

Appeal Decision

Site visit made on 29 August 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th September 2024

Appeal Ref: APP/P1615/W/24/3336848

33 Ford House Road, Newent, Gloucestershire, GL18 1LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs T Godfrey against the Forest of Dean District Council.
 - The application Ref is P1541/23/FUL.
 - 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 in 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.*
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Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. The appeal was made because of the Council's alleged failure to determine the application within the appropriate period. There is no disagreement between the parties as to when the original application was validated or the date by which a decision was due, that is, 12 January 2024. The appeal was submitted early the following day, but the Council disputes the allegation that its decision was not made in time and says that the determination was made on the due date, as the decision notice copied to the Inspectorate shows. The Council says that the decision would have been posted on its portal on the 12th for all, including the appellants, to see.
3. The Council has, however, since confirmed that its decision was not electronically transmitted to the applicants, but was sent by second class post, to arrive in the week-commencing 15 January 2024. In these circumstances I shall give the appellants the benefit of the doubt and deal with the appeal as originally submitted.
4. The Council has pointed to a factual error in the wording of the condition in dispute. It says that the revised plan 'No. 2m' was received on 21 April 2022, and not 21 February 2022 as indicated in the condition. A copy of the plan

referred to in the condition was provided to me at my request – this is dated March 2022. There is no disagreement between the parties that the plan referred to in the condition was prepared and submitted on behalf of the appellants. I do not therefore consider that the erroneous date shown in the condition has caused injustice to the appellants, and there is no indication before me that they consider this to be the case.

5. My attention has been drawn to an appeal wherein the appellants previously sought relief from the provisions of Condition No 13, the one in dispute now. That appeal was dismissed¹ and the decision is material to my considerations. It attracts substantial weight not least since it is a recent decision, unchallenged in the Courts.
6. The Council has made an application for an award of costs against the Appellants. This is the subject of a separate decision.

Main issue

7. Consistency in appeal decisions is expected and important for the purposes of securing public confidence in the development control system². Accordingly, the main issue is whether there are any grounds in the form of fresh evidence, changed circumstances or any convincing reason to disagree or differ with the previous Inspector's decision when considering a virtually identical proposal.

Reasons

8. The appellants' initial grounds of appeal were directed solely to the issue of non-determination, not to planning merits. The appellants' appeal submissions are contained in their Final Comments, which should normally be directed to the Council's case. Nevertheless I have taken account of the content of the Final Comments and the material submitted with the original application³.
9. Most of the appellants submissions appear to be a repetition of arguments presented to the previous appeal proceedings. The Inspector took these into account then and explained clearly why the condition in dispute was imposed in the first place, and why he did not consider that it should be removed from the permission. The appellants may disagree with the Inspector's conclusions, but without new evidence or convincing fresh arguments, that is insufficient reason for me to depart from the previous decision which was soundly based.
10. Without reference to any drawing or document, the appellants refer to an 'agreement' between them and the owner of 34 Fordhouse Road to erect a substantial new boundary hedge between 34 & 33 Fordhouse Road. This, it is claimed, would have the effect of '*...softening and reducing any latent impact from the new building erected at 34 Fordhouse Road..*'. This is a vague assertion unsupported by facts or evidence, and I noted on my visit that a mature hedge already separated the two properties. The hedge is also referred to in the previous appeal decision letter.

¹ Ref APP/P1615/W/22/3312746, dated 6 October 2023

² As held in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137

³ In particular a document entitled 'Letter of Clarification' dated 16 November 2023.

11. The appellants say they '*reiterate his grounds of appeal*' (sic). However, as mentioned above, the grounds for this appeal are not directed to planning merits. If this is a reference to the previous appeal, then they were more than adequately considered by the previous Inspector.
12. The appellants further say:

'The Appellants suggests no fence is indeed necessary for the purposes originally envisioned by the Local Planning Authority. In the first instance it is perverse that the responsibility for erecting any type of acoustic fence was placed on the Appellant as distinct from the Occupiers of 34 Fordhouse Road and why was it done retrospectively.'
13. This too repeats an argument presented to the previous Inspector, which was clearly considered and dealt with. No new acoustic evidence has been presented to support the contention that the fence is no longer necessary, and the appellants have clarified that they do not intend to produce any.
14. The appellants refer to the fence being '*..an extremely costly burden on a fledgling enterprise..*'. However, no costs or other evidence is provided to demonstrate that this is a justifiable claim. I also bear in mind that the acoustic fence is of the appellants' own specification and design to address an environmental problem identified following surveys conducted by their own technical consultants. There is no evidence before me that their technical consultants have changed their minds either as to the effectiveness of the fence or the need for it.
15. Reference is made to another application being considered by the Council with the suggestion that the Council has changed its position on the fence. This reference is vague and with insufficient detail provided for me to consider whether this is in fact the case. It is the appellants' task to provide clear evidence in appeal proceedings - it not for me to be left to attempt to read the appellants' minds. As to the Council changing its position, I find it difficult to accept that proposition in circumstances where it contests the appellants' most recent application to remove the condition in dispute, and this appeal.
16. Overall, I find the appellants' Final Comments vague and sometimes incoherent. They do not form a sound basis for reversing the previous Inspector's decision. To my mind, this appeal is a clear attempt to have a second bite at the cherry with little or no new evidence, none of which is convincing.
17. In the circumstances I have no reason to come to a different conclusion from the previous Inspector, which was that the condition in dispute was:

'..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.'

18. I have taken account of all other matters, but none raised in the representations is of such strength or significance as to outweigh those considerations that led me to my conclusions.

G Powys Jones

INSPECTOR