
Appeal Decision

Site visit made on 8 October 2024

by Philip Mileham BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 November 2024

Appeal Ref: APP/Z3825/W/24/3339718

Nowhurst Business Park, Guildford Road, Broadbridge Heath, West Sussex, RH12 3PJ

- 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 Norman Marshall Ltd against the decision of Horsham District Council.
 - The application Ref DC/21/2873 was approved on 31 August 2023 and planning permission was granted subject to conditions.
 - The development permitted is an outline application for the development of up to 26,942 sq m (GIA) for B1c, B2 and B8 employment uses with ancillary offices, car parking and service yard areas with associated drainage works, site re-profiling and landscaping. All matters reserved for future determination except access.
 - The conditions in dispute are Nos 27 and 28 which state that:
 - No external operations or activities, including the operation of plant and machinery, workshop processes, deliveries and dispatches, shall take place within Zone 1 as shown on the parameters plan (drawing 30853-PL-204) except between the hours of 0700 to 2300 hours Mondays to Saturdays and 0800 to 1300 hours Sundays and public holidays. All external shutters and doors to the buildings within Zone 1 shall be closed except between these hours.
 - No external operations or activities, including the operation of plant and machinery, workshop processes, deliveries and dispatches, shall take place within Zones 2 and 3 as shown on the parameters plan (drawing 30853-PL-204) except between the following hours:
 - Zone 2 – 0700 to 2000 hours Mondays to Saturdays, and at no times on Sundays or public holidays.
 - Zone 3 - 0700 to 2000 hours Mondays to Friday, and at no times on Sundays or public holidays.All external shutters and doors to the buildings within Zones 2 and 3 shall be closed except between these hours.
 - The reasons given for the conditions are: To safeguard the tranquillity of the countryside and amenities of neighbouring properties in accordance with Policies 24, 25, 26 and 33 of the Horsham District Planning Framework (2015).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original application was made in outline form with only the means of access agreed. Two indicative layouts were included within the original application and I have had regard to these in my determination of the appeal.
3. Since the Council granted permission for the development, the Government published a revised National Planning Policy Framework (the Framework) in

December 2023. As a result, I have had regard to the latest iteration of the Framework in reaching my decision.

Main Issue

4. The main issue is whether the conditions are reasonable and necessary having regard to the living conditions of nearby occupiers and on the character of the area.

Reasons

5. The appeal site is a predominantly flat area of land, with a further raised plateau of land at the end of a metalled access road. The site has access from the A281 Guildford Road. At the time of my visit, the area was generally quiet other than some limited background noise from traffic using the A281. The area's overall character is defined by, amongst other things, its quietness, tranquillity and sense of rurality.
6. Conditions 27 and 28 seek to restrict activity across different parts of the appeal site to limit the effects of noise which may arise from the development. The reasons for the conditions are twofold, firstly to protect the living conditions of adjoining occupiers from noise, and secondly, to protect the tranquillity of the rural area.
7. The appellant has indicated that the existing conditions are too restrictive and adversely affect interest in the site from potential future occupiers. However, there is no clear evidence that either of the conditions have directly resulted in the loss of any potential future occupiers of the site, and thereby why the conditions are unreasonable in this regard. No clear evidence has also been submitted why the conditions as currently drafted have had any direct impact on the viability of the proposed development. Furthermore, there is no evidence before me of the marketing that has taken place for the proposed development and how the disputed conditions have impacted its marketability.
8. The full removal of conditions 27 and 28 would result in noise arising from the development being left unrestricted with the potential for harm to the living conditions of adjoining occupiers and on the tranquillity of the area. Therefore, alternative conditions would be necessary to control these matters.
9. The appellant has suggested potential revisions to condition 27 which would remove the hours of operation in the Zone 1 which is the furthest away from existing residential development and replace these with the requirement for a noise management plan prior to any occupation within that zone.
10. The proposed amendments to condition 28 would require the submission of a noise management plan prior to the occupation of Zones 2. However, it would continue to limit operations or activities in Zone 3 which is the closest to existing residential development except during the hours of 0700-2000 hours Mondays to Saturdays and at no time on Sundays or public holidays.
11. The submitted acoustic statement indicates that maximum noise levels in Zones 1 and 2 would be 8db and 5db respectively below the World Health Organisation (WHO) guideline level of 60db($L_{Afm\max}$) where sleep would be disturbed. The WHO Night Noise Guidelines for Europe (NNGEE) (2009) threshold at which potential night awakenings would occur is approximately 57db($L_{Afm\max}$). Paragraph 3.16 of the Sharps Redmond (SR) statement (February

2024) considers nighttime noise would be principally focussed on disturbance to sleep. Figure 2 of the SR statement predicted maximum nighttime noise levels at five modelled receptor points across the site would be up to approximately 52db. Figure 3 of the statement models predicted noise levels in zones 1 and 2 with the highest level shown as being approximately 55db at receiver R5. As these would be below the NNGEE level, they say amending the conditions would not be harmful to the living conditions of nearby occupiers and I agree.

12. Notwithstanding the above, conditions 27 and 28 were imposed not only to address the effect on living conditions, but also to mitigate the effects of noise to protect the tranquillity of the countryside. The area beyond the site is characterised by open countryside with very low background noise. This is consistent with Table 4 and Figure 4 of the appellants submitted acoustic report (2021) and paragraph 5.7 which confirms low background noise levels. Due to the low level of background noise, the extent of change over the nighttime base levels would be significant with the levels predicted by the appellant being approximately 17db above baseline.
13. The appellant's acoustic response (dated 27.06.22) indicates that the character of noise from vehicles using the site access road would be no different from vehicles on the A281 Guildford Road. However, vehicles, particularly heavy goods vehicles would undertake manoeuvres within the site, as well as loading and unloading. Although the site has a history of employment uses, there is no evidence that these uses were able to operate on a 24 hours per day, 7 days per week basis. Therefore, whilst levels of noise would not be harmful to living conditions, these activities within the site would undoubtedly affect the tranquillity of the area, particularly during the early hours of the morning when background noise levels are at their lowest.
14. Although recreation activities in the countryside such as walking are unlikely during nighttime hours, the site is in a rural countryside location where there is no clear evidence before me of nearby commercial activity. This increase in noise would clearly adversely alter the quiet character of the area particularly at nighttime resulting in a more intensive commercial character, uncharacteristic of a site in a rural area.
15. The proposed amendments to conditions 27 and 28 respectively proposed by the appellant would not restrict any hours of operation in Zones 1 and 2, nor would they contain specific noise levels to be adhered to post-implementation. This would instead be left to a noise management plan and undefined acoustic mitigation. However, whilst the appellant considers the suggested revised conditions for a NMP would be specific to an end-user, condition 16 already deals with noise management plan per phase.
16. The submitted acoustic report (2021) indicates at table 5 that the predicted noise levels are based on a notional individual unit, and that other phases of development could act as a barrier block to the residential properties to reduce noise. However, site layout is a matter reserved for future consideration and there is no acoustic modelling before me that would indicate what levels might be achieved post-development. Therefore, there is nothing before me to indicate further alternative conditions would be capable of mitigating the harm to the character of the area.

17. Table 5 of the submitted acoustic statement indicates that whilst noise levels would be below the WHO guidelines in respect of health, they would remain significantly in excess of the existing nighttime noise levels. There is no evidence that the appellant's suggested amendments to conditions 27 and 28 would include clear measures on how to assess the effect of the scheme on the character of the area. As a result, I am not certain that the appellant's suggested conditions 27 and 28 would mitigate the effects of the development on tranquillity. Furthermore, I have concerns whether such conditions could be complied with. They would therefore be ineffective.
18. Whilst I find that the conditions are not reasonable in respect of the effects on the living conditions of nearby occupiers, I conclude that conditions 27 and 28 are reasonable and necessary having regard to the character of the area. They therefore accord with Policies 25, 26 and 32 of the Horsham District Planning Framework (2015) which seek to protect rural character, protect key characteristics of the landscape character and contribute to a sense of place.
19. Conditions 27 and 28 as imposed accord with the tests set out at paragraph 56 of the Framework which states conditions should be necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects.

Other Matters

20. Concerns have been raised by interested parties regarding the intensification of the site access and on traffic management. However, the proposal has already been granted planning permission by the Council and this appeal relates to the imposition of two specific conditions which do not relate to access. Therefore, as I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further.
21. Concerns have been raised by interested parties regarding the effects of lighting on the living conditions of nearby occupiers and on the tranquillity of the area. However, the existing planning permission already considers the effects of lighting and separate conditions (29 and 30) were already imposed by the Council to address the effects of lighting within the indicated zones on the parameters plan. As I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.

Conclusion

22. In light of the above, I find that whilst the removal or amendment to the conditions would have some economic benefits as the development would be more attractive to a wider range of occupiers, including those who wish to operate businesses on a 24 hour basis, these benefits are far outweighed by the harm that would arise to the tranquil character of the area.
23. Therefore, for the reasons given above the appeal should be dismissed.

Philip Mileham

INSPECTOR