The Planning Inspectorate

Appeal Decision

Site visit made on 14 February 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 24th March 2017

Appeal Ref: APP/P0240/W/16/3163316
Russell Farm, New Road, Maulden, Central Bedfordshire, MK45 2BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Golam Yahiya against the decision of Central Bedfordshire Council.
- The application Ref CB/16/00578/FULL, dated 10 February 2016, was approved on 18 May 2016 and planning permission was granted subject to conditions.
- The development permitted is erection of two, 2 storey office buildings (re-build of existing units A & B).
- The condition in dispute is No 7 which states that:
  (7) The buildings shall be used for B1a (offices) and no other purpose (including any other purpose falling within Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- The reason given for the condition is:
  (7) To exclude the provisions of the said Use Classes Order and thereby ensure the Local Planning Authority retains full control of the future use of the buildings in view of the special circumstances of the case.

Decision

1. The appeal is allowed and the planning permission Ref CB/16/00578/FULL for erection of two, 2 storey office buildings (re-build of existing units A & B) at Russell Farm, New Road, Maulden, Central Bedfordshire, MK45 2BG granted on 18 May 2016 by Central Bedfordshire Council, is varied by deleting condition No 7.

Procedural Matter

2. During my site visit it became clear that in order to assess the effect of the proposal I would need to enter the appeal site, rather than simply view it from the road. Accordingly, I enquired onsite and was permitted access. At no time did I discuss the merits of the appeal with either the appellant or persons working on the development.

3. The description of development given above reflects a wording that was agreed between the parties at the application stage, and the permission was granted on that basis. In light of this, and as the appeal is to vary the permission, I have based the description of development on the decision notice rather than the application form.

Background and Main Issue

4. Planning permission has been granted for the construction of 2 office buildings. The appeal seeks permission to carry out the development without complying with condition No 7. This condition removes permitted development rights from the buildings, relating to changes of use. A similar condition (No 12) was also attached to permission ref CB/12/03439/FUL on the same site.

5. The main issue is the effect that removing the condition would have on the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance.

Reasons

6. The appeal site is located a short distance from New Road, and forms part of a small business park. The consented office buildings would be located in relatively close proximity to an existing dwelling to the east.

7. The National Planning Policy Framework ('The Framework') states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) further advises that *"Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances"*.

8. The Council state that the disputed condition is necessary to retain control of the future use of the buildings, in order to protect the amenity of local residents. There is particular concern regarding a potential change to another use falling within Class B. Without the disputed condition, the buildings would benefit from permitted rights for a change of use to Class B1(b) research and development, Class B1(c) light industrial, and Class B8 storage or distribution, within Class B.

9. The Town and Country Planning (Use Classes) Order 1987 defines Classes B1(b) and B1(c), in part, as *"being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit"*. This definition clearly excludes intrusive uses that would be incompatible with a residential area. Accordingly, uses within Class B1(b) and B1(c) would not significantly harm the living conditions of nearby residents.

10. Permitted rights would also allow for a change of use to Class B8 storage or distribution of up to 500m of floorspace in each building. However, any such units would be relatively small and would not give rise to significant noise and disturbance in my view. In any case, the shape and layout of the buildings do not appear to lend themselves to B8 use.

11. In addition, permitted rights would allow for a temporary change of use (up to 2 years) to a flexible use falling within Class A1 (shops), Class A2 (financial and professional services), Class A3 (restaurants and cafes) or Class B1 (business). This would apply to no more than 150 square metres of floorspace, and any such units would therefore be small in scale. Accordingly, I do not consider that these uses would give rise to significant noise and disturbance.

12. The other changes of use that would be allowed for under permitted development rights have not been cited as a source of concern, and no 'exceptional circumstances' have been highlighted that would justify their removal.

13. For the above reasons, I conclude that removing the disputed condition would not lead to significant harm to the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance. The condition is therefore unnecessary, and there are no 'exceptional circumstances' to justify the restriction of permitted development rights in this case.

14. In coming to that view, I have had regard to the fact that the Council has consistently sought to apply a condition of this nature to developments on the site. However, I have come to my own view on this matter, having regard to the relevant tests in PPG and the Framework.

Other Matters

15. Concerns have been raised by interested parties that the removal of this condition would be a first step towards securing a residential use. However, as the consented buildings were not in office use on 29th May 2013, a change of use to dwellings would not be permitted development, and would require planning permission. Similarly, a change of use to a dance studio (within Class D2) would also require planning permission.

16. Given the size of the consented units, and the fact that offices were previously located on this site, I do not consider that the traffic implications of deleting condition No 7 would be significant. I further note that the Council has not sought to object to the proposal on these grounds.

17. The size and appearance of the building, its drainage arrangements, and the number of offices that are proposed are matters that go beyond the remit of this decision, which relates solely to condition 7 of planning permission ref CB/16/00578/FULL.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

Thomas Hatfield

INSPECTOR