



Appeal Decision

Site visit made on 15th March 2010

by **Jonathan G King** BA (Hons) DipTP MRTPI

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

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Decision date:
28 April 2010

Appeal Ref: APP/N1350/A/09/2117720

LBG Transport, Unit 1, Cleveland Trading Estate, Darlington DL1 2PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Simon Dodd on behalf of European Metal Recycling Ltd against the decision of Darlington Borough Council.
- The application Ref 09/00435/FUL, dated 29th June 2009, was refused by notice dated 25th August 2009.
- The development proposed is the change of use of the site to the storage and processing of scrap metals; installation of a 50' long weighbridge; and the construction of a new building for processing end-of-life vehicles, a 2 storey weighbridge office and staff amenity block, a non-ferrous building, and a 6 metre steel perimeter fence and a 2 metre fence.

Decision

1. I allow the appeal, and grant planning permission for the change of use of the site to the storage and processing of scrap metals; installation of a 50' long weighbridge; and the construction of a new building for processing end-of-life vehicles, a 2 storey weighbridge office and staff amenity block, a non-ferrous building, and a 6 metre steel perimeter fence and a 2 metre fence on land at LBG Transport, Unit 1, Cleveland Trading Estate, Darlington DL1 2PB in accordance with the terms of the application, Ref 09/00435/FUL, dated 29th June 2009, subject to the conditions set out in the attached Annex.

Main issue

2. The main issue in this case is the effect of the proposed development on the living conditions of the occupiers of residential properties in the vicinity; and its impact on the future occupiers of the North Road School.

Reasons

3. Policy EP2 of The Borough of Darlington Local Plan identifies a number of existing employment areas, including Cleveland Street / The Forge in which the site lies. But the proposed development falls to be considered under Policy EP17, which says that premises for the storage and processing of reclaimed or scrap materials or for the dismantling of motor vehicles and other machinery may be permitted within the Policy EP2 areas where: there are no adjacent Class B1 uses; activity in the open is not visible from certain railways or roads or from residential property; there is adequate screening; and where there is no material adverse effect on the amenity of the surrounding areas. Briefly, Policies E48 and H15 presume against permission for noisy development that would be harmful to the amenities of residential or other pollution-sensitive

areas. Policy E1 generally seeks to safeguard the quality of life of residents; to maintain acceptable standards of air, water and land quality; and to protect the character and environmental assets of the Borough. Policies E3, E18 and R12 encourage the protection and enhancement of the value of open land, including the River Skerne Corridor. Policy T12 requires traffic generated by new development to be accommodated satisfactorily on the road network; and T40 says that development likely to result in a significant increase in the number and size of heavy goods and other large vehicles will only be permitted on industrial sites (including those identified in Policy EP2) that are located conveniently for access to certain named major routes.

4. The site lies on the edge of an established industrial estate, but is not directly adjacent to any B1 uses. It is not visible from main roads or railways. To the north-west, beyond a dense belt of trees, is the valley of the River Skerne. This forms a green landscaped corridor that separates the industrial land from a residential area. The application includes the erection of a 6 metre high sheet metal fence on the boundaries of the site to the west, north and part of the south. Owing to its size and construction, this will not be an attractive structure; and it will doubtless be visible in a number of views from the industrial estate. But that context would be one of industrial scale-buildings employing cladding of similar appearance. Most, notably the aggregates depot close by, are significantly higher than 6 metres. I am satisfied that the fence would be visually compatible with this area.
5. If the fence were to be readily visible from locations other than the industrial estate, I would agree with the objector who alleges visual harm. It would indeed be inappropriate and it might make it difficult for the Council to resist similar forms of enclosure elsewhere. But the closest dwellings, at a slightly lower level and approximately 100 metres away, would be screened by the existing dense tree belt, even in winter time. Notwithstanding its size and appearance, I would not expect the proposed fence to be readily visible from them or from the river valley. The appearance and value of the river corridor would not be harmed. Neither would the character or environmental assets of the area be adversely affected.
6. The proposed development would give rise to traffic generation, estimated by the appellant at 55 to 80 vehicles per day. As the site is intended as a feeder yard, it would take in scrap from the local area. These movements, mostly by the smaller type of commercial vehicles including skip lorries, would of necessity be on local roads, so it is not in my view appropriate to apply the provisions of Policy T40 strictly in relation to these. Once sorted and processed, the scrap would be consolidated for transportation to an end user or port, or for further processing to the appellant's main yard in Hartlepool. About 2 or 3 of these trips by larger articulated vehicles are estimated each day. Though the site is not located particularly conveniently to the main lorry routes named in Policy T40, it is nonetheless to the north-east of the centre of Darlington so that transport to Hartlepool and to Teesside should not give rise to significant cross-town movement by these heavy vehicles. I take the view that, bearing in mind that there is no objection from either the highway or planning authority on grounds of traffic generation; and that a certain amount of traffic would in any event be generated by this allocated employment site, neither the objectives of this policy nor that of T12 would be compromised.

7. I have no evidence to suggest that the proposed activities would give rise to any ground pollution or dust generation that could not be addressed by the imposition of appropriate conditions.
8. Overall, therefore, I agree with the Council that noise is the only matter in dispute having regard to the range of local plan policies referenced above.
9. An assessment of background noise has been carried out on behalf of the appellants with measurements made at the closest dwellings and at several others including the site of the proposed North Road primary school, some 160 metres distant. The existing local noise climate is dominated by road and rail traffic and sounds from activities on the industrial estate. Noise from the proposed development has been predicted based on experience of similar operations elsewhere; and the impact on receptors calculated taking account of the attenuation which would be provided by placing the solid fence around the intervening boundary. Some of the noise from the operations is characterised as large in magnitude but short in duration, but the appellant's calculations assume a "worst case scenario", which includes a 5dB(A) penalty to take account of impulsive characteristics of some of the noise sources.
10. The calculated continuous sound pressure level (LAeq, 1hr) for the residential receptors would be less than 5dB(A) above background or in some cases even below existing levels. The greatest increase in noise would be at Grass Street [4.7dB(A) above background] and at Richard Court [(3.3dB(A) above background)]. The maximum levels (LAm_{ax}) for all residential receptors would be below or equal to the measured maximum noise levels. With respect to the proposed school, the appellant's noise measurements show existing noise at a level higher than would be experienced at this location from the development alone. As the background level is higher than the level recommended for schools, the assessment assumes that the design of the school would incorporate sufficient attenuation to bring internal noise levels to an acceptable level.
11. By reference to BS4142:1997 *Rating industrial noise affecting mixed residential and industrial areas*, if the rating level exceeds the background level by around 10dB(A) or more, this indicates that complaints are likely. A difference of around 5dB(A) is of marginal significance. On this basis, the appellant's assessment concludes that the level of magnitude of any noise produced by the proposed development is of less than marginal significance and therefore the potential for complaints is minimal.
12. The Council does not challenge the methodology of the appellant's noise assessment or the manner in which the measurements were carried out. But it has undertaken its own background noise measurements at the most sensitive residential locations of Grass Street and Richard Court. These show a level at the former of 1.2dB(A) below the appellant's reading; and at the latter either 2 or 2.8dB(A) below (2 measurements were taken). No measurements were taken at the proposed school site. If the Council's figures for these locations are factored in to the appellant's model, the predicted average hourly noise levels would exceed the background by up to 5.9dB(A) for Grass Street and up to 6.1dB(A) in the case of Richard Court.

13. I have no reason to doubt the veracity either set of background noise data. It is inevitable that measurements of background noise will vary from day to day depending on a number of variables including the amount of noisy activity taking place locally on the chosen day, and the weather. Though the appellant does not necessarily accept that the Council's readings were representative of normal background levels, neither party seeks to show by reference to evidence that the other's measurements are fundamentally flawed.
14. Using the Council's measurements on a precautionary basis, the level of predicted noise in both sensitive locations would be only a little over the level of marginal significance, which in any case is not precisely indicated in BS4142:1997, and well short of the level where complaints are likely. Moreover, the appellant states that he is content to agree to a condition suggested by the Council to the effect that the rating level as a result of site operations should not exceed the background level by more than 5dB(A) at any of the residential receptors; and that the background level used should first be agreed with the planning authority. The Council's Environmental Health Officer maintains his concern that it may not be possible to achieve acceptable working levels, but the acceptance of such a condition by the appellant indicates a considerable degree of confidence that it could.
15. It is a matter of judgment but, given that the noise prediction model is based on "worst case", I am reasonably satisfied that living conditions of the occupiers of properties in Grass Street and Richard Court would not be significantly adversely affected by the development. Although the Council's Environmental Health Officer has expressed "some concerns" about the effect on the school which is presently under construction, I have been presented with no convincing evidence that the proposed development would be the cause of unacceptable disturbance by reason of additional noise.
16. The appellant wishes to operate on the site within the hours of 07.00hrs and 18.00hrs Monday to Friday and 07.00hrs to 12.00hrs on Saturdays, with no working on Sundays or Bank Holidays. In the event of permission being granted, the Council would wish to see the start time 1 hour later - at 08.00hrs. The appellant has submitted evidence to show that it should not be considered differently to other times in the normal working day. I have not seen local background noise data for 07.00hrs to 08.00hrs, but I am aware that some other businesses on the industrial estate, notably the nearby aggregates plant, already operate at these times. The appellant says that work during that first hour would not include the noisiest operations such as loading and tipping of Heavy Goods Vehicles, crane movements of scrap metal and delivery or loading of skip wagons; and is content to accept a condition that would prevent these taking place. Bearing in mind always the acceptance of an overarching condition that would require levels to be no greater than 5dB(A) above background, I see no good reason why the site should not operate in this way. Detailed matters affecting the nature of the noise that may be generated, such as limiting the permanent machinery to be employed at the site to that taken into account by the noise assessment; the type of vehicle reversing warnings to be used and the drop heights for scrap material, could be covered by an appropriate condition which would also require the submission and approval of a noise management plan.

17. I conclude overall that, subject to the imposition of suitable conditions, I am satisfied that the proposed development is acceptable.

Conditions

18. The Council suggests several planning conditions in its statement and others in correspondence. Both parties have had the opportunity to comment on a composite schedule of conditions. In addition to the normal time limit for commencement and recitation of the approved plans, I agree that full details of several matters should be submitted to the Council for approval: materials to be used in the buildings and the fencing, in the interests of maintaining acceptable appearance; a scheme for dust management, to protect residential amenity and to avoid nuisance; and surfacing of the site, surface water drainage and the containment of potentially polluting liquids, in the interests of preventing pollution. The last 3 are not suggestions of the Council, but are nonetheless important, in my view. In order to ensure that the effects of noise are kept within acceptable bounds, hours of operation, including a restriction on the type of work to take place in the first hour of the working day, as discussed above, should be imposed. For the same reasons; a noise insulation / attenuation scheme, together with a noise management plan should also be submitted, approved and implemented, with a limitation on noise relative to measured background levels set at no more than 5dB(A) above background. The fencing should be erected and retained in order to keep within this level. Finally, in view of the potential for the site to release pollution from existing contamination, a condition along the lines of that recommended by the Environment Agency should be imposed in order to prevent, or respond to any such contamination. In most cases, I have in the interests of consistency and clarity amended the detailed wording of the suggested conditions to bring them more in line with Circular 11/95 *The Use of Conditions in Planning Permissions*.

Jonathan G King

Inspector

Annex

Conditions: Appeal ref APP/N1350/A/09/2117720

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - The undated site location plan;
 - Proposed Layout, dated 26.06.09;
 - The Proposed Layout – Vehicle movements, dated 26.06.08;
 - Portakabin elevations, dated 02.09.08;
 - Proposed weighbridge office and crew room internal layout, dated 02.09.08;
 - Details of Maguire 15 x 3m weighbridge, dated July 2006;
 - 12.5 x 6m prefabricated ELV building, dated January 2005;
 - Generic 12 x 6 ELV canopy and tank farm, dated September 2004;
 - Proposed building, dated 04.06.06;
 - Proposed 6 metre perimeter fence, dated 29.06.09; and
 - Proposed 2 metre perimeter fence, dated 29.06.09.
3. Notwithstanding any description provided in the submitted application, details (including samples) of all external materials to be used in the construction of buildings and for the erection of the acoustic barrier fencing and other fencing shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out as approved and the acoustic barrier fencing shall remain in place so long as the site is operated in the use hereby permitted.
4. No machinery, including vehicles, shall be operated on the premises outside the hours of 07.00hrs to 18.00hrs Monday to Friday and 07:00hrs to 12:00hrs on Saturdays. No operations shall take place at any time on Sundays or Bank Holidays. During the period of 07:00hrs to 08.00hrs on any day the following operations shall not take place: loading or tipping of Heavy Goods Vehicles; crane movements of scrap metal on site; and delivery or loading of skip wagons.
5. The use hereby permitted shall not commence until full particulars of the following have been submitted to and approved in writing by the local planning authority:
 - (a) a noise insulation / attenuation scheme in relation to the proposed buildings and for perimeter fencing. The scheme shall be designed to ensure that the Rating Level (as defined in BS 4142:1997) as a result of site operations shall not exceed the background noise level value by more than 5 dB(A) at the residential receptor locations specified in Table 2 of the Enviro noise report dated June 2009 when measured

in accordance with BS 4142:1997. The background noise levels to be used shall be agreed in writing with the local planning authority prior to the commencement of the development hereby permitted. Following commencement of the development, the operator shall not permit the noise emitted from the site to exceed the specifications of the design.

- (b) A noise management plan, which shall include details regarding management of vehicle reversing alarms and drop heights for scrap material. Permanent machinery to be used on the site shall be limited to that described in Table 1 and paragraph 1.3 of the Enviro noise report dated June 2009. Any additional or replacement machinery which produces significant noise emissions shall only be used with the prior written approval of the local planning authority, following submission of full details of the machinery and an updated noise impact assessment.

The scheme and the plan shall be carried out as approved.

6. Prior to the commencement of the use hereby permitted, a scheme shall be submitted to and approved in writing by the local planning authority for the effective control of dust from the premises. The scheme shall be implemented as approved.
7. Prior to the commencement of the development, details of the following shall be submitted to and approved in writing by the local planning authority: (a) surfacing of the site; (b) surface water drainage of the site; and (c) means of enclosure of all storage compounds for potentially contaminating liquids. The development shall be carried out as approved.
8. Prior to the commencement of the use hereby permitted the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved in writing by the local planning authority:
 - (a) a preliminary risk assessment which shall identify: all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; and potentially unacceptable risks arising from contamination of the site;
 - (b) a site investigation scheme based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
 - (c) results of the site investigation and the detailed risk assessment carried out in accordance with (b) and an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken; and
 - (d) a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action

Any changes to these components require the express consent of the local planning authority. The scheme shall be implemented as approved.

Prior to the occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a plan (a long-term monitoring and maintenance plan) for longer term monitoring of pollutant leakages, maintenance and arrangements for contingency action as identified in the verification plan, and for reporting this to the local planning authority.

If, during development, contamination not previously identified is found to be present at the site, then no further development shall be carried out until the developer has submitted and obtained written approval from the local planning authority for an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with.

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