

**RE: BATA, THE MILL, MAIN STREET,
AMOTHERBY, MALTON, NORTH YORKSHIRE, YO17 6TT**

OPINION

Introduction

1. I am asked to advise Ryedale District Council (“the Council”) in relation to BATA who operate a mill at the Mill, Main Street, Amotherby, Malton North, Yorkshire, YO17 6TT (“the Land”). An application has been received for:

“Erection of extension to existing feed bins to allow installation of additional 12no. bulk outloading bins for animal feed storage, together with integral weighbridge” (“the Application”)

2. I previously advised on this matter in an advice dated 6th July 2021 and this advice should be read in conjunction with that earlier advice.
3. On 28th June 2021 a report by KVA Planning (“the KVA Report”) was submitted to the Council on behalf of Amotherby Parish Council (“APC”). I am asked to respond to the issues raised in that document.

Discussion

Scope of the Application

4. The KVA Report suggests that the Application should have been a hybrid application for part retrospective and part prospective permission. It is for the applicant to decide what it is they wish to apply for planning permission for. Here they have decided that they wish to apply for a permission for operational development. If there is no change of use as a result of that application then there is no need for the scope of the application to be increased. Similarly if

there is no existing unauthorised change of use on the Land then there would be no reason for the Council to suggest that the scope of the Application is insufficient.

Intensification

5. The correct legal approach to the issue of intensification is set out in my previous advice. Whether or not there has been a change in use as a result of intensification is a matter of planning judgment to be exercised in accordance with the relevant legal principles.

6. I note that in the KVA Report there is little justification set out to support an opinion that there has been a change of use by way of intensification, it is more of an assertion that is not supported by evidence. For example: there is no identification of what the extant lawful use of the Land would be; there is no detailed breakdown comparing the current use of the Land to that lawful use which details what has changed and why it is materially different; and there is no attempt to categorise what the use of the Land is now.

Perception as a material consideration

7. The KVA Report states:

“Judicial cognisance of harm in the planning context has recently altered significantly. There is an emerging pattern that harm means ‘genuinely perceived’ rather than ‘actual’ (or even ‘significant’) harm, and that the decision-maker has a duty to take into account the perception of harm as a material consideration - although the weight to be attached to that factor is for the decision maker, acting reasonably, to determine. See e.g., on this issue and that of the subjective meaning of harm, R v. Tandridge DC ex p Mohammed Al Fayed [2000] JPL 604.”

8. I do not agree with the suggestion that there has been recent significant change to the meaning of harm in the planning context. However, it is right that in some circumstances a public perception of harm can be a material consideration. Whether in any given case, public concern is a material consideration that should be taken into account is a matter of planning judgment and the weight to be attached to it is similarly a matter of planning judgment.

9. The words of Glidewell LJ in *Gateshead MBC v Secretary of State for the Environment* [1994] 1 P.L.R. 85 at 95 who said:

"Public concern is, of course, and must be recognised by the Secretary of State to be, a material consideration for him to take into account. But if in the end that public concern is not justified, it cannot be conclusive. If it were, no industrial development—indeed very little development of any kind—would ever be permitted"

10. It is crucial to bear in mind that when determining the Application, the relevant material considerations that arise are those that stem from the Application itself. If there is a generalised concern about the existing use of the Land that is a separate matter to what can be considered as part of the Application. The Application is for a specific development and the material considerations relating to it are the land use consequences are those that arise specifically from that Application.

Noise

11. The KVA Report sets out at length the relevant noise policies contained in both local and national policy and guidance. These policies and guidance will be familiar to the Council and are not particularly controversial. The issue is instead to what extent are they relevant to the determination of the Application. Again, this is limited by the scope of the Application. The Application does not relate to the Land as a whole and does not seek to bring about a change of use. It is for a specific form of operational development and the relevant material considerations for the determination of the Application are those which stem from that Application.

Conclusion

12. The KVA Report does not raise anything that causes me to revise the Opinion I have previously provided. The points raised by the KVA Report are ultimately quite narrow and in my opinion do not raise any issues that undermine the approach that has been taken by

Officers in assessing the application and instead are simply an alternative planning judgment to that which has been set out by Officers.

FREDDIE HUMPHREYS

26th July 2021

Kings Chambers

Manchester – Leeds – Birmingham