

03/00390/OUT.



Appeal Decision

EDALE D.C.

Site visit made on 14 February 2007

28 MAR 2007

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DEVELOPMENT CONTROL

by **D R Cullingford BA MPhil MRTPI**
an Inspector appointed by the First Secretary of State

Date: 27 March 2007

Appeal Ref: APP/Y2736/A/06/2027637/NWF

Land at Bentley's Garage, Amotherby, Malton, North Yorkshire, YO17 6TG

- This appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is by C A and P J Bentley against the decision of the Ryedale District Council.
- The application (ref: 03/0039/OUT and dated 22 April 2003) was refused by notice dated 9 June 2006.
- The development is described as 'residential development'.

Formal Decision

1. For the reasons given below, and in exercise of the powers transferred to me, I dismiss the appeal.

Reasons for the Decision

The site

2. Bentley's Garage lies on the B1257 between Malton and Helmsley. It is within a ribbon of dwellings beside a cross roads where Amotherby Lane leads down to the main part of the village. It is a long established rural garage. A small estate stands on the opposite (northern) side of the road: dwellings line the adjacent road frontage. Behind the forecourt there is a workshop and, behind that, sheds and the occasional ancient vehicle or rotting bus amongst the burgeoning undergrowth and scrub. The southern boundary ends at an old quarry face, some 4m to 5m in height. Above that old quarry, and stretching into the surrounding fields and farmland, are the refrigeration units, warehouses, offices, packaging plant, loading and unloading areas and an extensive car park that form the successful Westler Foods operation.

The proposal

3. The proposal is to redevelop the garage site, including the land to the rear of the workshop, for housing. The whole of the site extends to about 0.45ha. The proposal is submitted in outline with all matters reserved for subsequent approval. However, the scheme has a protracted history, which I do not repeat here. The key points are that, after first being mooted in 2003, the concern has been that residential development might stymie operations at Westler Foods. There have now been at least 5 assessments of noise on the site, one extolling the virtues of PPG24 and the use of NECs while others insist on the methodology set out in BS4142:1997. The proposals now encompass indicative suggestions on possible layouts for the site, including a scheme for a 'U' shaped block toward the southern boundary to serve as a noise barrier.

The main issue

4. Noise remains the main issue; this is reflected in the reasons for refusal. There is concern that the proximity of the food processing operations would render the site unsuitable for residential development; that the possibility of noise nuisance complaints may stymie development of an important local business, contrary to the requirements of the statutory Local Plan; and, that the scale and character of the housing development that might be envisaged would be inappropriate in a small rural community such as this. I consider those issues below.

Policy

5. I start with the Development Plan. Policy EMP8 of the adopted Ryedale Local Plan seeks to safeguard existing industrial and business sites; their redevelopment or change of use would not be permitted unless substantial planning benefits would ensue. Several of those sites are industrial estates, so the policy would serve to ensure the availability of premises and land for future industrial or business development. But some, like Westler Foods, are existing factories with an existing occupant. The 'reasoned justification' explains that the aim of protecting existing occupiers is to give them the confidence to 'plan ahead and develop their businesses'. It is also explained that these local enterprises provide important local employment opportunities, so helping to reduce car-borne trips to jobs further afield. The implication is clear. The purpose of policy EMP8 is not just to prevent the redevelopment of the Westler Foods site. It also aims to provide a 'planning environment' that would be conducive to growing the business and to modernising, expanding or otherwise developing the enterprise. It seems to me that permitting adjacent noise sensitive development could, all too easily, undermine such an aim if noise nuisance complaints were to prove likely.
6. That issue is pertinent here because the company has recently won orders that are expected to necessitate an almost continual operation of the production line and a 24 hour shift-work programme to run the factory; there would be more deliveries to and from the site and the use of additional equipment, including more refrigeration units. An outline of the impending operations is set out in the letter dated 19 February 2007. In view of the response made on behalf of the appellants (dated 7 March 2007), I should indicate that the changes envisaged would not require planning permission and, in any case, at least one aim of policy EMP8 is to foster such success. Obviously, it is important to properly assess the realistic effects of one land use upon another: ossifying an assessment to pertain to conditions that might have existed when the application was made would not be very realistic.
7. None but the latest noise assessment (undertaken in November 2006) encompasses anything like the additional level of activity now likely to ensue. There, the operation of the plant and 4 mobile refrigeration units is modelled (the situation I observed at my site inspection), though not the level of activity that could well be associated with the new contract. Previous surveys assess the operation of no more than one mobile refrigeration unit on the site. The question is whether the levels of noise likely to be emitted from the factory would be sufficient to engender noise nuisance complaints from prospective residents nearby. If such complaints would be likely, then I consider that permission for the proposed housing development would fail to comply with policy EMP8 of the statutory Local Plan.

Noise

8. Would the proposal be likely to engender noise nuisance complaints directed at the operations of Westler Foods? The various noise assessments agree that background noise levels ($L_{A,90}$) are about 35dB(A) at night and around 45dB(A) during the day. There may also be agreement that the noise emitted from plant and equipment at Westler Foods contains low frequency elements as well as distinguishing characteristics. Unfortunately, on the face of it, there appears to be a plethora of conflicting results about almost everything else. However, I think that this is mainly because the assessments measure slightly different elements, in different positions under different circumstances. So, if I combine (by decibel addition) the main elements assessed in the survey by S and D Garritt (October 2003) I find that that would result in an $L_{A,eq}$ of about 56-57dB(A) towards the centre of the appeal site, consistent with the prediction by the first SRL assessment (April 2005) of $L_{A,eq}=56$ dB(A) for the operation the factory with one mobile refrigeration unit running. That also provides support for the latest assessment by SRL (November 2006) that with 4 mobile refrigeration units in operation a level of $L_{A,eq}=67$ dB(A) would be experienced at the

façade of the 'U' shaped block indicated as a possible noise barrier on the appeal site. Although the previous SRL survey did not calculate noise levels in the same position, they would have been between 56dB(A) (the level predicted towards the centre of the site) and 62dB(A) (the level predicted at the southern boundary); the increase predicted by using 4 rather than one refrigeration unit seems about right to me.

9. Moreover, even the apparent anomaly of the RPS survey (September 2004) may be accounted for if the measurements were undertaken without 'noise-emitting' elements operating. I have slight doubts about this survey because I think that it omits busy periods at the factory (between 10.00hrs and 20.00hrs, for example) and because, although it purports to apply the advice in PPG24, the calculations for daytime and night-time noise levels do not cover the hours over which those periods are defined in the guidance. Even so, a daytime noise level of $L_{A,eq}=51$ dB(A) would be roughly consistent with an $L_{A,eq}=52$ dB(A) identified by the first SRL assessment (April 2005) at the centre of the appeal site with the mobile refrigeration unit turned off. It is not possible to be certain from the RPS survey whether such was the case. But in my view, the compendium of the results would suggest that that was so.
10. If the results from the latest assessment by SRL (November 2006) are right (and for the reasons indicated above, I think that that are), then noise levels likely to be emitted from the Westler Foods factory with 4 mobile refrigeration units in operation would reach an $L_{A,eq}=67$ dB(A) at the façade of buildings on the appeal site, as currently indicated. Using BS4142, complaints would be very likely. There would be a difference of some 32dB(A) between the 'rated' emissions (which would be virtually continuous) and night-time background levels even without an addition of 5dB(A) to reflect tonal characteristics. Similarly, the difference would be about 22dB(A) during the day. Moreover, the level of activity (and possibly even the number of refrigeration units) is likely to increase. I consider that such conditions would be likely to engender a level of complaints that would not be conducive to growing the business or to otherwise modernising and expanding the enterprise. I consider that the scheme would fail to comply with policy EMP8 of the statutory Local Plan.
11. The assertion to the contrary is based on an application of PPG24 to the daytime noise level of $L_{A,eq}=51$ dB(A) derived from noise emissions probably with the mobile refrigeration unit turned off. If that was an accurate reflection of noise from Westler Foods, then the appeal site would fall into NEC A and noise should not be a determining factor in considering this planning application. For the reasons explained above I doubt that possibility. And, of course, substituting a noise level of $L_{A,eq}=67$ dB(A) would put the appeal site in NEC D, where the advice is that planning permission should normally be refused. However, PPG24 is fairly clear. It states that 'NEC noise levels should not be used for assessing the impact of industrial noise on proposed residential development'. The justification for persisting with an assessment based on PPG24 amounts to nothing more than an assertion that the noise on the appeal site is dominated by traffic noise rather than noise from the adjacent factory. No calculation has been done to corroborate that assertion. Moreover, applying the relevant advice in PPG24 to the different noise levels presented in the first SRL survey (April 2005) with the refrigeration units turned on and off, would suggest that the assertion is wrong. In any case, it could not possibly be right at night. Throughout most of the night-time period, traffic on the B1257 is very light. No evidence is adduced to alter my view that the scheme would contravene policy EMP8 of the statutory Local Plan.

Design

12. The suggestion that a 'U' shaped block positioned toward the southern boundary might serve as a noise barrier seems to me to be inappropriate. First, I have some doubts about its potential effectiveness because the Westler site lies some 4-5m above the appeal site and because low frequency emissions cause added difficulties. Second, I think that in order to achieve the degree

of noise reduction required, the block would have to present almost a blank façade toward the factory or include mechanically ventilated rooms with non-openable windows on its southern elevation. Such a structure and such living conditions would not accord with what might reasonably be expected in a rural location such as this. Third, the actual position of the mooted 'block' and its 'U' shaped configuration would be an incongruous addition to the ribbon development here and quite alien to the rural character of the village. An acceptable scheme may not be impossible. But I think that it would need to be so ingenious that a detailed demonstration would be warranted.

13. I appreciate that the site consists of 'previously developed land' and that the redevelopment of what might once have been described as a 'non-conforming use' would have much to commend it. I can see that some limited residential development confined to the front of the site could fit in with the surroundings and might be less subject to noise from the factory than the 'body' of the site. But, even there, dwellings would be slightly closer to noise sources at the factory and the screening properties of the existing garage would be absent. I note that the earlier positive response from neighbours has now been largely rescinded.

Conclusion

14. Taking all those matters into account, I find that the proximity of the food processing operations would be very likely to render the site unsuitable for residential development. The noise likely to be emitted would almost certainly be sufficient to engender noise nuisance complaints from prospective occupants and that could stymie development of an important local business, contrary to the requirements of policy EMP8 of the statutory Local Plan. The scale and character of the mooted housing development, designed to cater for those circumstances, would, I think, be inappropriate in a small rural community such as this. On the basis of the evidence adduced, I find nothing else sufficiently compelling to alter my conclusion that this appeal should be dismissed.

28 MAR 2007

INSPECTOR