



Appeal Decision

Site visit made on 24 February 2020

by **J E Jolly BA (Hons) MA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 01 April 2020

Appeal Ref: APP/V2255/W/19/3239767

Hempstead Farm, Hempstead Lane, Tonge, ME9 9BH

- 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 G H Dean and Co Ltd against the decision of Swale Borough Council.
 - The application Ref 18/506635/FULL, dated 18 December 2018, was refused by notice, dated 13 August 2019.
 - The application is described as planning permission for the consolidation of existing farm office functions and the relocation of a fruit packing area (all existing at Hempstead Farm) into a single building together with associated hard-standings for parking, loading, unloading and circulation (amended proposal) (planning permission 14/506433/FULL refers) without complying with a condition attached to planning permission Ref 16/50017/FULL, dated 8 March 2016.
 - The condition in dispute is No 8 which states that: 'Only fruit grown on farms within the County of Kent shall be stored, packed or tested in the hereby approved building.'
 - The reasons given for the condition is: 'In the interest of amenity.'
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Decision

1. The appeal is allowed and the planning permission Ref 16/50017/FULL for the consolidation of existing farm office functions and the relocation of a fruit packing area (all existing at Hempstead Farm) into a single building together with associated hard-standings for parking, loading, unloading and circulation (amended proposal) (planning permission 14/506433/FULL refers) at Hempstead Farm, Hempstead Lane, Tonge, ME9 9BH, granted on 8 March 2016 by Swale Borough Council, is varied by deleting condition 8, and substituting it with the conditions set out in Annex A.

Procedural Matters

2. The main parties agree that the description of development given in application Ref 18/506635/FULL has been changed to 'Variation of condition 8 of planning permission 16/500017/FULL (Only fruit grown on farms within the County of Kent shall be stored, packed or tested)'. I have proceeded accordingly.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring residents.

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Reasons

4. Hempstead Farm is a farm facility associated with the picking, sorting and distribution of fruits, and the storage and distribution of grain. The appeal site is located adjacent to what appear to be fields of fruit trees and other agricultural land. To the front of the farm facility there are two semi-detached dwellings associated with the business facing onto Hempstead Lane. There are also private dwellings along the other side of Hempstead Lane which have front setbacks with some off-street parking and gardens to the rear.
5. Planning permission under Ref 16/50017/FULL was granted as set out above, subject to conditions, on 8 March 2016. The disputed condition was imposed to limit the storage, packing and testing of cherries to those picked in Kent. However, the appellant has stated that the condition restricts this activity to the summer months of June, July and August when Kent grown cherries are available. The appeal proposal seeks to allow cherries from other countries and regions to be processed throughout the year. In practice this would result in approximately 2 additional deliveries and 5 HGV departures per day associated with the processing of cherries. However, the variation was refused by the Council which stated that the proposal would 'constitute a serious erosion of residential amenity for local people'.
6. I acknowledge that there has been a number of complaints and representations from interested parties related to HGV movements associated with both the existing business and the appeal proposal. However, I am satisfied having considered the comments from the Kent County Council Highways and Transportation department, and the findings of the extensive vehicle movements report provided by the appellant, that the arrivals and departures generated by this proposal, including the impact on air quality, would not be significant in comparison to other activity carried out on the farm. Indeed, during my site visit I noted that there is a range of activities associated with the business. These include, but are not limited to, the picking and distribution of apples and pears, and the storage and distribution of grain. These activities are such that they are carried out across the full extent of the year and generate vehicular movements that would not be unexpected in relation to a farm of this size, type or location, including the transportation of cherries.
7. I note the Council's preference for the seasonal and regional restriction of the cherry related business activity. However, in the absence of any convincing evidence to the contrary, I consider that the limited number of deliveries that would be generated by this relatively modest facility would not cause an unacceptable impact on the living conditions of the occupiers of nearby residential properties. This is particularly the case given the generous setbacks to the front of the dwellings, and back-gardens located away from the roadside. Furthermore, as shown on the submitted drawings, and as noted at my site visit, the appeal site is spacious enough to accommodate the loading/off-loading, parking and turning of vehicles away from the main highway and the neighbouring dwellings. As such, the limited disturbance created by an extended 'cherry season' would be comparable to activities already permitted on the site throughout the year. I therefore conclude, that removal of condition 8 is acceptable.

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8. Consequently, the proposal accords with Policies DM3 and DM14 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017, which say amongst other things, that planning permission will be granted to enable the diversification of a farm, and when it does not cause significant harm to amenity.
9. For similar reasons, the proposal meets the aims of Paragraph 83 of the National Planning Policy Framework, which requires that planning decisions should enable the sustainable growth and expansion of all types of businesses in rural areas.

Other Matters

10. I acknowledge an appeal referred to by the Council related to a cherry business at Owens Court Farm¹. However, I do not have the details of that appeal before me, and in any case, I have considered the proposal on the basis of its own planning merits.

Conditions

11. I have considered the suggested conditions provided by the Council. A condition is imposed to ensure that there is adequate accommodation for the loading, off-loading, parking and turning of vehicles associated with the proposal. In order to ensure that the building shall only be used for the storage, packing or testing of cherries it is clear that a revised condition is necessary, and I am satisfied that such conditions would comply with the requirements of Paragraph 55 of the National Planning Policy Framework, and the associated National Planning Practice Guidance.
12. I have also considered whether it is necessary to impose any of the other conditions from permission 16/50017/FULL. Given that the development has already been carried out it is not necessary to include conditions relating to the approved plans and matters related to the construction of the building. Therefore, conditions 1-7, 9-12 and 14 are removed. The essence of condition 13 is preserved within a new condition to ensure landscaping associated with the development is retained.

Conclusion

13. For the reasons given above, I allow the appeal and vary condition 8 of planning permission Ref 16/50017/FULL.

J E JOLLY

INSPECTOR

¹ APP/V2255/W/16/316481

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Annex A – Conditions

- 1) The area shown on drawing GHDean-31 (Site Location Plan) for vehicle loading, off-loading, parking and turning shall be retained for the use of the occupiers of, and visitors to the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order), shall be carried out on that area of land or in such a position as to preclude its use.
- 2) The building hereby permitted shall only be used for the storage, packing or testing of cherries.
- 3) Any trees or shrubs associated with permission 16/50017/FULL that are removed, die, become severely damaged or seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

*****End of Conditions*****