

**Open Report on behalf of Richard Wills
Executive Director for Communities**

Report to:	Planning and Regulation Committee
Date:	2 June 2014
Subject:	Outcome of Planning Appeal – Traynors Limited, The Boundary, Gorse Lane, Grantham

Summary:

This report sets out the outcome of an appeal following the Council's decision to refuse planning permission to vary condition 6 of planning permission S35/2558/10 so as to remove the restricted hours of operation in relation to the western part of the site (Yard 2) at Traynors Limited, The Boundary, Gorse Lane, Grantham. A copy of the Inspector's decision letter is attached as Appendix A.

Recommendation:

That the decision of the Planning Inspectorate is noted.

1. Traynors Limited's site at Gorse Lane is used for the sale, service, repair and dismantling of motor vehicles and plant and is broadly split into two parts. The western part (Yard 2) currently operates as an unrestricted scrap yard, for which an Established Use Certificate (Ref. SK.35/EU03/91) was issued in 1991. The eastern part (Yard 1) is used as an extension to the vehicle storage area, which was granted planning permission (Ref. 97/0112/35/05) in 1997. On 7 September 2011 planning permission (Ref. S35/2558/10) was granted to demolish a number of existing depollution/store buildings and to replace them with a single purpose built unit, to widen the existing vehicular access and to install additional vehicle racking equipment and concrete surfacing as well as other alterations and improvements to the site. This permission covered both parts of the site and so in granting planning permission for the development a condition (Condition 6) was imposed which defined the hours of operation for the whole site.
2. In January 2013 the applicant made a further application (Ref: S35/0842/13) which sought to vary Condition 6 of permission S35/2558/10 as they felt the hours of operation cited were too restrictive and therefore if the permission were to be implemented they would cause operational difficulties for the site. A report on that application was brought to the Planning and Regulation

Committee on 8 April 2013 where, in line with the Officer's recommendation, the application was refused.

3. The applicant made an appeal against the decision to refuse permission for application S35/0842/13 and the appeal was heard and determined by the written representation procedures. The Planning Authority submitted that the hours of operation cited by Condition 6 were necessary, relevant, enforceable, precise and reasonable in all other respects and struck a reasonable balance between the operational needs of the applicant's business whilst safeguarding the amenity of local residents. It was argued that whilst the hours of operation would restrict the current hours of operation currently in force and operated on parts of the site, overall the hours imposed would not have been unduly restrictive that they would have nullified the benefits of the improvements that were to be made to the site as authorised by permission S35/2558/10. However, having considered the arguments and representations made by both parties as part of the appeal the Inspector decided to allow the appeal and to impose the following conditions which define the hours of operation relevant for specified activities/operations associated with the development:

- 1) Unless otherwise agreed in writing with the waste planning authority, the development hereby permitted shall not be open to the public outside the following times:

0800hrs to 1800hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.

Nor at any time on Sundays, Bank or Public Holidays.

- 2) Unless otherwise agreed in writing with the waste planning authority, no activities or operations associated with the development hereby permitted in Yard 1 shall take place outside the following times:

0800hrs to 1800hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.

Nor at any time on Sundays, Bank or Public Holidays.

- 3) Unless otherwise agreed in writing with the waste planning authority, the activities or operations associated with the development hereby permitted in Yard 2 shall be restricted in the following ways:

- i) Metal breaking and baling shall not take place outside the following times:

0800hrs to 2100hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.

Nor at any time on Sundays, Bank or Public Holidays.

- ii) Loading and unloading of vehicles to/from HGVs/Car Transporters shall not take place outside the following times:

0800hrs to 2300hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.

Nor at any time on Sundays, Bank or Public Holidays.

- iii) No more than three HGVs/Car Transporters per calendar month shall be permitted to arrive at the site between 2300hrs and 0700hrs the following morning and these vehicles shall not arrive within five minutes of each other.

- iv) The noise levels emitted from within the site boundary shall not exceed the following limits as measured at a free field location representative of the closest demise of any neighbouring non-associated residential property to the site:

47dB LAr between 1800hrs and 2100hrs;
42dB LAr between 2100hrs and 2300hrs; and,
35dB LAr between 2300hrs and 0800hrs the following morning.

4. A copy of the Inspector's decision is attached to this report as Appendix A. As the appeal and the Inspector's decision only relates to changes to the hours of operation condition, the other conditions imposed on permission S35/2558/10 so far as the same are still subsisting and capable of taking effect remain intact. Consequently, the applicant now has until 7 September 2014 to implement the permission which is three years from the date that permission S35/2558/10 was originally granted.

RECOMMENDATIONS

That the contents of the report are noted.

Appendices

These are listed below and attached at the back of the report

Appendix A	Planning Inspectorate's Appeal Decision dated 9 April 2014.
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This report was written by Marc Willis, who can be contacted on 01522 782070 or dev_pcg@lincolnshire.gov.uk

Appeal Decision

Site visit made on 3 March 2014

by Karen L Baker DipTP MA DipMP MRTPI

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

Decision date: 9 April 2014

Appeal Ref: APP/Q2500/A/13/2202809

The Boundary, Gorse Lane, Grantham, Lincolnshire NG31 7UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Jane Traynor, Traynor's Limited against the decision of Lincolnshire County Council.
 - The application Ref. S13/0842/CM, dated 3 August 2012, was refused by notice dated 8 April 2013.
 - The application sought planning permission to demolish a number of existing de-pollution/store buildings and replace with a single purpose built unit; widen existing vehicular access; install additional vehicle racking equipment and concrete surface; alter perimeter bunds and boundary treatments; and, install CCTV and external lighting (in accordance with amended details received on 29 June 2011) without complying with a condition attached to planning permission Ref. S10/2558/CM, dated 7 September 2011.
 - The condition in dispute is No. 6 which states that: 'Unless otherwise agreed in writing by the Waste Planning Authority, no activities or operations associated with the development hereby permitted, including the movement of scrap in and out of the site by heavy commercial vehicles, shall take place outside the hours of:
08:00 to 18:00 – Monday to Friday, and
08:00 to 13:00 – Saturday.
No activities or operations associated with the hereby permitted use shall take place on Sundays, Public Holidays or Bank Holidays.'
 - The reason given for the condition is: 'To ensure the development is carried out in accordance with approved details, and in the interests of local amenity.'
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Procedural Matters

1. The appellants have referred to Circular 11/95: The Use of Conditions in Planning Permissions, which has been largely superseded¹ by the Planning Guidance (PG). Following the publication of the PG, the views of the main parties on the implications of it were sought. I have had regard to the matters raised during my consideration of this appeal.

Decision

2. The appeal is allowed and planning permission is granted to demolish a number of existing de-pollution/store buildings and replace with a single purpose built unit; widen existing vehicular access; install additional vehicle racking equipment and concrete surface; alter perimeter bunds and boundary

¹ Appendix A (model conditions) of Circular 11/95 is retained, with the rest of the document cancelled.

treatments; and, install CCTV and external lighting (in accordance with amended details received on 29 June 2011) at The Boundary, Gorse Lane, Grantham, Lincolnshire NG31 7UE in accordance with the application Ref. S13/0842/CM, dated 3 August 2012, without compliance with Condition No. 6 previously imposed on planning permission Ref. S10/2558/CM, dated 7 September 2011, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:

- 1) Unless otherwise agreed in writing with the waste planning authority, the development hereby permitted shall not be open to the public outside the following times:
0800hrs to 1800hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.
Nor at any time on Sundays, Bank or Public Holidays
- 2) Unless otherwise agreed in writing with the waste planning authority, no activities or operations associated with the development hereby permitted in Yard 1 shall take place outside the following times:
0800hrs to 1800hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.
Nor at any time on Sundays, Bank or Public Holidays.
- 3) Unless otherwise agreed in writing with the waste planning authority, the activities or operations associated with the development hereby permitted in Yard 2 shall be restricted in the following ways:
 - i) Metal breaking and baling shall not take place outside the following times:
0800hrs to 2100hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.
Nor at any time on Sundays, Bank or Public Holidays.
 - ii) Loading and unloading of vehicles to/from HGVs/Car Transporters shall not take place outside the following times:
0800hrs to 2300hrs Monday to Friday; and,
0800hrs to 1300hrs on Saturday.
Nor at any time on Sundays, Bank or Public Holidays.
 - iii) No more than 3 HGVs/Car Transporters per calendar month shall be permitted to arrive at the site between 2300hrs and 0700hrs the following morning and these vehicles shall not arrive within 5 minutes of each other.
 - iv) The noise levels emitted from within the site boundary shall not exceed the following limits as measured at a free field location representative of the closest demise of any neighbouring non-associated residential property to the site:
47dB L_{Ar} between 1800hrs and 2100hrs;
42dB L_{Ar} between 2100hrs and 2300hrs; and,

35dB L_{Ar} between 2300hrs and 0800hrs the following morning.

Main Issue

3. The main issue in this appeal is the effect of varying Condition No. 6 on the living conditions of neighbouring residents, with particular reference to noise and disturbance.

Reasons

4. The appeal site is located on the southern side of Gorse Lane, to the south west of the town of Grantham, within the open countryside. The appeal site is around 2.2ha and is bounded by a mature hedgerow of varying heights and a 2.5m high steel palisade security fence. The access road is located to the west of an existing dwelling, which is within the appellants' ownership. A ribbon of residential properties is sited on the northern side of this part of Gorse Lane, with the closest dwelling being around 30m from the appeal site's boundary with Gorse Lane. To the east, west and south of the appeal site is undulating countryside which is predominantly in agricultural use.
5. The appellants operate the appeal site for the sale, service, repair and dismantling of motor vehicles and plant. The appeal site can be broadly split into 2 parts. The western part (Yard 2) operates as an unrestricted scrap yard, for which an Established Use Certificate (Ref. SK.35/EU03/91) was issued on 16 April 1991, and the eastern part (Yard 1) is used as an extension to the vehicle storage area, which was granted planning permission (Ref. 97/0112/35/05) on 10 October 1997. Planning permission (Ref. S10/2558/CM) was granted on 7 September 2011 to demolish a number of existing de-pollution/store buildings and to replace them with a single purpose built unit; widen the existing vehicular access; install additional vehicle racking equipment and concrete surface; alter perimeter bunds and boundary treatments; and, install CCTV and external lighting at the appeal site. Planning permission (Ref. S12/2299/FULL) was granted on 22 November 2012 for the retention of a de-polluting unit within Yard 2, which had been erected by the appellants following a fire which destroyed the previous building in this location.
6. The development granted in September 2011 would secure a number of improvements to the site and the operation of the business. These would include widening the road along the site frontage and access; improving access to allow lorry parking inside the site and off the public highway; improving lighting to minimise light pollution; fitting effective silencers to all machinery and equipment on the site; installing more efficient vehicle racking equipment to speed up the movement of vehicles around the site; replacing a number of makeshift buildings with one purpose built building; providing a new soakaway drainage system with interceptor tanks to accommodate surface water run-off from new areas of concrete surfacing; landscaping along the boundaries to provide increased screening; improving car parking and turning areas; and providing cycle parking.
7. At the time of my site visit Yard 1 was being used for the storage of vehicles, with some stored using a racking system, while others were parked on the ground. Yard 2 currently has an informal car and HGV parking area, towards the northern end of the site, with a number of de-pollution, dismantling and storage buildings towards the middle. Beyond these buildings is an external area currently used for the baling operation, which includes a baling machine

and storage for cars prior to and following this operation, along with access for a collection vehicle. To the rear of the area used for the baling operation, and within the southern part of Yard 2, is a further car storage area. During my site visit I observed vehicles being dismantled and de-polluted within the de-polluting unit granted planning permission in November 2012 and witnessed the baling operation being carried out whilst I was both within the appeal site and from a position along Gorse Lane. Furthermore, the movement of vehicles by forklift trucks within the appeal site was also taking place at the time of my visit.

8. If the development approved by planning permission Ref. S10/2558/CM was implemented, the disputed condition would restrict the hours of operation of the business to between 0800hrs and 1800hrs (Monday to Friday) and 0800hrs and 1300hrs on Saturday on that part of the appeal site (Yard 2) which currently has no restrictions. Indeed, I note the appellants' concerns that Condition No. 6 seeks to limit the operation of the site to the times that Yard 2 is open to the public and not the times that the site currently operates within. The appellants state that such a restriction would be unacceptable as it would not make any allowance for staff to enter or leave the site, tidy up before and after the public arrive or leave or to take delivery of stock. Furthermore, they say that a degree of flexibility is required for evening and night-time working, which can include the recovery of vehicles from road traffic accidents and the arrival of vehicle transporters from Northern Ireland, via ferry, outside normal working hours. I acknowledge, therefore, the appellants' statement that, given the restrictions which would be placed on the appeal site by Condition No. 6, they would continue to operate without implementing this planning permission. Therefore, the other improvements to the appeal site that would result from its implementation would not occur.
9. The appellants consider that, given that the development permitted by this planning permission was for facilities that would improve the appearance and operation of the appeal site and that it would not expand the site nor intensify its use, there would be no increase in noise levels which could legitimately have invited a control to be imposed on the operating hours of the business. As such, they consider that the imposition of Condition No. 6 was ultra vires. Nevertheless, the appellants have put forward an alternative condition which restricts activities or operations associated with the development taking place within Yard 1 to between 0800hrs and 1800hrs (Monday to Friday) and 0800hrs and 1300hrs on Saturday and which enables activities to continue within Yard 2 unrestricted, with some exceptions. These include that metal breaking and baling shall cease no later than 2100hrs; loading and unloading shall cease no later than 2300hrs; no more than 3 HGVs/Transporters shall be permitted to arrive at the site between 2300hrs and 0700hrs and these shall not arrive within 5 minutes of each other and shall not be unloaded or loaded between 2300hrs and 0700hrs; and sets limits for the noise levels to be emitted from within the site between 1800hrs and 0800hrs.
10. Although I acknowledge that the approved development would not intensify the existing use of the appeal site and that it would provide many benefits, including the provision of modern purpose built buildings, improved access arrangements and boundary treatments, in my opinion, it would constitute a materially different development to that which already exists. As such, I consider that it was reasonable for the Council to impose a condition restricting the hours of operation. However, given the current unrestricted nature of Yard

- 2, along with the operational requirements of the business, I consider that the condition imposed was overly restrictive. Indeed, given the nature of this condition, from the evidence before me it would be likely that the appellants would not implement the approved development and would instead continue to operate the site in an unrestricted manner.
11. At the time of my site visit background noise levels were relatively low, there was very little wind and the day was bright and sunny. I acknowledge, however, that background noise levels are generally lower during the evening and overnight. Local residents and the Council are concerned about the impact of the proposed development on the living conditions of occupiers within their dwellings along the northern side of Gorse Lane, particularly during the evening and overnight. The appellants submitted an Outward Noise Impact Assessment² with the planning application. This assesses the noise impact of the operations of concern, namely the sound levels associated with a lorry arrival/departure and the unloading of cars off the lorry during the evening; the occasional arrival of a lorry with cars during the night time, with the unloading carried out the following day; and the breaking and/or baling operations up to around 2300hrs.
 12. I note the findings of the Noise Surveys carried out on 7 November 2012 between 1315hrs and 1645hrs and between 2000hrs and 2300hrs, along with the measurements attributed to each of the operations of concern. The Assessment also summarises the total contributory Rated Noise Level at the closest neighbouring dwellings of concern, namely those sited on the northern side of Gorse Lane, for the evening and night time periods. The report concludes that the loss of amenity criterion has the potential to be exceeded but that by ensuring that the Baling operation does not occur after 2100hrs and that during the night time period a lorry and transporter do not arrive within 5 minutes of each other it is possible to ensure that the loss of amenity criterion is not exceeded.
 13. The Council is concerned that the Outward Noise Impact Assessment carried out by the appellants does not fully assess the full potential noise impacts from the development and as such it would be difficult to ensure that the noise levels arising from the site activities would not fall within the range whereby they would be classed as having an adverse amenity impact on local residents. In particular, I note the Council's concerns in respect of the Breaking operations which it states are referred to in the report as taking place within the shed. The appellants have confirmed that Breaking includes the de-polluting of fluids from the car, removal of saleable parts, stripping of engines and the stripping of tyres, amongst other items, and that this operation only occurs within the buildings. Indeed, Condition No. 17 imposed on planning permission Ref. S10/2558/CM requires this operation to only be undertaken in the replacement building. The Council is also concerned about the Baling operation being carried out externally within the yard up to 2100hrs. It was apparent from my site visit that Baling is performed by the Baling machine, which is housed outside, and although it is transportable because it has wheels, the appellants have confirmed that it remains in the same place at the appeal site. Condition No. 7 imposed on planning permission Ref. S10/2558/CM requires the fitting of effective silencers on all vehicles, plant, power driven equipment and machinery employed at the site.

² Prepared by Lester Acoustics LLP

14. I am satisfied, from the evidence before me, that the appellants' Outward Noise Impact Assessment has adequately assessed the noise levels arising from these activities. Furthermore, I consider that the recommendations made within this assessment in terms of the hours of operation of the Baling operation and the limitations on the number of vehicles arriving overnight, along with the other conditions imposed to limit noise and disturbance from the site, would ensure that the proposed development would not unduly harm the living conditions of neighbouring occupiers. Indeed, I consider that the proposal would, subject to more appropriately worded planning conditions in respect of the hours of operation and noise levels, represent an improvement upon the existing situation in Yard 2, which currently has no such restrictions.
15. Both parties have put forward suggested alternative conditions which could be imposed if I was minded to allow the appeal. In my opinion, a condition restricting the hours of operation of the appeal site would be reasonable given the nature of the development proposed. However, a balance needs to be struck between the currently unrestricted nature of Yard 2 and the overly restrictive Condition No. 6 imposed by the Council, which would accommodate the operational requirements of the appellants' business while safeguarding the living conditions of neighbouring occupiers. In order to do this, a condition restricting the hours that the appeal site would be open to the public to between 0800hrs and 1800hrs (Monday to Friday) and between 0800hrs and 1300hrs on Saturdays would be reasonable. Furthermore, a condition preventing any activities or operations associated with the development to take place in Yard 1 outside of these times would also be reasonable.
16. With regards to Yard 2, it would be reasonable for the activities and operations associated with the development to have some restrictions, in order to safeguard the living conditions of neighbouring occupiers, with particular reference to noise and disturbance. These would be that Breaking and Baling operations shall only be carried out between 0800hrs and 2100hrs (Monday to Friday) and between 0800hrs and 1300hrs on Saturdays; loading and unloading of vehicles from HGVs/Transporters shall only occur between 0800hrs and 2300hrs (Monday to Friday) and between 0800hrs and 1300hrs on Saturdays; no more than 3 HGVs/Transporters per month shall be permitted to arrive at the site between 2300hrs and 0700hrs and these shall not arrive within 5 minutes of each other; and, that noise levels should not exceed specified limits.
17. I note the Council's concerns relating to the enforceability of such conditions, particularly in respect of the limit in the number of HGVs/Transporters permitted to arrive at the site per month, the time required to be left between each arrival and the restrictions relating to loading and unloading. Indeed, I acknowledge its reference to another appeal decision (APP/Q2500/C/07/2039818) in this regard. Since that appeal decision, however, there has been a number of technological advances which allow drivers to more easily monitor the location of other vehicles. Given this, along with the close working relationship between the drivers in this case and the limited number of times when this would be likely to occur, I consider that it would be relatively simple to ensure that HGVs/Transporters would not arrive at the site together. Furthermore, it is apparent from the correspondence from local residents that they monitor the activities in and around the appeal site. If a breach of these conditions were to occur, it is likely that they would contact the Council who would then be able to take the appropriate action.

18. From the evidence before me, I conclude that varying Condition No. 6 would not harm the living conditions of neighbouring residents, with particular reference to noise and disturbance. As such, it would accord with Policy EN1 of the Local Development Framework for South Kesteven: Core Strategy, adopted in July 2010, and Policy WLP21 of the Lincolnshire Waste Local Plan, adopted in May 2006.
19. I have considered all the other matters raised by the Council and third parties, including light pollution from the proposed development; highway safety; traffic congestion; car parking along Gorse Lane; and, the carrying out of unloading operations on the public highway; but none changes my overall conclusion that the appeal should be allowed.
20. As stated above, both the Council and the appellants have suggested alternatively worded conditions. I have had regard to the guidance in the PG during my consideration of these conditions and I consider that 3 new conditions along the lines of those described above should be imposed in order to safeguard the living conditions of neighbouring occupiers, with particular reference to noise and disturbance.

Karen Baker

INSPECTOR