



Appeal Decision

Site visit made on 24 July 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2024

Appeal Ref: APP/F3545/W/23/3329881

Your NRG, Station Yard, Station Road, Thetford, Suffolk IP24 2PD

Easting: 586202 and Northing: 279221

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Peter Kitchen against the decision of West Suffolk Council.
- The application Ref is DC/22/1620/VAR.
- The application sought planning permission for the continued use of heating fuel storage and distribution business (Class B8), retention of 4 storage tanks, 1 storage container, 2 fuel distribution points, 1 office portacabin, associated hard standing, underground interceptor tank, lighting and installation of 5th storage tank without complying with conditions attached to planning permission Ref DC/19/2155/FUL, dated 7 September 2021.
- The conditions in dispute are Nos 1, 4, 5, 6, 7, 8 and 9 which state that:
No 1: The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents, unless otherwise stated below:
 - 1534/LP1 Location plan 29 October 2019
 - 1534/VP3 Visibility splays 8 April 2021
 - 30-002 A Block plan 5 August 2021
 - tank elevations Elevations 5 August 2021*No 4: Prior to any works in relation to the installation of the acoustic fence or works within the RPA of the trees shown to be retained, an Arboricultural Method Statement (including any demolition, groundworks and site clearance) shall be submitted to and approved in writing by the Local Planning Authority. The Statement should include details of the following:*
 - a. Measures for the protection of those trees and hedges on the application site that are to be retained,
 - b. Details of all construction measures within the 'Root Protection Area' (defined by a radius of dbh x 12 where dbh is the diameter of the trunk measured at a height of 1.5m above ground level) of those trees on the application site which are to be retained specifying the position, depth, and method of construction/installation/excavation of service trenches, building foundations, hardstandings, roads and footpaths,
 - c. A schedule of proposed surgery works to be undertaken to those trees and hedges on the application site which are to be retained.*The development shall be carried out in accordance with the approved Method Statement unless agreed in writing by the Local Planning Authority.*
No 5: Within three months of the date of this permission a noise screen must be installed around the northern end of the site at a height of 2.5m in accordance with the details set out in the SRL Noise Report (Ref. 42908ASRL- RP-YA-01-S2-P01 P01, dated 25.10.2019) and shown in Figure 3 of the report, unless agreed otherwise in writing with the Local Planning Authority. All noise mitigation measures shall be maintained thereafter in accordance with the approved details. The gate of the acoustic fence shall be shut during all loading, unloading and HGVs idling on site.

No 6: The site shall operate a maximum fleet of 9 HGV tankers.

No 7: The total number of HGV movements to and from the site shall not exceed 30 per day.

No 8: HGV movements to and from the site shall only take place between the hours of 7am to 7pm Monday to Friday and 7am to 1pm Saturdays and at no time on Sundays, Bank or Public Holidays.

No 9: No loading or unloading shall take place and no plant or machinery shall be used on the site except between the hours of 7am to 7pm Monday to Friday and 7am to 1pm Saturdays and at no time on Sundays, Bank or Public Holidays.

- The reasons given for the conditions are:

No 1: To define the scope and extent of this permission.

No 4: To ensure that the trees and hedges on site are adequately protected, to safeguard the character and visual amenity of the area, in accordance with policies DM12 and DM13 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies. This condition requires matters to be agreed prior to installation of the fence to ensure that existing trees are adequately protected prior to any ground disturbance.

No 5: To protect the amenities of occupiers of properties in the locality, in accordance with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapters 12 and 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

No 6: In the interest of highway safety, residential amenities and amenities of the area, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies.

No 7: In the interest of highway safety, residential amenity and the amenities of the area, in accordance with policy DM2 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 9 of the National Planning Policy Framework and all relevant Core Strategy Policies.

No 8: To protect the amenities of occupiers of properties in the locality, in accordance with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapters 12 and 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

No 9: To ensure the appropriate use of the site and to protect the amenities of occupiers of properties in the locality, in accordance with policies DM2 and DM14 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and all relevant Core Strategy Policies.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name in the planning application form and Council's decision notice was 'c/o agent'. However, the appellant has confirmed their name which is displayed in the banner heading above.
3. Only the Easting and Northing co-ordinates of the appeal site were used for the address on the planning application form. I have therefore used the address on the appeal form in the banner heading above. As this did not include a postcode, I have taken the one used in the Council's decision notice. Moreover, I have included Easting and Northing co-ordinates for clarity.
4. Since the Council's decision, the appellant has stated that the noise barrier has been completed in accordance with the details agreed and accepted as part of

the original permission¹. Therefore, the appellant confirms that this aspect of the appeal, relating to the height of the noise screen and condition Nos 1, 4 and 5, is no longer relevant. I have therefore considered the appeal on this basis.

5. While the Council has indicated that the extent of the noise barrier erected needs to be established, this is not a matter for determination as part of an appeal made under section 78 of the Town and Country Planning Act 1990.

Background and Main Issue

6. The original permission sought permission for the continued use of the appeal site as a heating fuel storage and distribution business, with associated works. Among the planning conditions attached to the permission, were the four disputed conditions, which seek to restrict the number of HGV tankers the site operates, the number of daily HGV movements to and from the site, and the days and times of HGV movements and loading and unloading and use of plant or machinery. The reasons given for the conditions relate, among other things, to protect the residential amenities of occupiers of properties in the locality.
7. The appeal scheme seeks to vary condition No 6 to increase the maximum fleet from 9 to 20 HGV tankers and vary condition No 7 to increase the daily HGV movements from 30 to 40 per day.
8. Furthermore, the appeal scheme also seeks to extend HGV movements to and from the site and loading and unloading and use of plant and machinery, through the variation of condition Nos 8 and 9, to 6am – 9pm Monday to Friday, 8am to 4pm Saturdays and 10am to 4pm Sundays.
9. In view of this and having regard to the appellant's comments in respect of the noise barrier, the main issue is the effect of varying condition Nos 6, 7, 8 and 9 on the living conditions of existing occupiers, with particular regard to noise.

Reasons

10. The appeal site is located on Station Road, within an allocated rural employment site. Station Road is regularly used by HGV's, not just those associated with the appeal site, and is subject to an existing one-way HGV route. The area surrounding the appeal site is largely rural in character, with residential properties nearby and commercial uses adjacent. While only a snapshot in time, during a quieter part of the day, I observed a relatively moderate flow of traffic along this road. Due to the rural character of the area, I observed that noise levels in the wider area are relatively low, with noise primarily generated through passing traffic and the commercial uses at, and adjacent to, the appeal site.
11. Two residential properties are situated on the other side of Station Road, broadly opposite the appeal site. Further residential properties are also located along Station Road, broadly to the east of the appeal site.
12. The appellant states that a maximum of 10 HGV's would be on site, equating to 5 HGV's entering and leaving the site, which they consider would not be excessive in an employment area. While noting this and acknowledging that there may be periods whereby the site would not be utilised to its full capacity,

¹ Planning application reference DC/19/2155/FUL

nevertheless, I have to consider the proposed development based on the maximum HGV numbers and movements applied for.

13. While it has been asserted that the appeal scheme would only result in a minimal increase in the number of HGV's using Station Road as a whole, limited substantive evidence has been submitted to demonstrate this. Moreover, the appellant states that up to 10 more vehicular movements per day, equating to an addition 5 HGV's entering and leaving the site, would not be excessive in an employment area.
14. While HGV's are a feature of Station Road and the appellant's noise report states that non-site road traffic, in many instances, was the dominant noise source, an increase from 9 to 20 HGV's and from 30 to 40 movements per day would represent a significant increase in the number of HGV's and movements to and from the appeal site, when compared with the development granted as part of the original permission.
15. The appellant has submitted a noise report², which has assessed the acoustic effect and benefit of the 'as erected' noise barrier. The noise report concludes that the noise barrier is performing as predicted and provides the required mitigation. It is further highlighted that the operational noise of the appeal site was lower than other background noise sources.
16. However, in order to allow HGV's to enter and leave the appeal site, the noise barrier gate needs to be opened. Any increase in vehicles to and from the appeal site would necessitate the noise barrier gate to be opened more frequently. Once opened, it is likely that the acoustic merits of the noise barrier would be reduced. The noise report does not identify whether the noise barrier gate was open during the assessment. As such, in the absence of substantive evidence to the contrary, I cannot be certain that operational noise from within the appeal site would not be audible from neighbouring residential properties.
17. The proximity of the appeal site to the residential properties is such that the occupiers of these properties would experience increased noise as a result of the appeal proposal, through the increased number and movements of HGV's and operational noise from within the appeal site. The increased activity would materially increase noise levels to a level that would be detrimental to the existing occupiers of these properties. This would be further exacerbated due to the proposed extended hours and days of operation, which include early mornings, late evenings and weekends. Given the rural setting, these are times in which neighbouring occupiers would reasonably expect it to be quieter.
18. Consequently, the proposed increase in HGV's and their associated movements, in combination with increased working hours and days and the need to open the noise barrier gate more frequently to accommodate the proposed increased movements and HGV's, would result in a materially harmful impact upon living conditions of the occupiers of the nearby properties, through noise and disturbance. The presence of the acoustic fence, for the reasons outlined, would not adequately mitigate against this harm.

² Acoustic Evidence to Support Appeal dated 18 September 2023

19. The appellant states that the proposed variations would support the growth of a business that is located within an employment area. While business growth is supported, in principle, by LP Policy RV4 (e), which permits proposals for B1, B2 and B8 uses, this is on the basis, among other things, that general environmental considerations can be met. In this case, I have identified harm in respect of the main issue.
20. While the appellant asserts that condition No 7 restricts the potential growth of the business, limited substantive evidence to demonstrate this has been submitted. As such, this carries limited weight.
21. An approved application, reference E/91/1602/P, has been drawn to my attention. While the evidence indicates that this is immediately adjacent to residential properties, it relates to a small, urban petrol station. As such, while the appellant asserts that the appeal scheme would host more sporadic movements and that, in light of the approved application, condition 9 is overly restrictive, it is, nevertheless, not directly comparable. In any case, I have determined the appeal on its own merits.
22. For these reasons, I conclude that the appeal scheme would not protect the living conditions of existing occupiers, with particular regard to noise. This is contrary to Policy RV4 of the Rural Vision 2031 September 2014 and Policies DM2 and DM14 of the Joint Development Management Policies Document February 2015. Collectively, these seek, among other things, to ensure that development proposals do not affect adversely residential amenity and minimise noise pollution.

Conclusion

23. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR