
Appeal Reference:	2023/A0105
Appeal by:	Sam Mouldings
Appeal against:	The conditional grant of full planning permission
Proposed Development:	Appeal against conditions 4, 5 and 6 of planning permission LA03/2023/0536/F-extension to industrial unit to be used for storage, handling and packing area (amendment to LA03/2022/0089/F)
Location:	8 Orchard Way, Newpark Industrial Estate, Antrim
Planning Authority:	Antrim and Newtownabbey Borough Council
Application Reference:	LA03/2023/0536/F
Procedure:	Informal Hearing on 11 th June 2024
Decision by:	Commissioner Diane O'Neill, dated 21 st June 2024

Decision

1. The appeal is allowed.

Reasons

2. The main issue in this appeal is the noise impact from the development and the conditions controlling it.
3. Section 45 (1) of the Planning Act (NI) 2011 requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. The Antrim Area Plan 1984-2001 (AAP) operates as the local development plan for the area where the appeal site is located. The site is zoned industrial land within the settlement development limit of Antrim. Paragraph 6.1 of AAP states that the main centre for employment and industry in the plan area will be within Antrim Town. Large-scale industry will be encouraged to locate in sites designated within the urban area.
4. Paragraph 2.3 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), states that the planning system operates in the public interest of local communities and the region as a whole. In assessing a proposal, the question is stated to be whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. In order to safeguard residential and work environs, paragraph 4.11 of the SPPS states that noise is one a number of considerations that should be taken into account when managing development. Annex A of the SPPS, which deals with managing noise, indicates that planning authorities should seek to reach balanced decisions that consider noise issues alongside other relevant material considerations, including the wider benefits of the particular proposal. It is added

that it may be appropriate to apply conditions to planning approvals for new development in order to mitigate against excessive noise impacts.

5. The T-shaped appeal site is located to the south of the substantial industrial building occupied by Sam Mouldings. Part of the appeal site is currently laid out as a concrete yard which is used for lorry parking. The furthestmost section of the site is laid out in grass. A planted grass embankment is located along the western and south-western boundaries of the site screening views of the industrial building from the Ballycraigy Road. The larger industrial site is defined by black mesh fencing. A secluded residential dwelling, No.21 Ballycraigy Road, is located adjacent to the southern most tip of the appeal site along the busy Ballycraigy Road. No.21 Ballycraigy Road is approximately 7m below the level of the industrial building and is surrounded by dense vegetation and closeboard fencing. Adjacent and to the north of No.21 Ballycraigy Road is a council depot building.
6. Sam Mouldings has been in existence since approximately 1990 and currently employs approximately 180 staff in Antrim as well as a number of sub-contractors. It has been on this site since approximately 2001. A number of planning permission have been granted for the business. Two of the previous planning permissions are of particular relevance to this case.
7. On 3rd February 2017 full planning permission was granted for an extension to the industrial unit which included a two-storey extension to the existing offices and the formation of a new vehicular and pedestrian access onto the Ballycraigy Road (LA03/2016/0022/F). The approved factory extension under planning permission would prevent driving through the site from Orchard Way to the proposed Ballycraigy Road access. No noise related conditions were placed on this planning permission. Approved Drawing 09, which illustrated the proposed auto-tracking layout plan, showed 10 no. car parking spaces and the movement of HGV lorries within the application site to the south of the proposed Ballycraigy Road entrance in close proximity to No.21 Ballycraigy Road. Approved Drawing 07/2 illustrated a new service yard adjacent to the 15 HGV parking spaces to the north of this entrance along the shared boundary with the council depot building.
8. On 9th February 2023 the full planning permission was renewed (LA03/2022/0089/F) showing similar details as planning permission LA03/2016/0022/F. The P1 form indicated that approximately 182 vehicles would be at the premises daily which included 10 goods vehicles who could only park in the Ballycraigy Road section of the site. Irrespective of Environmental Health stating that it requested that noise conditions be attached to planning permission LA03/2022/0089/F, given that it was a renewal, the planning authority stated that planning permission was granted without any such restrictions.
9. The main changes in the current proposal to that previous approved under LA03/2022/0089/F relate to reducing the floor space of the extension, reconfiguring the yard area and no longer proposing direct access to the site via Ballycraigy Road. Concerns were however raised by the Council's Environmental Health department in relation to noise disturbance at nearby sensitive receptors arising from vehicle movements and idling as well as forklift truck use in the loading yard areas and hence the imposition of conditions 4-6 inclusive. The Council confirmed at the hearing that their concern is in relation to the amenity of the residents of No.21 Ballycraigy Road and that no noise complaints have been

received in relation to the appeal development. Whilst No. 21 Ballycraig Road has a large lawn to the front of the dwelling, the Council acknowledged that its sizable rear private amenity area, which is further away from the appeal development, would be more frequently used by its inhabitants. It was argued by the appellant that the environmental services depot was located closer to No.21 Ballycraig Road and that its' most recent planning permissions (LA03/2022/1069/F and LA03/2021/0951/F) do not have operating restrictions on either HGVs or forklifts in the yard area. However, these planning permissions are not comparable to the appeal development as the depot's operations are occurring internally when all the doors are closed.

10. During the processing of the planning application subject to this appeal a number of iterations of a Noise Impact Assessment (NIA) were produced. These were based on hours of operation from 08:30 to 17:00 Monday to Friday. The Council were verbally informed by the appellant during the processing of the planning application that the hours of operation were 07:00 to 18:30 Monday to Friday with dispatch operating on Sundays from 08:00 to 16:00. It was however confirmed at the hearing that the business operates 24hrs per day, 7 days per week. Given that it was considered that the use of forklift trucks and idling of HGVs on the site was part of the extant planning approval LA03/2022/0089/F the appellant stated that the impact of this on amenity was not assessed within the NIAs. Although the NIAs state that they are based on operating hours from Monday to Friday, monitoring also occurred over what they considered to be the quieter weekend period as it was thought that this would allow an assessment of the worst-case scenario.
11. Paragraph 5.65 of the SPPS states that planning authorities have the power to attach conditions to a grant of planning permission. This can enable planning authorities to approve development proposals where it would otherwise be necessary to refuse planning permission. However, conditions should only be imposed which are necessary, relevant to planning, relevant to the development being permitted, precise, enforceable and reasonable.
12. Condition 4 of planning permission LA03/2023/0536/F states that the use of forklift trucks is prohibited in areas marked 'loading yard' and 'HGV waiting area' on Drawing Number 04 date stamped 30th June 2023. The NIAs did not assess the impact of the use of forklift trucks due to the extant planning permission on the site (LA03/2022/0089/F). The previous planning permission showed a new service yard with 15 HGV parking spaces within the vicinity of where the loading yard and HGV waiting area is now indicated and did not restrict by condition the usage of forklift trucks anywhere in the site. Given the size and scale of the products which Sam Mouldings produce and the fact that a 15 bay HGV waiting area within a loading yard was indicated on approved Drawing 04 of planning permission LA03/2023/0536/F it is hard to see how their products would be placed on the trailers without the use of forklift trucks. The site has been operational for a considerable length of time without any complaints having been received in relation to this matter. Evidence was also presented by the appellant at the hearing that, given the scale of the business, the Northern Ireland Environment Agency monitors noise levels at the factory and that it has always complied with its standards. Condition 7 of planning permission LA03/2023/0536/F also requires the installation of an acoustic barrier, along the southern boundary adjacent to No.21 Ballycraig Road, which has yet to be

erected and which will provide a reduction of 10dB. It is therefore considered that condition 4 is unnecessary and unreasonable.

13. Condition 5 states that HGV engines shall not be left idling within the areas marked 'loading yard' and 'HGV Waiting Area' as marked on Drawing 04 date stamped 30th June 2023. At the hearing both parties acknowledged that it was difficult to assess this activity. Environmental Health stated that idling of an engine in excess of 10 minutes would give rise to an amenity issue. The appellant stated that 3-4 HGV lorries operate during the day and also at nighttime with them dropping off or collecting the trailers. Normal practice is said to be that 6 trailers would be being filled at any one time. During my site visit the HGV waiting area and loading yard had 11 empty lorry trailers awaiting loading, with a further trailer being actively loaded. The appellant also stated that due to the traffic light system that is in place on the site, which allows only one vehicle to enter this loading/waiting area, that the only time the HGVs would be idling is when they are waiting for the light to change. A lorry would then collect or return a trailer. For health and safety reasons, it was also stated by the appellant at the hearing that it is current practice that a lorry has to be unoccupied in order to load it. If there is no driver present, then the lorry would not be operational. It also makes little financial sense to have HGVs engines idling for any significant duration. Again, the installation of an acoustic barrier under condition 7 of planning permission LA03/2023/0536/F will help to reduce any noise arising from the HGVs. Condition 5 is therefore considered to be unnecessary, imprecise, unenforceable and unreasonable.
14. Condition 6 states that there shall be no HGV movements in the areas marked 'loading yard' and 'HGV Waiting Area' as marked on Drawing Number 04 date stamped 30th June 2023 outside of Monday to Friday 08:30 to 17:00 hours. The NIAs assessed hours of operation of 08:30 to 17:00 Monday to Friday, however, as confirmed at the hearing, this is not correct. The site operates 24 hours per day 7 days per week. The existing business has however been operational for a considerable number of years without giving rise to any complaints and is monitored by the Northern Ireland Environment Agency. In the previous planning approvals the site was not restricted to specific hours of operation despite the proposed auto-tracking layout plan (Drawing 08) within planning permission LA03/2022/0089/F illustrating HGV movements within this same area. Under this planning permission all the HGV traffic would also be entering and exiting the site via its proposed Ballycraig Road entrance. Despite the P1 form stating that there would be 10 goods vehicles attending the premises per day and the appellant's verbal evidence that there would be 6-8 goods vehicles, the NIA dated November 2023 submitted with planning permission LA03/2023/0536/F was based on 30 HGVs accessing the site per day. The NIA allowed for a character correction of -3dB for intermittency/other sound characteristics of the reversing alarms. The erection of an acoustic barrier will provide a reduction of 10dB. Given that the site is continually operational it would also compromise the successful business by asking HGV movements not to occur out of the conditioned hours. Condition 6 is therefore unreasonable.
15. Despite inadequacies in the NIAs, given the extensive planning history on this industrial site, the lack of noise complaints arising from the longstanding operational development to either the Council or the Northern Ireland

Environment Agency, the three conditions fail to meet the required legal tests. The appeal against conditions 4, 5 and 6 therefore succeeds.

This decision is based on the following drawings:-

Drawing 01 1:1250 site location plan stamped approved by the planning authority on 3rd January 2024

Drawing 02 1:500 block plan stamped approved by the planning authority on 3rd January 2024

Drawing 03 1:500 proposed site layout stamped approved by the planning authority on 3rd January 2024

Drawing 04 proposed site layout plan stamped approved by the planning authority on 3rd January 2024

Drawing 05 1:100 and 1:200 proposed section and elevations stamped approved by the planning authority on 3rd January 2024

Drawing 06 1:200 proposed floor plan stamped approved by the planning authority on 3rd January 2024

Drawing 07 1:500 landscaping plan stamped approved by the planning authority on 3rd January 2024.

COMMISSIONER DIANE O'NEILL

List of Documents

Planning Authority (Antrim and Newtownabbey Borough Council):-	Statement of Case (PA 1)
Appellant (Genesis Planning Consultants-agent):-	Statement of Case (A 1)

Appearances

Planning Authority (Antrim and Newtownabbey Borough Council):-	Ms Sairead deBru (planning) Ms Karen McCorvie (environmental health)
Appellant:-	Mr Sam McCrea (Sam Mouldings) Mr Ronan Woods (Genesis Planning Consultants) Mr Tom Quinn (Quinn Design Associates) Mr Simon Hetherington (FR Marks Associates)