Planning Inspectorate

# Appeal Decision

Hearing (Virtual) held on 18 March 2025

Site visit made on 19 March 2025

**by Hannah Guest BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 April 2025**

**Appeal Ref: APP/H1840/W/24/3356998**
**Mearse Croft Farm, Mearse Lane, Inkberrow, Worcestershire B96 6LN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Mark Edwards against the decision of Wychavon District Council.
- The application Ref W/24/00373/FUL, dated 22 February 2024, was refused by notice dated 10 June 2024.
- The application sought planning permission for agricultural buildings, including grain silos, chicken sheds and movable hen houses without complying with a condition attached to planning permission Ref 21/02986/FUL, dated 18 May 2022.
- The condition in dispute is No 3 which states that: *The development hereby permitted shall not be used beyond a date 9 months from the date of this permission unless a scheme of noise attenuation measures sufficient to ensure that the generator noise is inaudible on the north-western site boundary has been implemented in accordance with details first submitted to and approved in writing by the Local Planning Authority. The approved measures shall be retained thereafter.*
- The reason given for the condition is: *To ensure the proposal preserves residential amenity and to prevent unacceptable noise pollution to the detriment of human health contrary to policy SWDP31 of the South Worcestershire Development Plan.*

## Decision

1. The appeal is allowed and planning permission is granted for agricultural buildings, including grain silos, chicken sheds and movable hen houses at Mearse Croft Farm, Mearse Lane, Inkberrow, Worcestershire B96 6LN without compliance with condition number 3 previously imposed on planning permission Ref 21/02986/FUL, dated 18 May 2022, but subject to the conditions in the attached schedule.

## Applications for costs

2. Applications for costs were made by both parties against one another. These are subject to separate decisions.

## Procedural Matters

3. During the appeal process, the appellant applied to discharge the disputed condition to avoid the Council issuing a further Breach of Condition Notice. The application to discharge the disputed condition included a Noise Survey[1] (Noise Survey) and plans of the proposed noise mitigation. Copies of these were provided to me by the Council.

[1] Noise Survey, Discharge of Condition 3 of 21/02986/FUL, Mearse Croft Farm, Mearse Lane, Inkberrow, Redditch, B96 6LN, prepared by Plainview Planning Consultants, dated November 2024.

## Background and Main Issues

4. The background to the appeal was discussed at the beginning of the hearing, and the parties were in broad agreement with the summary set out below.

5. P&E Poultry is an existing poultry and sheep enterprise, which was established at the appeal site in 2015 (hereon referred to as the existing enterprise). The appellant explained at the hearing that since the enterprise was established, it has significantly expanded from 30 ewes to 170 ewes and from approximately 5,400 birds to 9,000 birds.

6. Permission for a general-purpose agricultural barn for feed, hay and straw storage, machinery workshop and lambing area, and the construction of an agricultural access track was approved in January 2016[2]. The poultry element of the enterprise relied on mobile poultry sheds, and the Council initially advised the appellant that planning permission was not needed for mobile poultry structures.

7. The appellant confirmed at the hearing that since the enterprise was established all the birds have been dependant on artificial ventilation systems. Therefore, to lawfully operate it would need an appropriate electricity back-up system, as required by Schedule 1, Section 20 of the Welfare of Farmed Animals (England) Regulations 2007. This is to guarantee sufficient air renewal to preserve the health and well being of the animals in the event the principal electricity system fails.

8. To meet this requirement, the appellant explained that a generator was purchased in 2015 and brought onto the appeal site in 2016. Initially, the generator was mobile and was moved alongside the mobile poultry sheds, approximately every 4 months, to allow ground rotation and resting of used areas. The whole of the enterprise is powered by renewable energy and the on-site generator feeds the battery bank system, when needed. As a result, it is in use for approximately 4 hours a day, although can be in use for up to 8 hours a day when weather conditions are not conducive with the production of renewable energy. The generator can come on at any time of the day or night.

9. During 2020, the appellant was advised by the Council that the mobile poultry sheds may require permission due to changes in case law. The appellant subsequently submitted an application for development described as retrospective and new permission sought for agricultural buildings including grain silos, chicken sheds and movable hen houses on 22 December 2021[3] (Hereon referred to as the appeal scheme).

10. In the interim, the Council received a planning application for a proposed live/work unit on a site adjacent to the enterprise[4] (hereon referred to as the application for the live/work unit). This application was approved on 20 December 2021 prior to the application for the appeal scheme being submitted to the Council.

11. Permission was granted for the appeal scheme on 18 May 2022. The permission was subject to the disputed condition, which required within 9 months of the date of the permission, a scheme of noise attenuation measures sufficient to ensure that the generator noise is inaudible on the north-western boundary to be implemented in accordance with details approved in writing with the Local

[2] Application Reference: W/15/02812/PN
[3] Application Reference: 21/02986/FUL
[4] Application Reference: 21/02516/FUL

Planning Authority. If an approved scheme of noise attenuation measures was not implemented within 9 months, the condition required the development permitted to no longer be used.

12. The Council consider the disputed condition to be necessary to preserve residential amenity and prevent unacceptable noise pollution to the detriment of human health. This is because of the active permission for the construction of the live/work unit on the adjacent land. The Council has received a start notice relating to this development and works have commenced on site.

13. The appellant, however, objects to the condition as they consider it to be unnecessary and unreasonable, and to not meet the tests set out at Paragraph 57 of the National Planning Policy Framework (the Framework). The Planning Practice Guidance states that any condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it.

14. In the above context, the main issues in this appeal are:

- whether the condition is necessary to preserve residential amenity and prevent unacceptable noise pollution to the detriment of human health;
- if necessary, whether the condition meets the other tests set out at paragraph 57 of the Framework, that is whether it is relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other aspects; and
- if the condition does not meet the tests, whether it could be re-drafted to meet them.

## Reasons

*Whether the condition is necessary*

15. The disputed condition refers specifically to the generator noise, and it is this aspect of the proposal that the disputed condition seeks to mitigate to ensure the proposal preserves residential amenity and prevents unacceptable noise pollution to the detriment of human health

16. Policy SWDP 31 of the South Worcestershire Development Plan (2016) (Local Plan) requires development proposals to be designed in order to avoid any significant adverse impacts from pollution, including cumulative ones, on, among other things, human health and wellbeing.

17. The Council confirmed at the hearing that it has never received any complaints relating to the noise being produced by the generator on the appeal site. There is only one potential residential receptor that would be sensitive to the noise of the generator, which is the proposed live/work unit, which has not yet been built or occupied.

18. From the evidence before me, it is not entirely clear what the effect of the generator noise would be on future occupants of the live/work unit. This is because the Noise Survey submitted to the Council to discharge the disputed condition focused on compliance with the disputed condition, which seeks to control the level of noise on the north-western boundary of the appeal site and not the level of noise reaching future occupants of the residential element of the live/work unit.

19. The Noise Survey assumes, based on the survey results, that the generator is likely to be audible from the live/work unit once it is constructed and occupied, and that the level of noise is likely to fall into the Lowest Observed Adverse Impact. The Council has not disputed this finding.

20. The Planning Practice Guidance states that the Lowest Observed Adverse Effect Level (LOAEL) is the level of noise exposure above which adverse effects on health and quality of life can be detected. The noise exposure hierarchy table explains that noise falling within the LOAEL can be heard and causes small changes in behaviour, attitude or other physiological response e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. There is the potential for some reported sleep disturbance, and it affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life. The advised action is that these noises should be mitigated and reduced to a minimum.

21. Accordingly, it would be necessary to mitigate the noise arising from the on-site generator to preserve residential amenity and prevent unacceptable noise pollution to the detriment of human health in line with Policy SWDP 31 of the Local Plan. Imposing a condition on the permission for the appeal scheme, such as the disputed condition, would be one way of achieving this. In the absence of any other mitigation measures the disputed condition is therefore necessary.

*Whether the condition is relevant to planning*

22. The appellant accepted at the hearing, with some reservation, that mitigating the noise of the generator on the appeal site is of relevance to planning. However, drew my attention to Paragraph 201 of the Framework, which advises that planning decisions should focus on whether proposed development is an acceptable use of land, rather than the control of processes or emissions.

23. I am mindful that the Framework also seeks to create places that promote health and well-being, with a high standard of amenity for future users, and to ensure that planning decisions avoid noise giving rise to significant adverse impacts on health and the quality of life[5].

24. There was no dispute between the parties that the noise arising from the generator could be addressed through an investigation under the Environmental Protection Act 1990. Nonetheless, I am of a similar view to the Council, that the planning system should be proactive in addressing adverse noise impacts, where possible, rather than leaving this to other control regimes.

25. As the disputed condition seeks to mitigate a potential adverse noise impact, it is therefore relevant to planning in the first instance.

26. I accept that it may be difficult to distinguish the noise made by the generator from other diesel-powered equipment being used on the existing enterprise, such as tractors, especially from locations outside of the appeal site. Nevertheless, this does not render the noise of the generator irrelevant to planning.

[5] Paragraphs 135 and 198 of the Framework.

*Whether the condition is relevant to the development being permitted*

27. I have found that it would be necessary to mitigate the noise arising from the generator located on the appeal site. Whether or not the generator was meant to form part of the application for the appeal scheme, it was identified on one of the submitted plans and approved as part of the permission. Given this, and in the absence of any other mitigation measures, the disputed condition is relevant, in that it is closely connected to the development being permitted.

*Whether the condition is precise and enforceable*

28. Mr Steve Williams of Worcestershire Regulatory Services (WRS) accepted at the hearing, on behalf of the Council, that the requirement of the disputed condition for the generator to be 'inaudible' is imprecise without the subsequent clarification that was provided by WRS to the appellant to help discharge the condition. He explained that the disputed condition should have required an assessment using BS 4124[6]. However, the Council has since disputed this in its response to the appellant's application for costs.

29. Notwithstanding this, in any event, the term 'inaudible' has a clear meaning, that is 'unable to be heard'. While there may be a degree of subjectivity as to whether a noise could be heard depending on who is listening, this does not make the term imprecise. In this case, it is more a question of whether the generator could meet the requirement to be 'inaudible'. Thus, whether this requirement was reasonable. I deal with this later in my decision.

30. In terms of enforceability, it would likely be difficult to demonstrate a breach with the disputed condition or compliance with it using a noise survey. This is because, even if the absolute noise level of the generator was measured below background sound level, this would not guarantee it to be inaudible, as someone may still be able to hear it from the north-western boundary. On my site visit I was able to hear noise being produced from a diesel-powered engine on the appeal site at the entrance to Sarsens on Dogbut Lane. However, I could not be certain that the noise was being produced by the generator, as other diesel-powered machinery was in use at the time of my visit.

31. Nevertheless, these difficulties would not make the disputed condition unenforceable, as a council officer could make an assessment in person and require all other diesel-powered machinery to be switched off.

32. Accordingly, I find the disputed condition is precise and enforceable.

*Whether the condition is reasonable in all other respects?*

33. The Council accepted at the hearing that the consequence to not use any of the structures permitted as part of the appeal scheme in the event of a breach of the disputed condition is unreasonable. The Council also accepted that this consequence, despite not materialising in practice in this case, would place an unjustifiable and disproportionate financial burden on the appellant.

34. Notwithstanding this, the Council explained at the hearing that the disputed condition, as a whole, cannot be unreasonable, as the appellant has applied to and received partial approval of an application to discharge the condition.

[6] British Standards 4142:2014+A1:2019.

Nonetheless, there is nothing before me to suggest that it would not be possible to discharge an unreasonable condition. It is also important to recognise that the appellant was unable to discharge the condition without clarification from WRS regarding the meaning of 'inaudible'.

35. Paragraph 200 of the Framework states existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. It goes on to explain that where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the application should be required to provide suitable mitigation before the development is completed. In these circumstances, the applicant of the new development is known as 'the agent of change'.

36. There was no disagreement between the parties that the existing enterprise was established at the appeal site prior to the application for the live/work unit. Also, that for the enterprise to operate lawfully, an appropriate electricity back-up system would be required, even if the enterprise was connected to mains electricity.

37. Despite suggesting during the appeal process that there would be other appropriate back-up systems available to the existing enterprise, the Council confirmed at the hearing that a generator is a commonly used back-up system for electricity production and its assumption would be that a generator had been used on the appeal site since the enterprise was established. This supports the appellant's case that the existing generator has been on the site since 2016.

38. The Council's position regarding whether it was aware of the use of a generator on the appeal site has evolved during the appeal. However, it accepted at the hearing that, as an organisation, it had been made aware of a back-up generator being used, where necessary, to run the specialist incubators that formed part of the enterprise in 2020[7], prior to the application for the live/work unit being made.

39. Notwithstanding this, the Council contended that, while it considered the live/work unit would be the agent of change with regards to the existing enterprise, this did not include the generator. This was because it considered that locating the generator in a fixed position as part of the application for the appeal scheme rendered it 'new development' that required planning permission.

40. Whether fixed or mobile, formally permitted or not, the generator was an established part of the existing enterprise. Therefore, in this case, the live/work unit was the agent of change, and the application for the live/work unit should have considered the likelihood that noise arising from the generator could have a significant adverse effect on new residents or users. As should it have considered other impacts of the existing enterprise, such as odour. However, the officer report prepared on the live/work unit, which outlines the Council's thinking at the time the live/work unit was assessed, does not consider the impact of any neighbouring land uses on the live/work unit. It only assesses the potential impacts of the live/work unit and there is no mention of the adjacent enterprise.

41. The Planning Practice Guidance advises that the agent of change, in this case the applicant of the live/work unit, will need to clearly identify the effects of existing businesses that may cause a nuisance (including noise, but also dust, odours, vibration and other sources of pollution) and the likelihood that they could have a

[7] Stated in the Design and Access Statement submitted with application reference: 20/00753/FUL.

significant adverse effect on new residents or users. I note that the applicant of the live/work unit made representations on the application subject to this appeal, which indicate they were aware of the generator and the noise arising from its use.

42. There is nothing before me to suggest that it is the responsibility of the existing business to make the Council aware of any possible effects that it could have on new residents or users. To the contrary, it is the responsibility of the Council to ensure that it is provided with enough information to fully assess a planning application, and it could have required the applicant for the live/work unit to submit additional information in line with the advice set out in the Planning Practice Guidance. I appreciate and sympathise that there were no obvious impacts arising from the existing enterprise when the Council officer visited the application site for the live/work unit. However, while not a statutory requirement, the Council could have chosen to consult on the application for the live/work unit more thoroughly.

43. For these reasons, the imposition of the disputed condition places restrictions on the existing enterprise, which the Council have accepted, in part, to be unreasonable. This is the result of the adjacent live/work unit, which was permitted after the enterprise was established. The imposition of the disputed condition therefore conflicts with paragraph 200 of the Framework.

44. In addition, although I have found the term 'inaudible' and subsequently the disputed condition to be precise, it is important to consider whether the appellant would have been able to comply with the requirement for the generator noise to be 'inaudible' at the north-western boundary of the appeal site. Given the need for the generator to be ventilated, I am of the view that a more comprehensive and potentially far more costly scheme of noise mitigation would have been required to meet the requirement.

45. In any event, while it is not uncommon for a condition to control the level of sound at the boundary of the site, Mr Steve Williams of WRS accepted at the hearing that the level of noise required by the disputed condition, should have been based on the level of noise reaching the receptor. Although the Council had reservations regarding this, from the evidence before me, I am of a similar view to Mr Williams. Regardless of tonality, by requiring the noise of the generator to be inaudible at the north-western boundary, the disputed condition limits the noise of the generator to a level over and above what would be necessary to protect the affected residential receptor and comply with Policy SWDP 31 of the Local Plan. The requirement for the generator noise to be 'inaudible' at the north-western boundary is therefore unreasonable.

46. To comply with the disputed condition, the appellant sought quotes for noise mitigation in the form of generator housing to try and make the noise of the generator inaudible as required. The estimated cost of the mitigation is £10,500. While I acknowledge this was a single quote, there is no substantive evidence before me that suggests that it is a gross overestimate of the costs required to install suitable generator housing to comply with the disputed condition. It would also be unreasonable to assume that the appellant would have the skills and knowledge to design and install the mitigation himself. Nonetheless, although I consider this a significant financial burden, there is no substantive evidence before me to demonstrate that the installation of this proposed mitigation or its ongoing maintenance would have impacted the deliverability of the development or the viability of the enterprise.

47. Overall, for the reasons above, the disputed condition is unreasonable in several respects. These include the consequence to not use any of the structures permitted as part of the appeal scheme in the event of a breach, which also places an unjustifiable and disproportionate financial burden on the appellant, and the requirement for the generator noise to be 'inaudible' at the north-western boundary. In addition, the agent of change principle has been misapplied and, as such, the disputed condition has also placed unreasonable restrictions on the existing enterprise.

*Whether the condition could be re-drafted to meet the tests*

48. It would be possible to re-draft the disputed condition to amend the consequence of a breach and the required noise level of the generator so that it was reasonable. At the hearing I circulated a re-drafted condition that addressed both these issues, which neither party raised issue with.

49. Nevertheless, the re-drafted condition would not address the misapplication of the agent of change principle set out at Paragraph 200 of the Framework. Imposing any condition requiring the noise of the generator to be mitigated would be unreasonable in this regard, as the noise mitigation should have been provided as part of the approval of the live/work unit.

50. Accordingly, I have found a condition would be necessary to preserve residential amenity and prevent unacceptable noise pollution to the detriment of human health in line with Policy SWDP 31 of the Local Plan. However, the disputed condition cannot be re-drafted to meet the tests required by Paragraph 57 of the Framework and therefore should not be imposed.

51. I recognise that by not imposing a re-drafted condition the conflict with Policy SWDP 31 of the Local Plan would not be addressed. However, imposing a re-drafted condition would risk undermining Paragraphs 200 and 201 of the Framework and the overarching aim for planning decisions to focus on whether proposed development is an acceptable use of land. It is important to recognise that the existing enterprise, which included a generator, was an acceptable land use prior to the live/work unit being approved. Given this, I afford the Framework meaningful and decisive weight. Thus, in this case, material considerations justify allowing the appeal and removing the condition.

52. As the live/work unit is yet to be constructed, the Council confirmed at the hearing that there is still an opportunity for the applicant to address the noise arising from the generator through the planning process, albeit this could not be required or controlled. There would also be the opportunity for the owner or occupier of the live/work unit to carry out their own noise attenuation measures outside of the planning process. In the event that the live/work unit was not provided with suitable mitigation, any noise arising from the generator considered to be a statutory nuisance to future occupants could be addressed through an investigation under the Environmental Protection Act 1990. Indeed, the Council has accepted that any future odour impacts on future occupants of the approved live/work unit arising from the existing enterprise would have to be addressed in a similar way.

53. In conclusion, the disputed condition is necessary, relevant to planning and to the development to be permitted, enforceable and precise. However, for several reasons it would not be reasonable in all other respects, and in line with Paragraph 57 of the Framework it should not have been imposed. Although many of its

failings could be addressed by re-drafting the wording of the condition, this would not address the misapplication of the agent of change principle. Placing unreasonable restrictions on the existing enterprise, as a result of approving the live/work unit, would undermine the fact that the existing enterprise was an acceptable land use prior to the live/work unit being approved.

**Conditions**

54. In line with the Planning Practice Guidance, I have restated all those conditions that the Council has suggested remain relevant. Condition 4 has been discharged and therefore has not been restated.

55. I am only able to require a programme of archaeological work prior to the additional grain silo being built, as this is the only part of the appeal scheme that is yet to be constructed. The rest of the development forming part of the appeal scheme is retrospective. Given this, I cannot impose a pre-commencement condition relating to the permission as a whole. I have therefore imposed a separate condition for the additional grain silo and reworded the condition regarding the retrospective development accordingly.

**Conclusion**

56. For the reasons above, considering the development plan as a whole and all relevant material considerations, I conclude that the appeal should be allowed. I therefore grant a new planning permission without the disputed condition but retaining those non-disputed conditions from the permission for the appeal scheme that appear to still be relevant.

*Hannah Guest*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT:

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| Mr Sam Eachus BA (Hons), MRICS, MBIAC | Planning Consultant (Plainview Planning) |
| Mr Trevor Olver Beng (Hons), MIOA | Acoustics Consultant |
| Mr Mark Edwards | Appellant |
| Miss Hannah Price | Appellant's Partner |

FOR THE LOCAL PLANNING AUTHORITY:

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| Miss Charlotte Barry BSc, MSc, RTPI Licentiate | Planning Officer Wychavon District Council |
| Mr Carl Brace BSc (Hons), MA, MRTPI | Development Manager Wychavon District Council |
| Mr Robert Smith BSc (Hons), MSc, RTPI Licentiate | Planning Officer Wychavon District Council |
| Mr Steve Williams | Technical Lead Permitting Worcestershire Regulatory Services |

SCHEDULE OF CONDITIONS

1) Unless where required or allowed by other conditions attached to this permission/consent, the development hereby approved shall be carried out in accordance with the information (including details on the proposed materials) provided on the application form and the following plans/drawings/documents:

   Location Plan Rev A 1:1250@A2
   Block Plan Rev A 1:500@A2
   2020-16-01 Rev A Chicken Sheds Type 1 and 2 1:100@A4
   2020-16-02 Rev A Chicken Sheds Type 3 1:100@A4
   2020-16-03 Rev A Chicken Sheds Type 4 1:100@A4
   2020-16-04 Rev A Feed Silos 1:100@A4
   2020-16-05 Chicken Shed 1:100@A4

2) The use of the development hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to v) below:

   i) Within 1 month of the date of this decision a desk-based archaeological assessment (DBA), which includes a historic environment record search covering a 500m radius of the site shall have been submitted for the written approval of the local planning authority.

   ii) In the event that the DBA identifies any notable likelihood of historic remains at the site, within 6 months of the approval of the DBA a programme of archaeological work must be submitted for written approval of the Local Planning Authority and the programme of archaeological work shall contain a timetable for its implementation including for analysis, publication and dissemination of the results and archive deposition.

   iii) If within 15 months of the date of this decision the local planning authority refuse to approve the programme of archaeological work or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iv) If an appeal is made in pursuance of iii) above, that appeal shall have been finally determined and the submitted programme of archaeological work shall have been approved by the Secretary of State.

   v) The approved programme of archaeological work shall have been carried out and completed in accordance with the approved timetable.

   In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3) Prior to the construction of the additional grain silo hereby permitted, a programme of archaeological work, including a written scheme of investigation and a timetable for analysis, publication and dissemination of the results and archive deposition, shall have been implemented in accordance with details previously submitted to and approved in writing by the local planning authority.

4) The materials to be used in the construction of the external surfaces of the additional silo hereby permitted shall match in type and colour those used in the existing silos.