
Appeal Decision

Site visit made on 14 November 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 14th December 2016

Appeal Ref: APP/M9496/W/16/3157101

Rutland Arms, Calver Road, Baslow, Derbyshire DE45 1RP

- 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 Peter Brett Associates against the decision of the Peak District National Park Authority.
 - The application Ref NP/DDD/0216/0116, dated 12 February 2016, was refused by notice dated 3 June 2016.
 - The application sought planning permission for change of use and alterations to external elevations to create Class A1 convenience store with associated servicing, refuse, plant and parking areas without complying with a condition attached to planning permission Ref NP/DDD/0115/0040, dated 22 October 2015.
 - The condition in dispute is No 8 which states that:
 - *"The hours of deliveries to and refuse collections from the shop hereby permitted shall be restricted to between the hours of 08:00 to 18:00, Monday to Fridays, 09:00 to 13:00 on Saturdays and no deliveries on Sundays and Bank Holidays."*
 - The reason given for the condition is:
 - *"In the interests of amenity and to prevent undue disturbance to existing residential properties".*
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Decision

1. The appeal is allowed and planning permission is granted for change of use and alterations to external elevations to create Class A1 convenience store with associated servicing, refuse, plant and parking areas at Rutland Arms, Calver Road, Baslow, Derbyshire DE45 1RP in accordance with the application Ref NP/DDD/0216/0116, dated 12 February 2016, without compliance with condition No 8 previously imposed on planning permission Ref NP/DDD/0115/0040, dated 22 October 2015, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Peter Brett Associates against the Peak District National Park Authority. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission has been granted for the change of use and alterations to the external elevations of the vacant public house to create Class A1¹

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

convenience store with associated servicing, refuse, plant and parking areas. The appeal relates to an application seeking removal of condition 8 attached to planning permission Ref NP/DDD/0115/0040 which restricts hours of delivery and refuse collection to the premises. The appellant has suggested an alternative condition to allow deliveries and refuse collection between the hours of 0700 to 2000 Monday to Saturday and 1000 to 1600 on Sundays and Bank Holidays. I, therefore, deal with this appeal under section 73 of the Town and Country Planning Act 1990 and consider it accordingly.

4. The existing building lies within the Peak District National Park, Baslow and Bubnell Conservation Area and the setting of Baslow Bridge, a Grade I listed building. It is common ground between the main parties that the proposal would not harm the character and significance of the designated heritage assets given that planning permission has been granted for change of use, extensions and alterations to the existing building. Based on the evidence before me and my observations of the site, I have no reason to take a different view. However, the National Park Authority refused the application due to concerns relating to the effect of extended delivery and refuse collection hours on the living conditions of occupiers of neighbouring properties.
5. Therefore, the main issue is whether the disputed condition is reasonable and necessary with regard to the effect of the development on the living conditions of occupiers of neighbouring properties, in terms of noise and disturbance.

Reasons

6. Saved Policy LC4 of the Peak District National Park Local Plan (LP), adopted March 2001, states that where development is acceptable in principle, it will be permitted provided that, amongst other things, it respects, conserves and where possible enhances landscape, built environment and other valued characteristics of the area. In this regard, it requires particular attention, to amongst other matters, the amenity, privacy and security of the development and of nearby properties.
7. The LP significantly pre-dates the publication of the National Planning Policy Framework (the Framework). However, Saved Policy LC4 is consistent with the Framework in so far as it requires that decision-making always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings². Saved Policy LC4 is, therefore, afforded considerable weight in that respect.
8. Having regard to the above, the Framework also advises that the planning system should prevent both new and existing development from contributing to or being put at unacceptable risk from, amongst other things, noise pollution³. The Framework also states that planning decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development. Planning decisions should also aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through use of conditions⁴.
9. **The Government's Planning Practice Guidance (PPG)** advises that, in determining noise impact, decision-takers should consider whether or not a

² Framework, Paragraph 17

³ Framework, Paragraph 109

⁴ Framework, Paragraph 123

significant adverse effect or an adverse effect is occurring or likely to occur and whether or not a good standard of amenity can be achieved⁵.

10. To assist such an assessment the PPG sets out a noise exposure hierarchy. Situations where there would be an observed adverse effect should be mitigated and reduced to a minimum. Situations where there would be a significant observed adverse effect should be avoided. The PPG recognises the subjective nature of noise and does not relate the noise exposure hierarchy to any measured noise levels.
11. The appeal premises is located in a prominent position adjoining Calver Road (A623) at its junction with Baslow Bridge which crosses the River Derwent to the west. The section of the A623 where the appeal site is located forms part of a main route through the Peak District National Park between Manchester and Chesterfield.
12. The immediate surroundings consist of mixed residential and commercial properties, with residential properties on the opposite side of Calver Road. A church, shops and a restaurant are located along Calver Road to the south, with residential properties on Bubnell Lane to the west on the opposite side of the River Derwent. The majority of nearby commercial uses are currently open during the daytime and closed in evenings. However, signage at the front of the restaurant indicates opening hours of between 1900 and 2300 at weekends. There are bus stops in close proximity to the site on both sides of the road and a bus depot nearby to the north.
13. At the time of my visit during the late morning, I observed that the A623 where it passes the site is a busy route with significant traffic flows in both directions including a significant proportion of heavy goods vehicle (HGV) movements and some buses. The prevailing noise environment that exists for residential properties along Calver Road is, therefore, heavily influenced by traffic noise, which was evident along the frontage of houses on the opposite side to the appeal site. When taking account of the presence of the A623 and the nearby bus depot, it is reasonable that there would be significant levels of traffic noise for much of the day, including early mornings and late into evenings.
14. The appellant has indicated that the operation of the Class A1 convenience store would consist of 2 main deliveries a day in standard 10.5m rigid vehicles. Delivery timings would vary but all would be made between the hours of 0700 - 2000 Monday to Saturday and 1000 - 1600 on Sundays and Public Holidays. Delivery dwell times would typically be 30-40 minutes, with much shorter times for refuse collection. All other deliveries would be via external suppliers and typically in smaller vehicles (indicated as an average of one per day).
15. Deliveries to and refuse collection at the site would utilise an existing access from Calver Road via an existing car park to the north of the building, which previously served the public house, and a service yard adjacent to the building. The existing service yard is enclosed by a wall that is approximately 1m high when viewed from Calver Road. However, land levels decrease within the site. Consequently, the service yard is approximately 1m lower and therefore, the boundary treatment is approximately 2m in height relative to the service yard.

⁵ PPG, Noise, Paragraph: 003 Reference ID: 30-003-20140306, Revision date 06 03 2014

16. To assess the impact of the proposed hours of deliveries and refuse collection on the site and its surroundings, including the existing houses opposite, the appellant carried out assessments in accordance with BS4142:2014⁶. The methodology within the British Standard requires background noise levels to be established. **BS4142:2014 advises at paragraph 8.1.2, 'Where possible, measure the background sound level at the assessment location(s). If this is not possible measure at an alternative location where the residual sound is comparable to the assessment location(s). A detailed justification for considering this should be reported'.**
17. A noise impact assessment report, dated February 2016, undertook a daytime and night-time fully automated environmental sound monitoring with calibrated equipment from 1100 on Friday 22 January 2016 to 1230 hours on Tuesday 26 January 2016. However, the monitoring position was taken at a single location to the west of the public house. This would not be a position that would be representative of background noise levels at the nearest residential properties to the east of the building. Background noise levels in that monitoring position would be unduly influenced by the proximity to the River Derwent and the increased distance from residential properties. This view is supported by concerns expressed by the National Park Authority and interested parties, including a letter from Acoustic Design Technology (ADT) dated 6 April 2016. Consequently, I give little weight to the results of the January 2016 survey.
18. In response to concerns relating to the original noise impact assessment report, the appellant submitted a revised noise assessment report, dated May 2016 and an accompanying technical note. This evidence included results from manned sound surveys with calibrated equipment undertaken on Saturday 23 April, Sunday 24 April and Monday 25 April 2016 at a position approximately 25 metres to the north of the nearest residential property (The Old Forge) at the opposite end of the terraced row on a 1.4m high tripod. Concerns have been expressed in terms of inconsistencies in Table 5.4 of the May 2016 report relating to the monitoring dates stated being after the **submission of the report. However, I accept the appellant's explanation that** Table 5.4 reflects typographical errors, as the respective days of the week correspond with dates in April 2016 rather than May 2016 as set out in a Technical Note prepared by the appellant dated 28 September 2016.
19. Additional concerns have been offered in terms of whether the monitoring position in the April 2016 surveys was a truly representative point relative to the nearest noise sensitive properties. However, correspondence between the appellant and the **District Council's** Environmental Health Officer acknowledged the restrictions on being able to take measurements from an ideal representative point. Furthermore, the National Park Authority has not provided any alternative monitoring evidence of its own. A peer review submitted by the appellant and undertaken by Acoustics Central within a memorandum dated 30 September 2016 identified that the approach would be suitable with respect to BS 4142:2014.
20. During my visit, I detected little difference in levels of traffic noise experienced at the front of The Old Forge when compared to the opposite end of the terraced row at the front of Jasmine Cottage where monitoring by the appellant

⁶ BS4142:2014 - Methods for rating and assessing industrial and commercial sound

was undertaken. It is reasonable that there could be an influence on background noise levels at different times of the day given that the monitoring position is closer to the bus depot. However, the length of the monitoring periods undertaken, the limited duration of buses accessing and exiting the depot and the use of the lowest end of the range of background noise levels for assessment limits the influence of noise from the bus depot. I, therefore, consider that the data obtained from surveys in April 2016 would be representative of background noise levels for nearest noise sensitive properties.

21. The revised noise impact assessment report dated May 2016 indicates that typical background sound levels during the period of the survey were in a range of between 46-55 dB $L_{A90,15mins}$, with the lower end of the range experienced at 0700 on Saturday 23 April 2016 and at 1945 on Monday 25 April 2016. Appendix B indicates a general trend of the lowest background sound levels of 48 dB $L_{A90,15mins}$ and below, being identified during the periods from 0700-0800 and 1900-2000 on Saturday 23 April 2016 and from 1830-2000 on Monday 25 April 2016. These monitoring times relate to part of the extended delivery times proposed, which are currently restricted by the condition subject to this appeal. As such, I consider that 46 dB $L_{A90,15mins}$ would be a reasonable benchmark for the worst case scenario of background sound levels to undertake the BS 4142: 2014 assessment rather than 47 dB $L_{A90,15mins}$ as selected by the appellant.
22. The particular noise arising from activities associated to deliveries and refuse collection, to which the National Park Authority and interested parties have expressed concern, are the type that could cause annoyance and disturbance in certain circumstances. Particular reference is made to the unloading and moving of wheeled trolleys that could occur up to a maximum of 13 times an hour with an individual noise rating at its highest of 89 dB identified by the **appellant's evidence**. There would also be more limited occurrences of lorry movements, doors slamming, reversing alarms, moving bins to and from a refuse collection vehicle and hydraulic lift of refuse bins, which would have individual noise ratings in the range of 82 - 93 dB.
23. Notwithstanding the above, the individual noise rating of individual activities can be misleading in terms of the effect on the living conditions of occupiers of neighbouring properties. This is particularly the case in terms of the proposal, where noise associated to road traffic would be experienced in closer proximity to the properties than activities relating to deliveries and refuse collection at the appeal site. In this respect and taking account of acoustic features such as boundary walls, a character correction of individual noise ratings is required to obtain a rating level associated to deliveries and refuse collection for the purpose of assessment relative to BS4142: 2014.
24. The original noise impact assessment dated February 2016 identified a rating level for deliveries and refuse collection of 52 dB $L_{Ar,1hour}$. The noise impact assessment dated May 2016 reduces the noise rating level to 49 dB $L_{Ar,1hour}$ based on a reduction to a single delivery and single refuse collection within each 1 hour period. In this regard, the frequency of deliveries can be controlled separately by the Delivery Management Plan required by Condition No 11 of the existing planning permission. The adjustment of the rating level has been subject to peer review by Acoustics Central and was considered

justifiable for assessment of impact relative to BS 4142:2014. I have no substantiated evidence before me which would lead me to a different view.

25. The worst case scenario of background sound levels monitored of 46 dB $L_{A90,T}$ and a combined rating level of 49 dB L_{Aeq} at the receptor, identified as the first floor of The Old Forge / Japonica Cottage / Jasmine Cottage, approximately 20 - 22 m to north east of the proposed unloading area, indicates that the rating level would be +3 dB. The difference between the rating level and background sound levels is below the recommendation of +5 dB which BS 4142:2014 indicates is likely to be an indication of an adverse impact, depending on the context.
26. The ADT letter dated 6 April 2016 states that an alternative 24 hour environmental noise survey was undertaken in a location 1m from the first floor window of The Old Forge. ADT identify that a background noise level of 45 dB $L_{A90,1hour}$ was measured in the last hour of the proposed delivery period (1900 to 2000 hours) and that a predicted rating level of 52 dB $L_{Ar,1hour}$ would, therefore, exceed the background level by 7dB. However, I treat the evidence in the ADT letter with caution and the weight given is limited by the minimal information provided relating to the noise survey and rating level assessment. This includes an absence of details of identified survey day and dates and relating to calibration of equipment. In any case, a calculation based on a background level of 45dB $L_{A90,1hour}$ at a rating level of 49 dB L_{Aeq} which I consider to be appropriate, would not alter my findings.
27. Further to the periods when background noise levels would be lowest, Appendix B of the noise impact assessment report dated May 2016 also identifies background sound levels during the delivery times proposed of 0700-0800 and 1800-1830 on a Monday, 1300-1900 on a Saturday and 1000 to 1600 hours on a Sunday. The background sound levels monitored during these periods were considerably higher than the worst case scenario identified in the assessment. In some cases the background noise level was little different or exceeded the rating level of noise associated with deliveries and refuse collection.
28. I have no reason to consider that the prevailing noise environment would be significantly different on Tuesdays to Fridays compared to an assessment undertaken on a Monday. Similarly, I have no evidence before me which would suggest that noise levels on Bank Holidays would be considerably different to those experienced during the same hours on a Sunday.
29. Having regard to the above and the PPG noise exposure hierarchy, I would categorise the worst case scenario effect of noise during the delivery and refuse collection periods proposed to be noticeable and not intrusive, with no observed adverse effect. This view takes account of the context of the site and its surroundings, which includes acoustic screening offered by existing boundary walls and lower land levels of the service area, together with the intervening presence of traffic noise associated to Calver Road. The internal living environment of neighbouring properties provided by existing windows and building fabric would also provide additional noise insulation.
30. The noise would be audible at times when background levels are at their lowest and would slightly affect the acoustic character of the area. However, the extent of the change would not be such that it would affect the health or quality of life of residents or cause a change in behaviour, even in warmer

weather when windows are likely to be opened for ventilation. The noise would be at times when a noise free environment would not be experienced, could not reasonably be expected and when it would not unduly disturb the sleep of the occupiers of neighbouring properties. In addition, the proposed deliveries on a Sunday would not have an adverse effect in terms of noise and disturbance to periods of worship at the nearby church, given the service yard is acoustically screened from this aspect by the existing building.

31. In reaching the above findings, I have taken into account that historically the nearby houses and church would have been subject to noise associated with the use of the public house, including customers arriving and leaving and vehicles using the car park throughout the day and into late evenings on each day. The use of the premises as a public house would also have been subject to delivery vehicles servicing the pub and the associated noise from external unloading in the service yard. In this respect, the occupiers of neighbouring properties would likely have experienced greater levels of noise than the existing background levels monitored at different times of each day.
32. It is reasonable that delivery activities associated to a public house would have been less frequent than associated to a Class A1 convenience store. Nevertheless, it is my understanding that use of the building as a public house was not subject to restrictions in terms of opening hours or delivery times. The fallback position of a drinking establishment being re-established would, therefore, have potential to generate noise, both earlier in mornings and later in evenings than the proposed delivery hours before me.
33. In addition, the extant planning permission did not impose restrictions on the opening hours of the Class A1 convenience store and therefore, additional noise generation above existing background levels could take place in the mornings, during the day and late into evenings associated with customers and vehicles. The fallback positions of noise arising from the implementation of the planning permission or the alternative of a drinking establishment are, therefore, attributed significant weight.
34. Drawing together the evidence, I consider that the existing restrictions on delivery and refuse collection hours between 0700-0800 and 1800-2000 on Mondays to Fridays, 0700-0900 and 1300-2000 on Saturdays and for no deliveries on Sundays and Bank Holidays, as imposed by Condition No 8, are not necessary to prevent an unacceptable impact on the living conditions of occupiers of neighbouring properties in terms of noise and disturbance.
35. Having regard to the above, the appellant has indicated that as the building is not a specified building and is no longer listed as a community asset, the premises have a fallback position of permitted development rights under Schedule 2, Part 3, Class A of the GPDO⁷ for change of use of the building from Class A4 (drinking establishment) to Class A1 (shops). Such an approach would allow the premises to operate without limitation on deliveries or refuse collection.
36. Nonetheless, the condition subject to this appeal relates to a development granted planning permission that includes extensions and alterations to the building that could not be otherwise undertaken through permitted development rights. Consequently, the extant planning permission would be a

⁷ The Town and Country Planning (General Permitted Development) (England) Order 2015

more intensive use of the property than the fallback position afforded by permitted development rights. In this respect, controls on delivery and refuse collection hours would be necessary to prevent an unacceptable impact on the living conditions of the occupiers of neighbouring properties in terms of noise and disturbance at times when a quieter living environment would reasonably be expected. However, given my previous reasoning, this should be in the form of a condition which reflects the hours of delivery and refuse collection proposed that are supported by the evidence before me.

37. Condition No 7 of the planning permission includes additional restrictions that would also provide reasonable controls in terms noise from plant and equipment. Similarly to Condition No 11, these restrictions appropriately supplement a restriction on delivery hours in preventing an adverse impact on the living conditions of occupiers of neighbouring properties, and the conditions are capable of being repeated if the appeal is allowed.
38. I conclude that the disputed condition is not reasonable and necessary in the interest of preventing a harmful effect on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance. However, a condition to control the hours of delivery and refuse collection to those proposed by the appellant, based on evidence which justifies the periods within which harmful noise and disturbance would not occur, is reasonable and necessary. Such a condition would ensure that the development complies with Saved Policy LC4 of the LP and the Framework in terms of ensuring a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

39. Interested parties have raised concerns with respect to highway and pedestrian safety relating to the extension of delivery and refuse collection times at the site. However, the access and car parking arrangements are existing and there were no objections in this respect from the National Park Authority. In addition, the Highway Authority advised that the extension of time does not conflict with peak hour flows on the highway network. Furthermore, the Delivery Management Plan required by Condition No 11 includes controls on the size, timing and routing of delivery vehicles. I, therefore, consider that the proposal would not have an unacceptable impact on highway and pedestrian safety.
40. Policy LS1 of the LP requires shops to have adequate facilities and access for the storage and disposal of goods, waste, and delivery of stock. The evidence submitted indicates the intention to increase frequency of deliveries due to limited storage space to support the viability of the business model of the prospective occupier. Nevertheless, the layout of the development would be unaffected by the proposal before me and was granted planning permission based on the storage space available. In such circumstances, the proposal does not conflict with Policy LS1 of the LP.
41. There is no substantiated evidence before me that an extension to hours of delivery and refuse collection would have an adverse impact on visitor numbers to Baslow or the Peak District National Park.

Conclusion

42. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

43. The advice contained within the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In allowing this appeal and granting planning permission I have considered the conditions imposed relating to planning permission Ref NP/DDD/0115/0040. As I have no information before me regarding the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant having regard to the advice contained within paragraph 206 of the Framework and the guidance contained in the PPG. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
44. Given my conclusion that the extended delivery hours would be acceptable, Condition No 8 has been altered to reflect application Ref NP/DDD/0216/0116 in restricting deliveries to between the hours of 0700 to 2000 on Mondays to Saturdays and 1000 to 1600 on Sundays and Bank Holidays only.

Gareth Wildgoose

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from 22 October 2015.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with amended plans T63-0307C, T63-0306D, T63-0302D, T63-0304E, and T63-0305B.
- 3) All new stonework shall be in natural gritstone faced, coursed and pointed to match the existing stonework.
- 4) Prior to the installation of any windows, full details of their precise design, including any glazing bar detail and external finish, shall be submitted to and approved in writing by the National Park Authority. Once approved the development shall thereafter be carried out in accordance with the approved specification and shall be permanently so maintained.
- 5) Prior to the building being taken into the approved use precise details of the finish of the blanking to the windows that are to be obscured shall be submitted for written approval by the Authority. Once approved the blanking of the windows shall thereafter be carried out in accordance with the approved specification and shall be permanently so maintained.
- 6) The development, the subject of the application, shall not be commenced until details of the position, intensity, direction, spread of luminance and shielding of external light sources has been submitted to and approved in writing by the

- National Park Authority and thereafter maintained in accordance with the approved scheme throughout the lifetime of the approved development.
- 7) Prior to the installation of any external refrigeration, air conditioning, or other motors or fans a noise survey shall be undertaken, detailing existing background noise levels as well as the noise levels of the proposed installations. This shall be submitted to and approved in writing by the National Park Authority prior to any installations being undertaken, subject to any amendments or mitigation measures considered necessary to make the installation acceptable. Once approved all installations undertaken thereafter shall be in full accordance with the approved scheme.
 - 8) The hours of deliveries to and refuse collections from the shop hereby permitted shall be restricted to between the hours of 0700 to 2000 on Mondays to Saturdays and 1000 to 1600 on Sundays and Bank Holidays only.
 - 9) Access visibility splays and site access widths and positions shall be maintained in accordance with plan 14015-T63-010A (Appendix 2 of the Transport Statement). The land in advance of the visibility sightlines shown on the approved plan shall be maintained in perpetuity clear of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway edge.
 - 10) No development shall take place until space has been provided within the site for the storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods and vehicles, and the parking and manoeuvring of employees and visitors vehicles in accordance with details to be submitted and approved in writing by the National Park Authority. Once approved the development shall be carried out in accordance with the agreed details.
 - 11) No development shall take place until a Delivery Management Plan addressing the size, timing, and routing of delivery vehicles has been submitted and approved in writing by the National Park Authority. Once approved the development shall be carried out in accordance with the agreed details.
 - 12) No development shall take place until a Traffic Management Plan to deter roadside parking has been submitted and agreed in writing and the yellow lines are in place.
 - 13) The premises shall not be brought into use until the parking spaces have been laid out in accordance with the details approved. The spaces shall thereafter be maintained only for the purposes of parking, remaining free from other obstruction.
 - 14) No shop door fronting a highway shall open outwards.
 - 15) No access ramps to the shop shall be constructed or placed within the public highway.
 - 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order) no alterations to the external appearance of the building shall be carried out without the National Park Authority's consent and no extensions, porches or ancillary buildings whatsoever shall be erected on the site without the Authority's prior written consent.
 - 17) Prior to the building being taken into the approved use the flood mitigation measures proposed in the submitted Flood Risk Assessment document shall be fully implemented and complied with at all times thereafter.

Costs Decision

Site visit made on 14 November 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 14th December 2016

Costs application in relation to Appeal Ref: APP/M9496/W/16/3157101 Rutland Arms, Calver Road, Baslow, Derbyshire DE45 1RP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Peter Brett Associates for a full award of costs against the Peak District National Park Authority.
 - The appeal was against the refusal of planning permission for change of use and alterations to external elevations to create Class A1 convenience store with associated servicing, refuse, plant and parking areas without complying with a condition attached to planning permission Ref NP/DDD/0115/0040.
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Decision

1. The application for a full award of costs is allowed, in the terms set out below.

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. Other substantive matters include the failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised **or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.**
 4. The application for costs relates to substantive matters listed, with particular reference to a failure to support the reason for refusal concerning noise and **generalised assertions about the proposal's impact which have not been supported by an objective analysis.**
 5. The reason for refusal set out in the decision notice is complete, precise and specific to the application. It clearly identifies what the Council considers to constitute harm and states the policies of the Peak District Local Plan (LP) to which it considers that proposal would be in conflict, together with the National Planning Policy Framework (the Framework).
 6. It is evident from my appeal decision that I agree with the District Council Environmental Health Officer (EHO) and the National Park Authority, in terms
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of the unsuitability of the monitoring position used for the surveys which informed the original noise impact assessment report dated February 2016.

7. However, the applicant sought to address these concerns through surveys in April 2016 at an alternative monitoring position closer to the nearest residential receptor which informed the revised noise impact assessment report dated May 2016. This was supported by prior correspondence with the District Council EHO explaining that the measurement would be undertaken as close as possible to the nearest noise sensitive receptors without trespassing in accordance with BS4142:2014. Although the District Council EHO subsequently expressed concern that the monitoring location was not a truly representative point to all the nearest noise sensitive properties, the restrictions in this regard were acknowledged.
8. Notwithstanding the above, the District Council EHO expressed concerns relating to the predicted noise levels and conclusions of the May 2016 report and maintained that the requested earlier operating times would have a negative impact on the nearest noise sensitive properties. However, no alternative technical evidence has been provided by the District Council EHO or the National Park Authority to support such a view.
9. With regard to the above, it is evident from Appendix 1 of the Statement of Case submitted by the National Park Authority, that the view of the District Council EHO is an assertion that is not evidence based and contrary to technical evidence prepared in accordance with BS4142:2014 with regard to the Framework and the PPG. This includes additional evidence submitted to this appeal, including a further technical note from the applicant and a peer review undertaken by Acoustics Central. The advice from the District Council EHO has also failed to take into account the available controls on deliveries offered by a separate condition or the fallback positions of the established use of the premises and uncontrolled opening hours as part of the planning permission. The advice of the District Council EHO, therefore, reflects vague, **generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.**
10. Having regard to the above and based on the evidence before me, it should have been apparent to the National Park Authority that the advice it was relying upon in making its decision had not been substantiated relative to the technical evidence provided by the applicant. I, therefore, consider that the National Park Authority acted unreasonably in preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. In this respect, the National Park Authority has also failed to produce evidence to substantiate a reason for refusal on appeal.
11. The unreasonable behaviour identified above, has resulted in wasted expense for the applicant in terms of the preparation of the appeal and accompanying evidence.

Conclusion

12. I conclude that a full award of costs, to cover the expense incurred by the applicant in contesting the appeal is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that the Peak District National Park Authority shall pay to Peter Brett Associates, the costs of the appeal proceedings described in the heading of this decision; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gareth Wildgoose

INSPECTOR