The Planning Inspectorate

Appeal Decision

Site visit made on 12 November 2024

by J D Westbrook BSc (Econ) (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/B3438/W/24/3346146
Ball Green Farm, Gorsey Bank, Stoke-on-Trent, ST6 8AR

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr D Clement against the decision of Staffordshire Moorlands District Council.
- The application Ref is SMD/2024/0028.
- The application sought planning permission for the retention of excavation works, erection of freestanding agricultural building for animal housing, extension to existing agricultural building to provide animal housing, erection of slurry tank and retention of vehicular private way, without complying with a condition attached to planning permission Ref SMD/2023/0343, dated 11 July 2023.
- The condition in dispute is No 9 which states that: *The existing access with the highway from Gorsey Bank at the northwestern end of the site shall only be used for the purposes of transporting sileage between the 1st May and 30th September on no more than a maximum of 30 days per calendar year. Within 6 months from the date of this permission a new farm gate shall be erected and installed across this access in a position that is to be set back a minimum of 10m from the carriageway edge*.
- The reason given for the condition is: *To limit the use of a highway access with a narrow residential lane opposite dwellings*.

Decision

1. The appeal is allowed and planning permission is granted for the retention of excavation works, erection of freestanding agricultural building for animal housing, extension to existing agricultural building to provide animal housing, erection of slurry tank and retention of vehicular private way, at Ball Green Farm, Gorsey Bank, Stoke-on-Trent, ST6 8AR, in accordance with the application Ref SMD/2024/0028, without compliance with condition number 9 previously imposed on planning permission Ref SMD/2023/0343 dated 11 July 2023, and subject to the conditions set out in the schedule below, which includes a modified form of condition number 9.

Preliminary Matter

2. The appellant wishes to modify condition 9 as imposed on SMD/2023/0343 by deletion of the words '…between the 1st and 30th September on…' and replace it with the word …'for'. The effect of this change would be to retain the restriction on the use of the track at the northwestern end of the site for the transportation of sileage to no more than 30 days per calendar year, but allow it to happen at any time of the year.

Main Issue

3. The main issue in the case is the effect of the proposed extension to the period for use of the access track on the living conditions of the occupiers of nearby dwellings, by way of noise and disturbance.

Reasons

4. The appeal property is a farm with an access track situated at the north-west corner of the site, which leads directly off the road known as Gorsey Lane. There are gates set back a short distance from the road, and the track, which is rough surfaced, follows the northern boundary of the site for around 70 metres before turning south and down to serve two modern agricultural buildings and a large area that is used for storage of silage.

5. The Council granted permission for the construction of farm buildings in December 2023, subject to a number of conditions. The condition that is currently under consideration required the appellant to restrict use of the access road for transport of silage to any 30 days between May and September, a period which apparently coincides with the main silage season. The appellant contends that there are times outside of that period when it may become necessary to bring in silage, and that the condition should not limit the time when such transport could be utilised.

6. The Council contends that the proposed variation of the condition would result in an unreasonable loss of amenity for those residents that are within close proximity of the farm and the Gorsey Lane access point, by way of excessive noise, disturbance and light pollution. I note that there has not been any objection to the proposed use of the access point from Gorsey Lane by the Highway Authorities, and that the Authorities have not requested any time-limited conditions on highway safety grounds.

7. The access track initially runs alongside the northern boundary of the farm. Beyond the boundary for that length of the track is a church building and the long rear gardens of Nos 4 and 6 Heather Lea. There is also a dwelling on Gorsey Lane opposite the access point. I acknowledge that the use of the access for the appellant's farm business purposes may result in some noise and disturbance, but this is already limited to 30 days in any one year. The proposed varied condition would not increase the overall number of days per year in which the access point could be used.

8. In my opinion, whether the 30 day limit on use of the access is concentrated during the May to September period or is spread more widely throughout the year, there would be no increase in overall noise and disturbance. Indeed, there may well be an argument to say that concentration of activity along the track during the summer months, when residents of Heather Lea and Gorsey Lane would be more likely to be outside in their gardens, could be more detrimental than having the use spread somewhat more evenly over the whole year, including times when residents would be less likely to use their outdoor space.

9. On this basis, I find that the variation of Condition 9 to allow use of the access for 30 days spread over the year, instead of being concentrated within a limited period only, would not result in additional noise or disturbance and would not, be harmful to the living conditions of the occupiers of nearby dwellings.

Other Matters

10. There have been objections from nearby residents relating to possible breaches of the existing condition which is the subject of this appeal, along with possible breaches of other conditions attached to the existing permission. All of the conditions, in my opinion, are set down to regulate the development, including the ongoing business of the farm. If there are breaches of any of those conditions, that is a matter for the Council to initiate enforcement action if and when deemed necessary, as indeed is the case for any breaches of condition relating to any planning permission.

Conclusion

11. I find that the replacement of Condition 9 with one that allows the use of the farm access for any 30 days during the year would not be harmful to the living conditions of the occupiers of nearby properties by way of additional noise or disturbance. On this basis, it would not conflict with Policies DC1 and SD4 of the Staffordshire Moorlands Local Plan which require that development should protect the amenity of an area, including residential amenity, and that any potential adverse pollution effects, including air and noise pollution, should be mitigated by the imposition of planning conditions.

12. As allowing the appeal has the effect of granting a new planning permission, I have included all the conditions on the original permission, with condition 9 suitably modified. As the development has at least in part commenced because it includes the retention of elements that were carried out before permission was granted, there is no need for a time limit condition.

13. It is unclear how much of the development permitted by the earlier permission has already been carried out, and, on that basis, I consider that all the other conditions appear to remain relevant, reasonable and necessary. In the event that some have in fact been discharged, that is a matter which can be addressed by the main parties. They have been imposed for the same reasons given on the original permission.

J D Westbrook

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall have begun before the expiration of three years from the date of this permission.

2. The developments hereby permitted shall only be carried out, retained or completed in accordance with the drawn and written detail shown on the following approved plans referenced and numbered 1702-AL01B, 1702-AL02B, 1702-AL03B, 1702-AL04B, and 1702 AL05A.

3. No fill material, used in connection with the above development or associated farm track, is to be imported to the site until it has been tested for contamination and assessed for its suitability for the proposed

development. A methodology for demonstrating the material is suitable for its proposed use, shall be submitted too and agreed in writing by the Local Planning Authority prior to the material being imported.

4. In the event that contamination is found at any time when carrying out the approved development it must be reported in writing immediately to the Local Planning Authority. Development shall not continue until an initial investigation and risk assessment has been completed in accordance with a scheme to be agreed in writing by the Local Planning Authority to assess the nature and extent of any contamination on the site. If the initial site risk assessment indicates that potential risks exist to any identified receptors, development shall not recommence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property, and the natural and historical environment has been submitted to and approved in writing by the local planning authority. Following completion of measures identified in the approved remediation scheme and prior to bringing the development into first use, a verification report that demonstrates the effectiveness of the approved remediation shall be submitted to and approved in writing by the Local Planning Authority.

5. There shall be no artificial lighting incorporated into, installed or used at this application site that increases the pre-existing illuminance at the adjoining light sensitive locations when they are in operation.

6. The rating level of sound emitted from any fixed plant and/or machinery associated with the development at the use hereby approved shall not exceed background sound levels by more than 5dB(A) between the hours of 0700 - 2300 (taken as a 15 minute LA90 at the nearest sound-sensitive premises) and shall not exceed the background sound level between 2300 - 0700 (taken as a 15 minute LA90 at the nearest/any sound-sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound-sensitive property. Any deviations from the LA90 time interval stipulated above shall be agreed in writing with the local planning authority.

7. No deliveries including movement of animals shall be received or dispatched from the site using the access road hereby permitted outside the hours of 07:00 and 19:00 nor at any time on Sundays, Bank or Public Holidays.

8. The terms of the 'odour management plan' that was submitted on the 27th May 2021, shall at all times be observed and complied with throughout the life of the developments and for the duration of their use.

9. The existing access with the highway from Gorsey Bank at the northwestern end of the site shall only be used for the purposes of transporting sileage on no more than a maximum of 30 days per calendar year. Within 6 months from the date of this permission a new farm gate shall be erected and installed across this access in a position that is to be set back a minimum of 10m from the carriageway edge.

10. Within the first available planting season following the date of this planning permission, the planting and landscaping detailed in the scheme shown on plan numbered 1702-AL07A that was submitted under application ref. DOC/2022/0085 shall be carried out and implemented. The landscaping and planting shall thereafter be retained and maintained, in accordance with the detail of the approved scheme, throughout the life of the development.