which connects to Folgate Road to the north-east.
8. The yard is currently used for storage and maintenance in connection with the four holiday parks in the area which the appellant owns and operates.
9. Planning permission for the construction of a storage building on the yard was granted in May 2007¹. The appellant indicates that the permission was implemented, and the building constructed in accordance with the approved plans. A further permission was granted in January 2013² for an extension to the building and a separate building for machinery, shelter and secure storage. The appellant indicates that the permission was implemented, the extension was built but the standalone building was not. Neither the 2007 nor 2013 permissions showed access to the yard via the Land.
10. It is noted that the LPA previously issued an enforcement notice for the alleged material change of use of the yard for the storage of plant and vehicles not in association with the authorised use of the site for the storage and maintenance of caravans. It is understood that the LPA withdrew the notice on the basis that it accepted the 2007 and 2013 permissions were unrestricted by condition and the alleged breach fell within the storage use granted.
11. Planning permission was granted for an additional area of land to the south-west of the Land for the use for sales and storage for touring and static caravans in December 2018³ ("caravan storage land"). That permission contained a condition which limited access and egress to South Beach Road only, effectively preventing use of Fenway for vehicular traffic. Thus, the appellant says, no caravans stored on that site are brought via Fenway.

¹ LPA Ref: 07/00555/F

² LPA Ref: 12/0197/F

³ LPA Ref: 18/01605/F

12. The appellant does nevertheless have two existing accesses to Fenway available from land in their ownership. They are located to the south and to the north-east of the Land. In January 2022, Norfolk County Council, as the relevant Highway Authority, determined that it was not in a position to take action against the vehicular use of Fenway as there was good evidence of the existence of private vehicular access rights.
13. Nonetheless, the County Council made clear in its position statement that it was not to be taken as authority for unrestricted or unlimited vehicular use of Fenway, only noting the existence of private vehicular rights, with no advice given on the level of usage or type of vehicles being used.
14. The appellant has utilised both accesses for vehicles since prior to 2012. A Goods Vehicle Operator's Licence has been in force from 1 August 2012 which permits a maximum of three motor vehicles and three trailers with a condition for use of Fenway for access, limited to 0700 – 1800 Mondays to Fridays. In 2022, the appellant applied to the Office of the Traffic Commissioner to vary the Operator's Licence to extend the licence in respect of the hours and movements. On 8 November 2023, the application was refused.
15. In any event, the appellant indicates that neither access is sufficient to facilitate HGV use. Thus, prior to 2016, HGVs have accessed the yard and caravan storage land via the caravan park. In contrast, the access subject of the notice has facilitated the use of Fenway by the three HGVs subject of the Operator's Licence.
16. To the north-east of the Land, 1-10 Fenway comprise two adjacent terraces of two-storey houses. The houses are set a short distance back from Fenway behind front gardens, the majority of which have been given over to driveways. The properties sit adjacent to the junction of Fenway and Folgate Road with No 1 being the closest.
17. The appellant has provided a Noise Assessment dated May 2022. The appellant accepts that the increased use of Fenway since the provision of the access in 2016 has increased the noise experienced by residents of those properties. It is argued nevertheless that the levels of noise experienced are acceptable.
18. However, the development will inevitably result in HGVs, vans and other vehicular traffic exiting the appeal site decelerating as they approach the junction with Folgate Road and prepare to stop. This will result in noise from engines as vehicles gear down and from brakes as they are applied. Moreover, noise will result from engines idling whilst vehicles wait to exit, as well as vehicles accelerating upon exiting, with the sound of engines gearing up. Furthermore, noise will derive from engines gearing up and down, as well as braking, as vehicles slow to turn into Fenway, before speeding up again.
19. Given the proximity of No 1-10 Fenway to the junction, vehicles will be slowing down and speeding up immediately to the front of those properties. Residents of those properties are therefore likely to experience that noise from inside their homes, more so when windows are open or they are using their gardens. The increase in noise levels will be clearly noticeable. Inevitably, noise levels will be at their greatest when HGVs are approaching the access. Whilst the appellant indicates that generally, there are only two movements per day of one of the HGVs, with the other two being used once a week each only, that is still a material increase in HGV use of Fenway from the appellant's operations.

20. Moreover, the appellant states that there are now on average, approximately 60 two-way trips per day on Fenway associated with the staff and maintenance vehicles. They are said to comprise vans and cars. In addition, there are approximately four two-way trips per week of a tractor, four two-way trips per week of a telehandler and six two-way trips per week of deliveries from outside vehicles. As such, noise will be experienced by residents from vans and cars approaching the junction. Determining whether those vehicles derive from the appellant's land or not is a moot point since the development will materially increase the traffic levels and nature of traffic movements on Fenway.
21. The Noise Assessment indicates that the levels of noise experienced are acceptable. However, the Noise Assessment shows that, when measured against pre-2016 baseline conditions, an increase in noise at the houses on Fenway will experience an increase of 5.6 dB. The Noise Assessment indicates that the magnitude of impact of the noise change is major, both in the short term and long term.
22. The appellant argues that Fenway is the most direct route to the appellant's land. That is not disputed. It is said that 109 caravans and 70 houses currently experience noise from traffic associated with the appellant's operations which use Folgate Road and South Beach Road which, it is argued, causes more noise and disturbance as well as generate additional health and safety issues as vehicles pass through the Holiday Park. Thus, the appellant's case is that the increase in noise to residents of Fenway is offset by a reduction in noise for residents of Folgate Road and South Beach Road.
23. However, that assumes that all traffic would cease to utilise Folgate Road and the caravan park for access. Moreover, the majority of those properties are located along parts of Folgate Road where vehicular speeds would be consistent and thus would be unlikely to experience noise from braking or engines gearing up and down. Many of those properties are also set further back from the road than 1-10 Fenway are, though I note the presence of properties immediately adjacent the junction of Folgate Road and South Beach Road. Nevertheless, those properties also experience a greater existing background noise level from road traffic than the residents of Fenway, since Folgate Road and South Beach Road are much more heavily trafficked compared to Fenway. Furthermore, the appellant's Noise Assessment indicates that the reduction in noise levels on Folgate Road will be less than the increase in noise levels on Fenway.
24. As a result, I am not satisfied that there is clear, compelling justification to significantly increase harm to the occupiers of Fenway on the basis that it could reduce existing noise levels to residents on Folgate Road, South Beach Road or those who occupy the caravan park.
25. I note that vehicular use of Fenway is restricted by the Operator's Licence to between 0700 and 1800 on weekdays, and a condition could be imposed to the same effect. However, that would still result in noise occurring in relatively early hours of the morning at a time when residents would have reasonable expectations for higher levels of peace and quiet. Moreover, given the proximity of the junction to the properties, even at times during the day the noise levels are likely to be detrimental to residents who are at home, including those working from home or indeed, shift workers. Such a condition would thus not overcome the harm.

26. I note the appellant has indicated that use of the two pre-existing accesses onto Fenway will continue and thus some of those vehicular movements will continue. However, those accesses cannot facilitate the use of Fenway by HGVs. Moreover, it is not indicated how many of the daily or ad-hoc vehicular movements deriving from the operations those accesses can accommodate. I note the Noise Assessment was predicated on the basis that there was pre-2016 an even split between the caravan park and Fenway for access by light vehicles.
27. As a result, the material increase in the use of Fenway by HGVs and other vehicles associated with the appellant's operation will result in a harmful increase of noise and disturbance experienced by occupiers of properties on Fenway.
28. I conclude, therefore, that the development will have a significant harmful effect on the living conditions of the occupiers of Fenway, in particular Nos 1-10, with regard to noise and disturbance. As such, the development conflicts with Policy CS06 of the Kings Lynn and West Norfolk Local Development Framework Core Strategy July 2011 (the CS) which states that development in rural areas should maintain a high quality environment. The notice refers to conflict with CS Policy CS10, however, that policy relates to the provision of employment land and other employment uses and is not relevant to the matter of living conditions.
29. There will also be conflict with Policy DM15 of the LPA's Site Allocations and Development Management Policies Plan September 2016 which states that proposals will be assessed against their impact on neighbouring uses and their occupants, and that development that has a significant adverse impact on the amenity of others will be refused.
30. The development also conflicts with Policy 5 of the Heacham Neighbourhood Plan June 2022 which states that development should demonstrate that they minimise adverse impacts on neighbouring residents.
31. Finally, there would be conflict with paragraph 89 of the National Planning Policy Framework December 2023 (as was paragraph 85 at the time of the issue of the notice) which states that it will be important to ensure development is sensitive to its surroundings.

Other Matters

32. I note that there is little dispute between the parties that the development will result in harm to highway safety. However, any lack of harm in respect of highway safety will not outweigh the harm which arises to the living conditions of nearby residents.
33. Likewise, I note the appellant's willingness to accept a condition requiring a landscaping scheme to prevent harm to the character and appearance of the area. However, a lack of harm in such respect would not outweigh the harm to the living conditions of nearby residents.
34. The appellant indicates that the company provides full time employment for 13 people and makes a significant contribution to the local economy. However, there is no evidence before that the inability to use the access subject of the notice would unduly affect the business, or pose a risk to the jobs it supports. As such, I afford those benefits limited weight.

Conclusion

35. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

J Whitfield

INSPECTOR