



Appeal Decision

Site visit made on 25 September 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2019

Appeal Ref: APP/E2001/W/19/3231553

Transwaste Recycling and Aggregates Ltd, Melton Waste Park, Gibson Lane, Melton, East Yorkshire HU14 3HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Transwaste Recycling and Aggregates Ltd against the decision of East Riding of Yorkshire Council.
 - The application Ref 18/02749/CM, dated 13 August 2018, was refused by notice dated 23 April 2019.
 - The application sought planning permission for the construction of a waste transfer facility including new office, stores, waste sorting buildings, hardstanding areas and planted bund without complying with a condition attached to planning permission Ref DC/05/06302/STPLF/STRAT, dated 17 January 2006.
 - The condition in dispute is No 26 which states: *The opening hours of the site for operations sales and deliveries shall be 06:00 to 18:00 hours Monday to Friday, 06:00 to 16:00 hours on Saturdays and 08:30 to 15:00 on Sundays and Bank Holidays, unless otherwise agreed in writing with the local planning authority. Essential repairs and maintenance of plant and equipment on site shall be permitted outside of these hours until 20:00 hours. No deliveries shall be accepted or leave the site outside of these hours.*
 - The reason given for the condition is: *This condition is imposed to protect the amenity of neighbouring properties and residents in the vicinity of the site.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of nearby residents with particular regard to noise disturbance.

Reasons

3. The appeal site is an operating waste processing and transfer facility. It occupies a large flat area of land to the west of Gibson Lane. The area is predominantly industrial with a number of other large premises to the north, south and east. These include, amongst other things a chemical manufacturing firm, a timber merchant, a packaging company and a number of storage and distribution centres. There is a small row of single storey terraced housing to the north of the appeal site, separated therefrom by a railway line. A barrier

controlled vehicular level crossing allows Gibson Lane to cross the line. This is located south of the aforementioned housing. The appeal scheme seeks to essentially vary one of the controlling elements of a condition imposed on a previous planning permission, having the effect of permitting 24 hour operations within the site but retaining the prescribed hours for vehicular deliveries to and from it.

4. The area around the Gibson Lane houses is far from what a reasonable person would call quiet given the number and breadth of, in some cases, fairly heavy industrial uses in relatively close proximity. Traffic is a near constant along Gibson Lane itself and there is some background road noise emanating from the A63 to the north of the appeal site. Some vehicles passing the Gibson Lane dwellings serve other operations further south than the appeal site and comprise, in the main, articulated HGVs. Anecdotal evidence suggests that other operations along Gibson Lane do not have restrictions on their operating hours.
5. With the applicant seemingly agreeable to deliveries to the site remaining restricted as they currently are the focus of my attention is therefore operations within the site, namely those associated with the processing of material once it has been delivered. Whilst some waste processing is internal to numerous buildings my experience of the site during my site visit was one of a busy yard based operation. Noise sources, amongst other things, tended to be vehicle reversing sirens, conveyor belts and the dropping of materials and the use of a mechanical digger style bucket mounted to the front of a vehicle to both transfer waste materials from clamps to processing areas and to keep the hard surfaced yard free from loose material. It is activities like these, should the site operate within its confines 24 hours per day, that would emit noise during night time hours.
6. I note the findings of the appellant's noise report which seems to indicate that the increase in noise would not be significant. Indeed, the report explains the sources of the additional noise, referring to certain items of plant operating in the yard during the night time hours that were assessed over two consecutive days in early October 2018. Be this as it may, there are some matters which give me cause for concern.
7. Firstly, an existing condition imposed on the extant planning permission for the site's operation as I have set it out above effectively requires operations at the site to cease completely during night time hours. Thus, there should be, in theory, little to no noise emitting from the site so using some of the noise sources measured from the site as something of a starting point or context to the potential 'new' sources explained in the evidence and my preceding paragraphs is somewhat misleading.
8. Secondly, and notwithstanding the above, it is the type of noise that could lead to a nuisance. As far as I can see when comparing the appeal site to others it is one of the few that is for a substantial part a yard operation where others are mostly internal and the use of scraping buckets for clearing and loading can be the source of echoing noise that could travel, particularly at a time when migratory noise from other local main roads may dissipate. Similarly, the use of audible reversing warnings can be a higher pitched and piercing sound, capable of disrupting sleep. I appreciate that the appellant has suggested conditions to limit the use of certain machinery during night time hours and

disengage reversing warnings, but I have concerns as to how such conditions could be reasonably enforced without putting an unreasonable burden on local residents to report breaches.

9. As I have alluded to above, the area is far from a quiet one and it seems little doubt that local residents would be well used to some form of noise at most times of the day. They live fronting a fairly busy single carriageway road in arguably an industrial area but it is important to bear in mind that the operation of the appeal site during night time hours would be in addition to existing noise and not instead of it, the type, occurrence and frequency of which they would be less used to and thus by which they would be more likely to be disturbed.
10. I am mindful of the location of the nearby railway line. Evidence suggests, again anecdotally, that this carries freight as well as passenger trains, the former of which operate through the night. There are no doubt noises and vibrations that emanate from the line as well as the audible automatic barriers that operate at its crossing with Gibson Lane. The audible crossing warning is however a low pitch to what to my mind tend to be more higher pitched reversing warnings, my views on which I have set out. In addition, the operation of the trainline is a noise source that existing residents will be well used to during the night on the perhaps more random times a freight train passes. It is perhaps important to reiterate in this context that noise emanating from the night time operation of the appeal site would be in addition to, and arguably more constant than that from the railway line.
11. The cessation of deliveries to and from the appeal site would ensure that a number of vehicles would not be on the road serving it during night time hours. This would accordingly reduce the number passing the Gibson Lane houses and likely therefore the noise that they would create. As I have said however, living on a relatively busy road with other unrestricted operations using large vehicles it is arguably a background noise that residents will be more used to through the night. I am not persuaded therefore that the lack of vehicles serving the appeal site during the night would be sufficient to off set the potential effects of the appeal proposals.
12. The Council's Environmental Control Team have advised that an acoustic barrier at the northern boundary of the appeal site would assist with mitigating the noise occurring from the site and ease the effect thereof on nearby Gibson Lane residents. The Council's planning officer is agreeable to this in their presentation to the planning committee. This is however in the context of the findings of the noise report and existing noise emitting equipment which, as I have explained, I have some concerns with. Without a detailed design in place to show how types and level of noise would be reduced to an acceptable level, I am not sufficiently comfortable to permit the operation of the site through the night. In essence, it would be a more appropriate approach to consider in detail the type and design of such a system and how it would work to then be content that it would satisfactorily alleviate potential effects before permitting an operation that gives rise to them. As far as I can see, I have no such detailed design or technical specification to consider as I determine the appeal.
13. I note the business case presented by the appellant in that it would suit their growth to be able to process material as a round the clock operation. I attach some weight to this from an economic development perspective. However,

people still have to live in reasonably close proximity to the appeal site and in my view the effects on their lives through the possibility of disturbed rest could be far reaching and long lasting should the appeal succeed as it currently stands. This factor therefore, again in my view, attracts the most weight in any balance.

Conclusion

14. For the reasons I have set out above, the appeal scheme would result in harm to the living conditions of neighbouring occupiers through noise disturbance. This harm would result in conflict with Policy W2 of the Joint Waste Local Plan¹ and Policy ENV1 of the East Riding Local Plan². Between them and amongst other things, these policies seek to ensure that detailed planning considerations are taken account of such as having regard to the impact of new development on local amenity, existing and proposed properties. There would also be conflict with paragraph 127 of the Framework³ which explains that developments should create safe places with a high standard of amenity for existing and future users.
15. The existing condition is reasonable and necessary in the interests of the living conditions of nearby residents with particular regard to noise disturbance. The appeal is therefore dismissed.

John Morrison

INSPECTOR

¹ Joint Waste Local Plan for Kingston Upon Hull and the East Riding of Yorkshire 2004

² East Riding Local Plan Strategy Document 2016

³ The National Planning Policy Framework 2019