



Appeal Decision

Site visit made on 25 February 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/V2635/W/24/3351655

Land at Freebridge Farm, Clenchwarton Road, West Lynn, King's Lynn, Norfolk PE34 3LW

- 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 National Highways against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref is 23/02195/F.
 - The application sought planning permission for a highways depot comprising maintenance building, salt barn and ancillary offices plus parking and landscaping without complying with conditions attached to planning permission Ref 22/01332/FUL, dated 22 September 2022.
 - The conditions in dispute are No's 2, 4, 16 and 17 which state that:
 - No.2 – The development hereby permitted shall be carried out in accordance with the following approved plans 16635-120, 16635-122 Rev B, 16635-123 Rev C, 16635-124, 16635-125 Rev B, 16635-126, 16635-127, 16635-128, 16635-129, 16635-130, 16635-131, 16635-VL L01 Rev C, 8732-D-AIA and D40986/LKM/C.
 - No.4 – For the duration of the construction period all traffic associated with (the construction of) the development hereby permitted shall comply with the Construction Traffic Management Plan and use the 'Construction Traffic Access Route' approved under application 20/01685/DISC_C unless approved in writing with the Local Planning Authority.
 - No.16 – Prior to the first use of the development hereby permitted the proposed access, on-site car and cycle parking, servicing, loading, unloading, turning, waiting areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan (16635-122 Rev C) and retained thereafter for that specific use.
 - No.17 – Prior to the first use/operation of the development hereby permitted the external lighting shall be provided in accordance with drawing no D40986/LKM/C submitted and approved under application 20/01685/FM and shall thereafter be maintained and retained as agreed.
 - The reasons given for the conditions are:
 - No.2 – For the avoidance of doubt and in the interests of proper planning.
 - No.4 – In the interests of maintaining highway efficiency and safety in accordance with the NPPF and the Development Plan.
 - No.16 – To ensure the permanent availability of the parking/manoeuvring areas, in the interests of satisfactory development and highway safety in accordance with the NPPF and Development Plan.
 - No.17 – In the interests of minimising light pollution and to safeguard the amenities of the locality in accordance with the NPPF.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by National Highways against King's Lynn & West Norfolk Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. In December 2024, the Government published a revised National Planning Policy Framework (the Framework). Although some paragraph numbers have changed, the revisions do not relate to anything that is fundamental to the main issue in this appeal. Reference to the revised Framework would not be prejudicial to the parties.

Background and Main Issue

4. Planning permission was granted for a highways depot comprising maintenance building, salt barn and ancillary offices plus parking and landscaping, under reference 20/01685/FM. A subsequent S73 approval was granted under application 22/01332/FUL to vary the original plans. The new permission sits alongside the original, such that either could be implemented. Both permissions required the development to be commenced by 21 July 2024.
5. This appeal seeks permission to carry out the development permitted without complying with conditions 2, 4, 16 and 17 of 22/01332/FUL which relate to the approved plans, specific site layout and lighting. The Council suggests within its officer report that conditions 3, 5, 6, 7, 8, 12, 18 and 19 would also be affected by the proposed changes. Variation of these conditions has not been explicitly applied for. My consideration is therefore limited to the variation of the conditions specified on the appellant's application form.
6. S73 applications to vary a planning condition(s) can only be approved where the permission to be amended is extant and capable of implementation. It is not possible to vary a condition attached to a lapsed planning permission¹. In this case, the parties dispute whether the previous permissions expired on 21 July 2024 without being commenced.
7. The Council suggests that a site visit on 5 November 2024 confirmed that no development had commenced. Photographs have been supplied showing the appeal site in a largely undeveloped condition². However, the appellant contests this, advising that the erection of a 10m length of a 2.5m high acoustic fence was erected on 16 July 2024, in advance of the expiry of either planning permissions. They suggest that this fence is shown as a green dashed line on drawing number 16635-132 which accompanied planning application 20/01685/FM. It was also specified in the details provided to discharge condition 3 of this permission, relating to the provision of a construction management scheme. It is similarly shown again as a green dashed line on drawing number 16635-122 Rev B which formed one of the approved plans as part of condition 2 on the 22/01332/FUL permission.
8. The fence appears to have been in situ on the 5 November 2024 as it is visible in the photographs supplied from the Council's visit. It also appears to be of a height that would not constitute permitted development³. However, it is not for me as part of this S73 appeal to determine whether development has commenced lawfully and the information before me is not entirely conclusive.
9. I have not been provided with a plan indicating the precise position of the erected fence, nor evidence that it has acoustic properties, although it appeared to have a

¹ Section 73(4) of the Town & Country Planning Act 1990.

² Appendix 3 of the Council's statement of case.

³ As prescribed by Class A, Part 2, Schedule 2 of the Town & Country (General Permitted Development) (England) Order 2015.

similar appearance to such fences. The fence shown on both of the approved plans referenced above, would start someway into the appeal site, running in a straight line parallel with and immediately adjacent to the existing timber fence demarcating the northern-most perimeter of the Premier Inn site.

10. The erected fence had no immediate physical or visual reference points but from my observations, it did not appear to unambiguously follow the straight line established by the Premier Inn fence, i.e. the alignment appeared to be incorrect. For these reasons, I cannot be satisfied that the erected fence is located in the correct position sufficient to determine that either the original or amended permission has been implemented. It would be open to the appellant to submit an application to the Council for a certificate of lawfulness of existing use or development.
11. The proposed variation of the conditions would make a number of changes to the permitted scheme including amending the design of the salt barn, changing the roof profile and elevation treatment of the main office building, increasing the service yard area for material storage, repositioning the gates and fencing to the main frontage, reorientating and repositioning the fuel island and the provision of 3 storage bunds. None of these matters are in dispute between the parties and I have no reason to take an alternative view.
12. It is clear from the evidence before me that the sole point of contention relates to the provision of a 4.5m acoustic fence to the eastern boundary. For this reason, the main issue of this appeal is the effect of the proposed acoustic 4.5m fence on the living conditions of the occupiers of Freebridge Farm, with particular regard to loss of light and outlook.

Reasons

13. The appeal site comprises a parcel of scrubland located adjacent to the King's Lynn services, just off the A17. Freebridge Farm is a detached 2-storey dwelling immediately adjoining the eastern boundary which exists on a diagonal axis. A band of conifer trees extends along 2/3rds of this boundary but terminates roughly in line with the rear elevation of the dwelling.
14. As discussed above, 2 planning permissions exist for the development of the appeal site as a depot for National Highways. As approved, a 2.5m high acoustic fence would be set atop a 2m bund that would be 20m from the rear amenity space of Freebridge Farm and 23.5m at the furthest point, as cited by the Council. Other than a small section to the north, the fence would run in a straight line set away from the established boundary, creating a triangle of land adjacent to Freebridge Farm that would form a planted buffer.
15. This proposal seeks to replace the permitted bund and fence with a 4.5m acoustic fence. The overall height would therefore be the same. However, the fence would largely track the existing perimeter fence for most of its length, only taking a straight route alongside the rear elevation of the adjacent dwelling. The parties suggest that the proposed acoustic fence would be 4m from the rear amenity space at the closest point and 11m at the furthest. This represents a significantly closer relationship to the neighbouring dwelling than the permitted scheme.
16. The proposed acoustic fence, due to its considerable height and solid form would be clearly visible from, and loom above, the rear garden of Freebridge Farm.

Although the band of conifer trees adjacent to the side elevation of the dwelling forms a landscape feature, it is not solid. The crown of the trees has been lifted on the neighbours side. This, along with the space between the tree trunks and the mesh fence allows the currently open land and sky on the other side to be appreciated, as well as allowing light to filter through.

17. The proposed acoustic fence due to its height would be clearly visible from the windows serving habitable rooms on the southern and western elevations of the dwelling and particularly, the rear garden space which currently has an unimpeded outlook to 3 sides. The height, proximity and solidity of the proposed fence particularly the section closest to the dwelling, would nonetheless create an imposing and oppressive structure. It would harmfully curtail the presently open outlook afforded to the ground floor windows in the rear elevation and the rear garden. The enclosure already experienced by the rooms within the western elevation from the trees would be exacerbated as the solid fence would be clearly visible through it.
18. The proposed fence would be a 'greensoundblok' acoustic barrier which the appellant suggests could be encased with planting. However, it is likely that any such planting would take a considerable time to establish, sufficient to cover the fence. Even then, whilst planting may soften its appearance it would not address the mass or solidity of the structure, nor its proximity. This would be the same for the 7 trees that would be planted between the acoustic fence and the existing boundary with Freebridge Farm. The impact of the fence on the outlook of the adjacent occupiers would not be sufficiently mitigated by the proposed planting.
19. Shadow diagrams have been provided to address the concerns regarding the suggested loss of light⁴. However, the diagrams are basic in nature. They do not provide a comparison of the current shading of the windows in the western elevation of Freebridge Farm from the conifer trees with that which would occur with the proposed fence in place. I am unable to determine if any subsequent reduction of light to these windows would be materially worse than the existing situation.
20. Having said that, I am satisfied that due to the southern orientation of the rear elevation and garden, the proposed acoustic barrier, even with its considerable height, would not cause an undue loss of daylight or sunlight that would be detrimental to the amenity of the occupiers.
21. For the above reasons, I find that the proposal would result in harm to the living conditions of the occupiers of Freebridge Farm, with particular regard to outlook and loss of light. The proposal would therefore be contrary to Policy CS08 of the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy (2011) and Policy DM15 of the Site Allocations and Development Management Policies Plan (2016). Together these policies seek amongst other things, to ensure that new development is of a high quality and does not harm neighbouring uses and their occupants with regard to overlooking, being overbearing and overshadowing. It would also fail to accord with paragraph 135 of the Framework which seek a high standard of amenity for existing users.

⁴ As provided within appendix 3 of the appellant's statement of case.

Other Matters

22. The proposal would deliver important highway infrastructure that would have social and economic benefits. The appellant suggests that operational requirements necessitate additional land within the appeal site, hence the need for the repositioned acoustic fence to the eastern boundary. However, there is no evidence before me as to what the operational requirements entail or that the previously approved arrangements are impractical, unworkable or otherwise unfeasible. It may be that there are different solutions that would meet the needs of the appellant without causing the harm identified to the neighbouring occupiers. Due to the lack of information provided, the benefits would attract no more than moderate weight in the planning balance.
23. Given the uncertainty around the commencement of development, it is not clear whether the previous approvals would constitute fallback positions. Even if they did, I am clear that the approved schemes would be less harmful to the living conditions of the neighbouring occupiers than the proposal.
24. The lack of objections from statutory consultees weighs neutrally in the planning balance and does not alter the harm I have identified.

Planning Balance and Conclusion

25. The moderate social and economic benefits arising from the provision of highway infrastructure would not outweigh the harm to the living conditions of the occupiers of Freebridge Farm. The development with the conditions varied as proposed would conflict with the development plan.
26. The presumption in favour of sustainable development within the Framework does not change the statutory status of the development plan as the starting point for decision making. Where a proposal conflicts with an up-to-date development plan, permission should not usually be granted unless material considerations indicate that the development plan should not be followed. No material considerations have been advanced that would indicate a decision should be made otherwise than in accordance with it. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR