

Appendix 1

- Appeal Reference - APP/W0530/A/07/2053559
 - Planning Reference - S/1048/07/F
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Appeal Decision

Site visit made on 3 December 2007

by **Daphne Mair** BA(Econ), MPhil, MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
7 January 2008

Appeal Ref: APP/W0530/A/07/2053559

Unit J, Broad Lane Industrial Estate, Cottenham, CB4 8SW

- The appeal is made under section 78 of the Town and Country Planning Act 1990, firstly against refusal of permission for operational development and secondly against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the change of use from warehousing to light industrial without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Whitfield Group against the decision of South Cambridgeshire District Council.
- The application Ref S/1048/07/F, dated 18 May 2007, was refused by notice dated 17 August 2007.
- The development proposed (as given on the application form) is installation of extract fan sound attenuators and acoustic enclosure.
- The condition in dispute attaching to planning permission S/1184/74/F dated 21 January 1975 is No 6 which states that:
 - o Condition 6: Machinery shall not be used between the hours of 6 p.m. and 8 a.m. on week days and shall not be used on Sundays and Bank Holidays.
- The reason given for the condition is: To safeguard the interests of other users of land in the vicinity.

Decision

1. I dismiss the appeal.

Procedural Matters

2. The operational development has already occurred and I shall therefore treat this part of the application as for its retention.
3. In the first part of the heading section above I have clarified the intention of the planning application guided by the appellant's letter accompanying the application and also by the Local Planning Authority's representations. I note that the second reason for refusal refers to extending working hours to 07.00 to 20.00 and their statement says "the full application proposes" this. Those hours do not appear on the application form or in any of the documentation supplied to me as accompanying the application. The "grounds of appeal" refers to a letter of 3 July 07 "requesting an increase in normal working hours" but neither that letter nor the "acoustic control plan" (also there referred to) is with the documentation on the appeal file. I shall approach the appeal on my understanding of the appellant's purpose from the documents submitted, i.e.:
 - To vary Condition 6 of the above 1975 permission to allow occasional 24 hour working of machinery and

- To approve details of all internal and external plant and equipment installed after the date of the above 1975 planning permission including extractor fans, air conditioning condenser units, fume extract fan stacks and the acoustic enclosure, as required by condition 3 of the above permission which states: "Power driven machinery shall not be used on the site without the prior consent of the Local Planning Authority".
4. At my visit to the site it was apparent that the plan submitted with the appeal was amended before the Local Planning Authority took its decision. The latter plan was supplied to me after my site visit (no.06/1165.001A). As noted at my site visit the fume cupboard extraction stacks as implemented are not exactly as shown on either plan. I have taken the works as implemented and as recorded in photographs taken on the day of my visit and submitted the day after as being those for which permission is sought.
 5. During my visit all 6 of the fume extraction units were turned on for me but not the air conditioning units within the acoustic cabinets at the rear of the building. Conditions were windy with noise from adjacent trees affecting my subjective impressions.

The Main Issue

6. The main issue is whether the fume extraction units, air conditioning equipment and other plant can be operated within limits that would not seriously harm the living conditions of occupiers of the adjacent mobile home park and in houses nearby.

Reasons

7. There are 6 fume extractor units on the side of the building adjacent to the car park and a bank of large acoustic enclosures across much of the width of the industrial unit at its rear. I saw that the latter encloses numerous air conditioning condenser units and two large cylinders of industrial gases (argon and nitrogen). In a letter supporting the application it is stated that there is no noise generating equipment inside the building.
8. The purpose of both conditions appears to be to ensure that living conditions for nearby residents and perhaps working conditions for other occupiers of the employment area are acceptable. The housing estate and perhaps the mobile home park post date the 1975 permission for the light industrial use.
9. There is no suggestion that occupiers of other industrial units would be harmed by the development and no objection from the Local Planning Authority to the appearance of either the range of acoustic cabinets across the rear of the building or the fume extraction structures. The view of them from nearby dwellings is partly but not wholly obstructed by fencing, vegetation and angle of vision. The structures appeared to me to be of the character and colour that might be expected on an industrial estate and I find no visual objection to them. Whether, as a local resident considers, the acoustic cabinets prejudice the means of escape from the rear of the appeal building because it would now need to be across grassed and sloping ground is a matter to be assessed under other legislation. I find no planning objection to the works on these grounds and now turn to their noise implications for nearby residential occupiers.

10. Chemex which occupies Unit J provides analysis of chemicals and compounds contained within either water borne samples or soil samples. Unit J is subdivided internally and amongst other space uses has discrete laboratory rooms adjacent to the car park and extending to the rear of the building. These have their own fume cupboard extraction systems to ensure cross contamination of samples does not occur. My understanding is that the company needs to be able to run all the fume extraction units during normal working hours (08.00 to 18.00 Monday to Friday) and at least 1 of them at night, with another operating two or three nights per week. Occasionally one or two other fume extraction units may be in use at night. Air conditioning is needed outside working hours when a particular lab space requires abnormal cooling due to extreme external environmental conditions or a process machine is running, the latter not being needed for "normal" night time analysis work. The last Senior Manager to leave the premises is instructed to turn off all non essential equipment before leaving.
11. To satisfy condition 3 the "power driven machinery" should not make such noise that it would harm living conditions nearby at any hour and secondly (with regard to condition 6) to ensure that the desired occasional 24 hour working would ensure that conditions for people living in nearby Courtyard Way and Cottenham Park mobile home park allow for quiet relaxation in the evening and to enable people to get off to sleep and to avoid their being disturbed once asleep at night.
12. All elements of the development as implemented must therefore ensure acceptable levels of noise at the nearby dwellings taking account of their method of construction, the desire to sleep with windows open in warm weather and to use gardens as outdoor rooms during the evenings in summer.
13. In addition to meeting noise limits under test conditions it will be necessary to ensure that the equipment and acoustic cabinets are maintained to ensure that continues to be so. I saw that one of the doors to the acoustic enclosure of the air conditioning units and liquid gas cylinders was difficult to close. If left ajar its performance would be compromised. I have noted that the acoustic consultant in his letter of 9 May 2007 refers to one of the units producing noise with a noticeable higher frequency component indicating a need for maintenance rather than attenuation, which since has been undertaken. It may be that new conditions requiring that the former be kept always shut when not in use and that all the plant and machinery be maintained in accordance with the manufacturers' instructions would be sufficient to address these matters. The timing of the refilling of the gas vessels could also be addressed by a condition to avoid undue disturbance arising.
14. I turn now to the acoustic evidence submitted with the appeal. To apply a condition such as that proposed limiting noise from Chemex "at the nearest dwelling" to a free field level of 35dB(A) would require me to both accept that was the appropriate level and to have confidence that it could be achieved.
15. On the first, the World Health Organisation Guidelines are referred to by a neighbour and I note the e-mail from Dr Rokho Kim of WHO with its quotation from those guidelines that "where noise is continuous, the equivalent sound pressure level should not exceed 30 dB(A) indoors, if negative effects on sleep are to be avoided. When the noise is composed of a large proportion of low

frequency sounds a still lower guideline value is recommended because low frequency noise (e.g. from ventilation systems) can disturb rest and sleep even at low sound pressure levels. It should be noted that the adverse effect of noise partly depends on the nature of the source." That level would imply an outside sound level about 1m from the dwelling façade of 45dB LAeq to allow people to sleep with windows open.

16. Appendix 3 to the appeal statement indicates that the above WHO guideline figure could be achieved at "the complainant's dwelling". I have inferred that the latter is at 15 Courtyard Way. The acoustic evidence submitted (dated 9 May 2007) does not specify the equipment to which it relates but I have inferred from the reference to "all six units" that the measurements refer to operation of the six fume extraction units. That information does not describe the character of the noise. My impression was that it is continuous when in operation. The sound I heard did not seem to be of a particularly low frequency. The table of "sound pressure levels measured 3m from façade of dwelling closest to Chemex" does not specify which dwelling that is. The mobile home at 2 Monet Way appeared to me slightly closer than 15 Courtyard Way to the acoustic cupboards enclosing the air conditioning units and gas vessels.
17. I have found no specific assessment of the noise from the air conditioning units or the occasional sudden loud hiss from the industrial gas cylinders one of which occurred on my visit. Appendix 3 refers to "all plant running" but does not specify that this included the air conditioning units. I understand that those operate only when temperatures are raised to a certain level but I have not been told what that is or how frequently they operate. It may be that the acoustic cabinet structure is capable of adequately attenuating the noise from those sources but I have found no specific reference to this on the file. The e-mail from the Environmental Health Officer to the resident of 15 Courtyard Way dated 13 July 2007 does not specify that the air conditioning was running when he made his assessment that no statutory nuisance arose from the development. Even if that were so, it does not necessarily indicate the acceptability for planning purposes of the new noise sources into an area.
18. There is also no sign that specific account has been taken of the fact that several of the nearest dwellings are mobile homes where the construction materials are unlikely to have the mass and hence sound attenuation characteristics of masonry dwellings. In my view it would be necessary to test this to judge the acceptability or not of the equipment's noise characteristics.
19. Information on these matters is particularly important as the conditions when the air conditioning units come into operation outside normal working hours may well be the same "extreme external environmental conditions" (appellant's letter of 11 May 2006) as when nearby residents wish have their windows open or use their gardens into the evening. The sudden loud hiss also may or may not have been taken into account and may or may not be adequately mitigated by the cabinets. I simply do not have the clarity and detail of information to judge. The location here is away from the main road through the village. From my own observations and letters of representation it is clear that people are used to this as a quiet employment area within a quiet village. The acoustic report does not appear to me to take full account of the existing nearby noise climate. In such areas, as paragraph 18 of Planning Policy

Guidance 24 advises, new noises can be especially disruptive. Given the rural and quiet character of the locality I consider that nearby residents should be able to enjoy quiet conditions between 18.00 and 08.00 on weekdays and at all times on Sundays and Bank Holidays.

20. Bearing in mind all the above factors it appears to me that an indoor noise pressure not exceeding 30dB(A) would be the appropriate and necessary figure to achieve at the closest dwellings during the above times. Any test of that should be clear and specific that it was done with all the fume extractor units and air conditioning units and any other plant running and had taken account of any sudden hisses from gas vessels.
21. I have taken into account the substantial investment in the equipment and that 40 jobs are at stake at what is described as one of the leading contamination analysis companies in Europe. I have also noted that enforcement action has begun and a summons has been issued. Those are weighty considerations. It may well be that an acceptable noise level can be achieved. However without clarity on all the above information I cannot be confident in assessing whether noise from the fume extraction units, the air conditioning units and the gas cylinders would be controlled within an acceptable level when experienced at the nearest masonry and mobile home dwellings.
22. I have considered all the representations, the aims of Policies ET/5 and NE15 of the adopted "Development Control Policies" Development Plan Document and those of national guidance in Planning Policy Guidance 4 and 24 and Circular 11/95. In the absence of sufficiently clear, specific and comprehensive evidence on all the above matters (which otherwise may have led me to "discharge" condition 6 but impose a condition along the lines set out at Annex 4 paragraphs 16 and 17 of PPG24), I consider that Condition 6 remains reasonable and necessary and that the approval needed by Condition 3 should not be given for the external equipment and acoustic enclosure. The appeal should be dismissed.

Daphne Mair

INSPECTOR

