
Appeal Decision

Site visit made on 26 August 2016

by Chris Couper BA (Hons) DiP TP MRTPI

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

Decision date: 23 September 2016

Appeal Ref: APP/U1105/W/16/3150317

**Unit B Block 19, Flightway, Dunkeswell Business Park, Dunkeswell
EX14 4PB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by WIMS (UK) Ltd against the decision of East Devon District Council.
 - The application Ref 15/0748/FUL, dated 20 March 2015, was refused by notice dated 2 February 2016.
 - The development proposed is the change of use of part of the first floor of the B1 industrial unit to residential to form a live/work unit.
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Decision

1. The appeal is dismissed.

Procedural and preliminary matters

2. On the application form the site's address is given as 'B3' in block 19. However, that is inconsistent with its description as unit 'B' in block 19 on the appeal form, decision notice, and drawings. I have therefore amended the site's address to accord with those documents.
3. The Council confirmed in an email dated 14 September 2016 that its decision was based upon, amongst other drawings, no. 853/2 Rev B. I have also been provided with no. 853/2 Rev C, which the appellant states was sent to the Council. Rev C is annotated 'rooflight amended'. It appears to address a discrepancy between the floor plan and elevation on Rev B, but in other regards is nearly identical. Consequently, I am satisfied that no parties' interests would be prejudiced by my consideration of that drawing in this appeal.
4. In its decision the Council referred to policies in the 'New East Devon Local Plan 2013-2031'. However, in its statement of case the Council sets out that those policy references were to a consultation draft of the emerging plan, and that the relevant policies in the decision notice should have been Strategy 7, Strategy 32 and policy D1 from the East Devon Local Plan 2013 to 2031 (adopted January 2016) ('LP').
5. Although reference is made by the appellant to LP Strategy 6, I understand that Dunkeswell does not have a built up area boundary in the adopted LP, and that that policy is therefore not relevant to this site. I have been provided with the policies referred to at paragraph 2.11 of the Council's statement. The appellant

has had an opportunity to comment on them as part of the appeal process, and I have therefore considered the appeal against those policies, rather than the ones referred to in the decision notice.

6. I observed on my visit that much of the first floor of the unit has been converted to residential use. On the application form it is stated that the works were completed in December 2013. A previous application sought permission for the change of use of the first floor to living accommodation. That was dismissed at appeal (APP/U1105/A/14/2224343) ('previous appeal'). This revised scheme was submitted in response.
7. Consequently, whilst I note that works have been carried to the first floor of the unit, the existing internal layout and elements of the building's external appearance do not correspond with the proposed floor plans and elevations. I have therefore treated this scheme as a proposal for a live/work unit, rather than the retention of the existing development.
8. The appellant stated on the appeal form that a planning obligation would be submitted, and has provided a Unilateral Undertaking dated 20 October 2014. However, that refers to the previous planning application and is not applicable to this proposal. I have therefore given it no weight in my decision.

Main Issues

9. The main issues are i) whether the proposal would provide satisfactory living conditions for future residential occupiers, and whether such a use might unduly restrict business/industrial operations in the nearby units; and ii) whether or not the proposal would be harmful to the character and appearance of the area.

Reasons

Living conditions and the effect on business operations

10. The site is located on the Flightway Business Park, which has some live/work units, as well as commercial premises. Given the site's location above a row of commercial units which front on to an access and parking area, the Council contends that future occupants of the living accommodation would experience unsatisfactory living conditions; or that the nuisance caused to those occupants may result in unreasonable restrictions being placed on the nearby commercial uses.
11. In the previous appeal the Inspector stated that he was far from convinced that the residential accommodation proposed would be suitably insulated from noisy activities. In response the appellant has reconfigured the proposal so that offices associated with the business beneath would be to the front, and the living accommodation would be to the rear. Additionally this scheme was supported by a Noise Impact Assessment ('NIA') prepared by Atspace, and a report by Sound Advice Acoustics Ltd dated November 2013, which I understand was not considered as part of the previous appeal.
12. At paragraphs 3.1.5 and 3.1.7 of its statement the appellant asserts that the adjacent units are limited to B1 use and that there is a covenant to that effect. However, the Council disputes that, and I have not been provided with evidence of any such limitation. From the information before me, particularly the decision notice (Ref: 7/56/04/P1325/00072), it appears that the units in this

terrace, including unit B, could be used for B1, B2 and B8 purposes, and that there are no conditions restricting their hours of operation or the noise that they could generate. Additionally, according to an email from the appellant dated 28 January 2016, two nearby units, one of which adjoins this site, are not owned by WIMS (UK) Ltd. Given their distance from residential properties, and their siting behind a large forecourt, the units in this terrace appear to me to be suitable for a broad range of uses, including B2 which may generate significantly greater noise and have greater impacts on amenity than a B1 use.

13. Following a noise survey the NIA concluded that internal noise levels within the building at day and night were significantly below the limits in BS8233:2014, and that maximum noise level guidelines for bedrooms at night time as set out by the WHO were not exceeded. However, whilst the NIA provides a snapshot of the noise environment over a 24 hour period in September 2015, I have little information regarding the use of all the nearby units at that time, and I have very limited evidence to assess the impact that other B2 or B8 uses could have.
14. Furthermore, although the living accommodation would be located towards the rear, I noted that there is an access road there, and that some nearby units have rear yards. Some also have rear openings, and additional openings in that elevation might be required in the future. The scheme would include rear-facing openings serving habitable rooms which would look out over the extended raised decking and countryside beyond. However, some of those might be opened for ventilation, and I am concerned that the residential occupants may experience significant noise and general disturbance in those habitable rooms and outdoor areas from the adjacent commercial uses. That could include from early evening until early morning when the impacts of noise and disturbance would typically be greatest. Other than the reconfiguration of the proposal, the previous Inspector's concerns, which I share, regarding the potential for disturbance from vibration, smell, smoke and fumes, have not been addressed.
15. The scheme was accompanied by a regularisation certificate under the Building Regulations indicating that the existing development complies with certain provisions. However, that does not demonstrate that this scheme is satisfactory in every respect concerning noise transmission or nuisance. Notwithstanding no objection from the Council's Environmental Health Department, for the reasons above I am concerned that should the appeal be allowed the future occupants would experience unsatisfactory living conditions.
16. Attempts to improve the occupiers' living conditions through restrictions on the operational times, noise emissions or other limits on nearby units would in my view place an unreasonable burden on those operators, which would have the potential to harm business and employment opportunities in the area. That would be contrary to the National Planning Policy Framework ('Framework') advice at paragraph 123 that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.
17. Amongst other matters, LP policy D1 states that proposals will only be permitted where they do not adversely affect the amenity of existing residential occupiers and occupiers of proposed future residential properties with respect to access to open space and storage areas. That policy is of limited relevance to

the first reason for refusal. However, the scheme would conflict with one of the Framework's core principles that planning should achieve a good standard of amenity for all existing and future occupants of land and buildings.

18. LP Strategy 7 sets out the general approach in countryside locations such as this, and, amongst other matters states that development will only be permitted where it would not harm the amenity and environmental qualities of the area. That policy is also of limited relevance to the first reason for refusal. However, the scheme would conflict with LP Strategy 32 which states that permission will not be granted for the change of use of employment land where it would harm business and employment opportunities in the area.
19. At paragraph 21 the Framework requires local planning authorities to facilitate flexible working practices such as the integration of residential and commercial uses within the same unit. That approach is broadly reflected in LP Strategy 31 which encourages the provision of mixed use development, including employment close to where people live and the creation of live/work units. The scheme would contribute to those objectives. However, that benefit does not outweigh the harm that I have found would be caused as a result of the poor living conditions that would be provided for the residential occupiers, and the potential adverse impact on the working practices of nearby commercial units. Consequently, the scheme does not represent sustainable economic growth, and it does not benefit from the Framework's presumption in favour of sustainable development.

Character and appearance

20. Drawing no. 853/2 Rev C shows that the front elevation would be provided with horizontal timber cladding. I noted on my visit that the cladding that has been installed to the front and rear now matches the colour of the other units in this terrace.
21. Whilst the profile and orientation of the cladding differs from the other units, given its colour, and its striped appearance, it does not stand out, or significantly disrupt the rhythm of the terrace. The extended rear decking would be at odds with the form of the other units. However, it would be a largely open and lightweight structure, and on this fairly discrete elevation it would not appear incongruous or harm the area's appearance.
22. Consequently, I conclude that the scheme would respect the area's key characteristics and would not harm its appearance. On this issue it would not conflict with LP Strategy 7 or Policy D1, or with the Framework's requirement for good design and for schemes to reflect the identity of local surroundings.

Other matters

23. The appellant's Planning Statement refers to the Council's lack of a 5 year housing land supply. However, in its appeal statement the Council states that, following the adoption of the LP, it can now demonstrate such a supply. As I have no evidence to the contrary, I have not considered that matter further.
24. The appellant has referred me to other live/work units on the Business Park. However, those grouped in a row at The Laurels appear to be purpose-built, and have rear elevations which look out over significant outdoor space.

I understand that the commercial uses there are restricted to B1 and B8 only. Elsewhere, units 10 and 20A are detached buildings on reasonably spacious plots. Consequently, whilst I have limited information regarding the living accommodation within those units, I am satisfied that their context is different from this proposal which would be within a terraced row permitted for B1/B2/B8 uses. I also understand that a live/work proposal in unit no. 18, close to this site, was dismissed at appeal. The appellant's examples do not therefore change my view regarding the harm this scheme would cause.

25. Dunkeswell Parish Council supports the scheme and states that it would accord with policy in the emerging Dunkeswell Neighbourhood Plan and would help improve security. However, I have no details of that policy, and the Neighbourhood Plan does not currently form part of the development plan. I also have no further information concerning security incidents.

Conclusions

26. From the evidence before me I conclude that the scheme would result in unsatisfactory living conditions for the future occupants of the proposed residential accommodation. The nuisance caused could lead to pressure for nearby commercial units to curtail present or future operations which would harm business and employment opportunities in the area. Consequently, although I have considered the benefits that would arise from the creation of a live/work unit and the promotion of more flexible working practices, the scheme would not accord with the development plan as a whole, and would not constitute sustainable development as defined by the Framework. Having regard to all other matters raised, the appeal is therefore dismissed.

Chris Couper

INSPECTOR