



Appeal Decision

Site visit made on 22 December 2009

by **Colin Tyrrell MA(Oxon) CEng MICE FIHT**

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

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Decision date:
8 January 2010

Appeal Ref: APP/D1780/A/09/2113818

Baba Plastics Limited, Unit A, Bakers Wharf, Millbank Street, Southampton SO14 5QQ

- 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 K S Kooner against the decision of Southampton Council.
- The application Ref 09/00580/FUL, dated 12 May 2009, was refused by notice dated 8 September 2009.
- The development proposed is the retention of Class B2 use (manufacture of plastic products).

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Schedule to The Town and Country Planning (Use Classes) Order 1987 defines Class B2 as a general industrial use for the carrying on of an industrial process other than one falling within Class B1 (less disruptive to the immediate environment) or within Classes B3 to B7 (more disruptive to the immediate environment). Class B1 is defined as including any industrial process being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
 3. Although the site is in on the edge of an industrial area, it is separated from the blocks of flats of Northam Estate only by the width of Millbank Street – there is no buffer zone. The LPA seeks to require the appellant to control his manufacturing processes to avoid detriment to the residents of this adjacent estate, yet has apparently suggested that he should apply for Class B2 use. He is, however, expected to take steps to avoid any noise, vibration or smell emanating from the premises which might be offensive to the nearby residents. It seems to me that the LPA is effectively expecting the appellant to comply with Class B1 use, though I have determined the appeal on the basis of the application for Class B2 use and the provisions of the development plan.
 4. The appellant's agent suggested that I should carry out my site visit when all the machines were running, and perhaps at night when the ambient noise from other sources would be less. However, there is no dispute about measured noise levels and I was content to rely on the technical reports and comments produced by the appellant and by the LPA's environmental health officer. I visited the site in daylight in Christmas week and was able to acquaint myself with all relevant physical elements of the site and its surroundings.
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Main Issue

5. In my opinion, the main issue is the impact of the operation on the living conditions of nearby residents.

Reasons

6. The site is immediately opposite the blank gable end of Trent House, a deck-access block of flats on the opposite side of Millbank Street. There is a second similar block, Clyde House, slightly further along Millbank Road. Forth House, some 60m from the site, is of a different design with individual balconies, some of which look towards the site.

Policy

7. The site is within the policy area of saved Local Plan Policy REI 12(i), which seeks to reserve sites at Bakers Wharf and others with river frontage for maritime-related use. However, the site is some distance from the water's edge and is in fact only about half the size of the red-outlined rectangle shown in the LPA's statement. The appellant's statement confirms that the site is 190m from the quay wall, has not been in maritime-related use for over fifty years, and that only one of the seven active uses on Bakers Wharf is currently marine-related. Other adjacent sites are currently vacant.
8. The site is on the boundary of the REI 12(i) policy area, adjacent to the Millbank Road, and appears to be the furthest part of the policy area from the water's edge. Furthermore, the binding Inspector's Report into the LPA's Core Strategy, which in time will form part of the Local Development Framework replacing the existing Local Plan Review, concludes that a special or additional policy to protect sites for marine businesses is neither necessary nor desirable.
9. In the particular circumstances of this site, I can give considerable weight to this Inspector's conclusion.

Vibration

10. The site is alongside Millbank Street, which is a lorry route leading to the docks and wharves on this part of the River Itchen frontage. The plant operating at the site, some of which was in use on my visit, seemed to me to be unlikely to lead to perceptible ground-born vibration, especially at a distance from the source. The LPA's EHO has found no evidence of the vibration of which complaint has been made. I have seen no detailed evidence of vibration emanating from the site, and I conclude that I should give little weight to concerns expressed in this respect.

Odour

11. The site is in a marine/industrial environment with other comparable uses nearby. The LPA's EHO seems to agree with much of the appellant's report on the alleged odour problems, noting that the plastic smell was neutral in terms of unpleasantness and was faint or only locally discernible, while the solvent smell was not detected outside the building. As with the alleged vibration problem, I have seen no detailed evidence of unpleasant odours, and I conclude that I should give little weight to such concerns.

Noise

12. The May 2009 noise survey and report carried out on behalf of the appellant by Robert Davis Associates is described by the LPA's EHO as presenting "a good picture of the current situation", and she does not disagree with its findings. It finds that, if the doors to the building are left open, the noise level at the nearest flats will exceed the recommended limit except within the hours of a standard working week – between 07:30 and 17:30 on weekdays and 09:00 and 13:00 on Saturdays. If the doors are kept shut, the period of excessive noise break-out is likely to be restricted to the quietest part of the night.
13. If the doors are modified to provide additional noise attenuation, and kept shut outside standard working day hours, the required noise levels may be achieved. However, further work may be required to improve the sound insulation of the building as a whole or to limit noise levels at source, perhaps by the provision of acoustic enclosures to the noisy machinery.
14. The noise survey notes that the doors are currently left open for additional ventilation, particularly during the summer months. If the building and its doors are to be modified to reduce noise break-out, this will impede natural ventilation and alternative arrangements will be required. Any form of forced ventilation will itself tend to produce additional noise unless carefully designed.
15. The appellant suggests that these works could be achieved by condition, but the LPA disagrees. It states that such conditions would not be reasonable on planning grounds because the measures required for adequate attenuation of noise (including the time required for implementation) cannot be precisely identified and it would be impractical to enforce night-time closure of the doors.
16. It seems to me that surveillance of the doors is readily achievable, as these are clearly visible from the public realm. However, I do agree that it is not possible to formulate conditions which satisfy the requirements of the contents of DoE Circular 11/95 "The Use of Conditions in Planning Permission" in respect of precision unless further work is carried out to frame the conditions more precisely, including the timescale for implementation.

Overall Conclusion

17. I have seen no cogent evidence indicating that the current operations are materially detrimental to neighbouring residents' living conditions in respect of odour or of vibration.
18. However, I accept the evidence that noise from the site represents a material detriment which is contrary to saved Local Plan Review Policies SDP 1 and SDP 16. I do not agree that this detriment can be adequately mitigated by conditions which would comply with Circular 11/95 without further study and development. I therefore dismiss the appeal.

Colin Tyrrell

INSPECTOR