
Appeal Decision

Site visit made on 3 January 2017

by **Philip Lewis BA (Hons) MA MRTPI**

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

Decision date: 03 February 2017

Appeal Ref: APP/H0738/W/16/3159190

2 Boltby Way, Durham Lane Industrial Park, Eaglescliffe, Stockton on Tees TS16 0RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mersen UK Teeside Ltd against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 15/3067/RET, dated 25 February 2016, was approved on 19 May 2016 and planning permission was granted subject to conditions.
 - The development permitted is described as retrospective application for the installation of 3no 6m lighting columns to the rear car park.
 - The condition in dispute is No 2 which states that: *Within 2 months of the date of the decision notice, the three 6m high lighting columns hereby approved shall be fitted with automatic timers to ensure that the hereby approved lighting is not used outside the hours of 05:30am - 10:30pm Monday to Friday and 06:00am - 12:00am on Saturdays.*
 - The reason given for the condition is *to prevent excessive light pollution at unsociable hours in the interest of residential amenity.*
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Decision

1. The appeal is allowed and the planning permission Ref 15/3067/RET for development described as retrospective application for the installation of 3no 6m lighting columns to the rear car park at 2 Boltby Way, Durham Lane Industrial Park, Eaglescliffe, Stockton on Tees TS16 0RH granted on 19 May 2016 by Stockton-on-Tees Borough Council, is varied by deleting condition 2 and substituting for it the following condition:
 - 1) The lighting installations hereby approved shall not be illuminated between the following hours: 2230 – 0530.

Background and Main Issue

2. National guidance on the imposition of conditions is provided in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG). Paragraph 206 of the Framework states that planning conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects.
 3. Planning permission for the installation of the three lighting columns included the disputed condition which requires automatic timers to be fitted to ensure that the approved lighting is not used outside of the specified hours. The reason given for the condition is to prevent excessive light pollution at unsociable hours in the interest of residential amenity. The appellant objects
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to the condition stating that they installed the lights under a duty of care to protect staff whilst on the site and consider that it restrict the business from working 24 hours a day.

4. The main issue for the appeal is whether condition 2 is necessary and reasonable to protect the living conditions of neighbouring occupiers.

Reasons

5. The three lighting columns have been erected close to the edge of the factory site, near to the adjacent dwellings on Chaldron Way, with each of the lighting columns having two 100 watt LED floodlights positioned at the top. The lights are orientated to illuminate a car parking area and face into the factory site and I noted that the lighting units are not shielded. I saw at my site visit that the appeal site is separated from dwellings on Chaldron Way by a mound which is topped with a close boarded timber fence.
6. During my site visit I viewed the illuminated lights from Chaldron Way after dark including from the rear garden of 26 Chaldron Way, and noted that the top of the lighting columns and lights are visible above the timber fence at the end of the garden. My observations broadly accord with those of the Council's Environmental Health Officer in that whilst the lights face away from the dwellings on Chaldron Way, there are some bright areas of light spilling at the edges of the lights. Due to the relative close proximity of the lights to the dwellings on Chaldron Way and the height of the lights in relation to the dwellings, the light spills are particularly visible for the occupiers of nearby dwellings, including from the windows facing towards the appeal site, some of which I understand serve bedrooms. Consequently, I consider that the limitation of the use of the lights as erected to specified hours is necessary to prevent unacceptable harm to the living conditions of the occupiers of nearby dwellings at times when they would not expect to be disturbed by the lights.
7. The Council Officers report includes that the disputed condition seeks to allow the lights to be on for the start and end of the shifts for staff working at the appeal premises, with an automatic timer switch used to ensure compliance. It has been stated that the lights were not shielded due to concerns over the durability of shields in high winds. The hours set out in the condition seek to ensure that there would be no light spilling towards neighbouring residential properties at unsocial hours, late in the evening and night time. Whilst I have not been presented with any technical lighting assessments to consider and note that the Council's assessment was made from the street rather than from nearby dwellings, I nevertheless find it necessary to restrict the hours of illumination of the unshielded lights in order to safeguard the living conditions of nearby residents.
8. I have considered the appellants concern that the condition would restrict them from operating the site on a 24 hour a day basis which it is stated is sometimes required. Although I understand the requirements of the appellant, I do not consider that it would be acceptable for the lighting as erected to be used on an unrestricted basis, without effective measures to prevent the spillage of light being deployed due to the harm identified.
9. I find that condition 2 is necessary, enforceable and relevant to planning and the development, and therefore it meets those tests for conditions outlined in the PPG and the Framework. However, the disputed condition as worded does

not use the 24 hour clock and lacks precision and could be read as ambiguous regarding the hours set out for Saturdays. Additionally, it has not been demonstrated that it is necessary to restrict hours on Sundays, nor that it is reasonable or necessary to require that the lighting is fitted with an automatic timer switch to ensure compliance with the permitted hours for illumination. In regards to hours of use of the lights, I have taken into consideration the suggestion of the Council that the restriction should apply to 0600, but consider that restricting the use between 0530 and 2230 on any day would be adequate to prevent significant harm to the living conditions of the occupiers of nearby dwellings.

10. As a result, I consider that the appeal should be allowed in so far as the disputed condition is deleted and substituted with a replacement condition as set out in my decision. The substitute condition sets out the permitted hours for illumination of the lights.

Conclusion

11. For the reasons given above I conclude that the appeal should be allowed and the planning permission varied as set out in the formal decision.

Philip Lewis

INSPECTOR