



Appeal Decision

Inquiry held on 13 February 2007

Site visit made on 13 February 2007

by **J P Watson** BSc FIHT MICE MCMI

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

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Date: 22 February 2007

Appeal Ref: APP/F1040/A/06/2016118

Foston Farm, Hay Lane, Foston, Derbyshire DE65 5PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Elbar Services Limited against the decision of South Derbyshire District Council.
- The application Ref 2005/0191, dated 15 February 2005, was refused by notice dated 15 November 2005.
- The development proposed is a cold store.

Summary of Decision: The appeal is allowed and outline planning permission granted subject to the conditions set out in the Formal Decision below.

Procedural Matters

1. The inquiry sat on 13 February 2007. I made an unaccompanied visit to the site on 12 February 2007 and an accompanied visit on 13 February 2007.
2. The subject of the appeal was an application for outline planning permission with external appearance as the reserved matters.

Main Issue

3. The main issue is the effect that traffic generated by the proposed development would have on highway safety.

Planning Policy

4. The development plan includes the South Derbyshire Local Plan, adopted in 1998, includes Employment Policy 1 which permits the expansion of industrial and business uses providing, among other things, that no traffic problem would result.

Reasons

5. The proposed development would add a cold store to other premises in the appellant's control at Foston Farm, next to the appeal site, and it would share the existing access. Heavy goods vehicles (HGVs) currently visit the food processing facility at Foston Farm, and the appeal proposal is expected to increase the frequency of such visits. The form of the site access is such that large vehicles passing between the site and the nearby main roads must do so via a section of Hay Lane which is too narrow to allow two HGVs to pass side by side, although an HGV and a car can pass there. The ends of that section of road are intervisible, and so the drivers of HGVs or other vehicles entering it are able to anticipate oncoming traffic. In addition to traffic associated with Foston Farm, some 10 HGVs

travelled one way or the other along this section of Hay Lane during a traffic survey conducted on a weekday between 07:00 and 19:00. The expert witnesses of the Council and the appellant agreed during the inquiry that, if the amount of HGV traffic on Hay Lane associated with the appeal site and the adjoining land at Foston Farm controlled by the applicant (which together are shown hatched on drawing ELB1) were limited to 50 movements per 12-hour working day, or pro rata for shorter periods, and providing that sufficient space is allowed in the development for the parking and manoeuvring of vehicles, then any risk to highway safety associated with the development would be so low as to cause no discernable traffic problem, and I am of the same view. There is currently no limit on the amount of daytime HGV traffic that may visit Foston Farm.

6. Other interested parties expressed the view that traffic conditions on Hay Lane would be unsatisfactory if the development were to proceed, subject to the suggested conditions, but gave no evidence to support that view. Records show there to have been no accidents in Hay Lane during the standard 5-year assessment period. It seems to me improbable that large lorries would reach very high speeds between Uttoxeter Road and the appeal site entrance, a distance of slightly more than 300 metres. On my unaccompanied visit to the site I noted that the road surface was generally sound. There was no evidence that cracks in the walls of some properties near Hay Lane were caused by passing traffic on Hay Lane, nor that traffic associated with the proposed development would make them worse. Verges are present which provide refuges for pedestrians in the narrowest part of Hay Lane, should those be needed, although the amount of pedestrian activity is very small. Equestrian activity in the same section of road is smaller still, and there was no evidence of conflict between equestrians and other traffic in Hay Lane.
7. It seems to me that if the proposed development were to proceed and HGV traffic associated with the site and Foston Farm were regulated, the potential for traffic problems in Hay Lane would be acceptable and less than might arise if the development did not proceed and HGV traffic to and from Foston Farm were allowed to grow without restraint. I therefore conclude that the proposed development would have an acceptable effect on highway safety.

Other Matters

8. Although interested parties expressed their concern regarding other matters relating to the proposal, there is no evidence other than that the proposed development, subject to conditions, would comply with the development plan.

Conditions

9. Various conditions were suggested by the two main parties, which I have considered in the light of DoE Circular 11/95 *The Use Of Conditions In Planning Permissions*. Conditions limiting the periods during which approval may be sought for reserved matters and in which the development may start are necessary to comply with section 92(2) of the Town and Country Planning Act 1990. The landscaping proposals lack detail, which should be provided, and the Council's approval of those and of reserved matters, and the satisfactory establishment of necessary landscaping, are necessary to secure an acceptable form of development. A condition to ensure satisfactory arrangements for drainage is necessary to avoid flooding or pollution, but it need not detail some individual components that such a scheme may have. Model condition 13 from Planning Policy Guidance Note 24 *Planning*

and Noise (PPG24) provides a mechanism to control noise emanating from the site, which might otherwise disturb nearby residents, and the regime so established should be comprehensive. Model condition 20 of PPG24 would ensure no subsequent unauthorised modification could be made to the arrangement approved through the noise control condition. Conditions to secure sufficient operating space on the site during construction and when it is in use would remove any need for vehicles associated with the site to stand in Hay Lane during working hours.

10. The Conditions should include means to avoid untimely disturbance to nearby residents. Such a regime was sought for Foston Farm by the planning permission granted on 10 June 1993 (Reg No. 9/0493/0001/F). The established regime precludes HGV traffic to and from the site on Sundays and Bank Holidays but allows six vehicles to leave the site each working day between 22.00 and 06.00. The proposed regime would replicate the established arrangement except in that it would allow HGV traffic, limited as I have described in paragraph 5, during working hours including (among other periods) four hours on Sundays and Bank Holidays and would prevent night-time HGV traffic to or from the site. Such a change seems reasonable. In my view, a condition to control noise emanating from the site and another to regulate the timing and volume of HGV traffic associated with the site are reasonable and sufficient to safeguard nearby residents from disturbance that may otherwise arise from the proposed use of the site.

Conclusions

11. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

12. I allow the appeal, and grant outline planning permission for a cold store at Foston Farm, Hay Lane, Foston, Derbyshire DE65 5PJ in accordance with the terms of the application, Ref 2005/0191, dated 15 February 2005, and the plans and other documents submitted with it, and plan number ELB1, subject to the following conditions:
 - 1 Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
 - 2 The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
 - 3 Details of the design and external appearance of the building, the landscaping and the means of enclosure of the site shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 4 All planting, seeding or turfing comprised in the approved landscaping details shall be carried out in the first planning and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next

- planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 5 No development shall take place until details of a scheme for the disposal of surface and foul water have been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in conformity with the approved details before the development is first brought into use.
 - 6 Before the development hereby permitted commences a scheme shall be agreed with the local planning authority which specifies the provisions to be made for the control of noise emanating from the site, and that scheme shall be complied with.
 - 7 Notwithstanding the provisions of Article 3 of the Town and Country Planning General Development Order 1988, no further plant or machinery shall be erected on the site under or in accordance with Part 8 of Schedule 2 to the Order without planning permission from the local planning authority.
 - 8 No development shall take place until details of a scheme for the provision within the site curtilage, during the construction of the development, of site accommodation, materials storage, lorry loading and unloading, parking and manoeuvring space and personnel and visitor parking and manoeuvring space have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the start of construction works and shall be maintained throughout the construction period.
 - 9 The development shall not be brought into use until details of a scheme for allowing space for the parking and manoeuvring of commercial vehicles, employee vehicles and visitor vehicles have been submitted to and approved in writing by the local planning authority and implemented. The approved scheme shall be maintained free of obstruction to its designated use.
 - 10 The number of vehicles of more than 7.5 tonnes laden weight (referred to here as "HGVs") arriving at the site identified by hatching on plan number ELB1 (referred to here as "the hatched site") or leaving it, together with the time at which each such HGV movement occurred, shall be recorded on a daily basis and those records shall be stored for at least one year and provided to the local planning authority in writing within 7 days of receipt of a written request for that information. The sum of (i) the number of HGVs arriving at the hatched site and (ii) the number of HGVs leaving the hatched site shall not exceed the following throughout each of the stated periods:

Between 07:00 and 19:00, Monday to Friday other than Bank Holidays:	50 HGVs.
Between 07:00 and 13:00, Saturdays:	25 HGVs.
Between 10:00 and 14:00, Sundays and Bank Holidays:	17 HGVs.
Any other time:	No HGVs.

J.P. Watson

INSPECTOR