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## Appeal Decision

Site visit made on 4 April 2017

**by Paul Freer BA (Hons) LLM MRTPI**

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

**Decision date: 18 May 2017**

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**Appeal Ref: APP/N0410/C/16/3158637**

**Land at Apex Works, Willow Avenue, New Denham, Buckinghamshire UB9 4AF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Noel McManus of Kincar Estates Limited against an enforcement notice issued by South Bucks District Council.
  - The enforcement notice was issued on 4 August 2016.
  - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land from two workshops with ancillary offices within Class B1(c) of the Town and Country Planning (Use Classes) Order 1987 ("the UCO") to a sui generis house in multiple occupation and workshop ("the Unauthorised Development").
  - The requirements of the notice are to cease all use as a house in multiple occupation and remove from the Land all fixtures, furnishings and domestic items brought onto the Land in connection with the house in multiple occupation element of the Unauthorised Use.
  - The period for compliance with the requirements is six calendar months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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**Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected.**

### Procedural Matter

1. During my site visit, I noted that the plan attached to the enforcement notice did not accurately show the footprint of the building to which it relates, insofar as it did not include that part of the workshop at the western end of the building. I have subsequently been provided with an amended plan which does include the part of the building missed off the original plan. The part of the building missed off the original plan is not used for purposes attacked by the notice, being one of the two workshops that existed prior to the alleged breach of planning control taking place and the one workshop that remains after the alleged breach of planning control occurred. I am therefore satisfied that no injustice would be caused by correcting the notice to include the amended plan, and note also that the appellant has raised no objection to the plan as amended. I shall therefore correct the notice accordingly, and the amended plan is attached to this Decision.

### The appeal on ground (a) and the deemed planning application

2. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission
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ought to be granted. The Council has stated three substantive reasons for issuing the enforcement notice, from which the main issues raised are:

- the effect of the development on the supply of employment sites in the District, and
  - whether the development makes adequate provision for the collection of refuse and recycling storage.
3. The Council also contends that granting planning permission for the use of part of the site as a house in multiple occupation would act as a precursor to further proposals for similar development at other sites in the District, which the Council would then find difficult to resist. However, it is a fundamental planning principle that each development should be considered on its own merits. It is highly unlikely that the particular set of circumstances that exist in relation to the current appeal will be replicated at other sites, such that any decision I reach in relation to this appeal would act as an unassailable precedent in the consideration of other proposals for similar development elsewhere in the District. I therefore conclude that the Council's concerns in this respect are not well founded and do not form a valid reason for not granting planning permission for the use alleged in the notice.

*The supply of employment sites in the District*

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. This is therefore the starting point for consideration of this main issue.
5. The Council adopted its Development Framework Core Strategy in February 2011 (Core Strategy). Core Policy 10 of the Core Strategy indicates, amongst other things, that important employment sites will be retained in employment use. The policy goes on to indicate that there will be a general presumption that other employment sites (B Use Class) will also be retained in employment use (B Use Class). The policy does however indicate that in limited circumstances, specifically stated as including where there is no reasonable prospect of a site being used for the permitted purpose, the priority will be for the site or premises to be reused or redeveloped (where appropriate) for an alternative economic use. A footnote to Core Policy 10 explains that, in seeking to demonstrate that there is no reasonable prospect of a site being used for the permitted purpose, the applicant will need to have undertaken a prolonged period of unsuccessful marketing, using details approved by the District Council.
6. The Council provides guidance on the interpretation of Core Policy 10 in *Guidance Note: Implementation of Core Policy 10 (Employment)* (Guidance Note), dated November 2013. The Guidance Note includes a specific section on marketing expectations, in which it is explained that applicants will be required to provide robust evidence to show that the employment site has been marketed for an appropriate time, that the form of marketing has been appropriate and that despite best endeavours no tenant or purchaser interested in using the site for Use Class B operation has been found. The Council's expectations in these respects are set out in detail in the Guidance Note.

7. The appellant has questioned the weight that should be afforded to the Guidance Note. It is expressly stated in the Guidance Note that it is not a statutory document and does not form part of the development plan. Nevertheless, to the extent that it informs interpretation of a policy in the development plan, I consider that it is a useful document and I attach significant weight to it.
8. In assessing the breach of planning control against Core Policy 10, it may firstly be noted that the appellant has not made an appeal on ground (b): namely, that the matters alleged in the notice have not occurred. The deemed planning application arising from the appeal on ground (a) can only relate to the breach of planning control alleged in the notice which, by not challenging with an appeal on ground (b), the appellant accepts is from two workshops with ancillary offices to a sui generis house in multiple occupation and workshop. The appellant has made reference to the ad hoc use of the second workshop and that the building is being used as a live/work unit, and I shall return to these points later. However, in the first instance, I must assess the deemed application on the basis that it results in the partial loss of an employment site.
9. For the purposes of Core Policy 10, Apex House is not designated as an 'important employment site'. Consideration must therefore be made on the basis that Apex House falls in the category of an 'other employment site' for the purpose of Core Policy 10. It follows that, in accordance with that policy, there is a general presumption that Apex House will be retained in employment use.
10. In this respect, the "limited circumstances" referred to Core Policy 10 relate to a scenario whereby the priority will be for the site or premises to be reused or redeveloped (where appropriate) for an alternative economic use. The types of alternative economic use that the Council may consider acceptable are set out in the Guidance Note. The use of the Apex House in part as a house in multiple occupation cannot be considered to be an alternative economic use as described in the Guidance Note, and therefore does not accord with Core Policy 10 in that respect.
11. In terms of the evidence required by the Council to show that the employment site has been marketed for an appropriate time, the Guidance Note specifies that vacant employment sites will normally need to be marketed continuously for a minimum period of 12 months. The Guidance Note sets out in detail the actions that need to be taken and the information that needs to be provided as part of a marketing campaign.
12. The appellant explains that Apex House has been marketed for employment use since September 2015. However, the only information that has been provided in support of that is a letter from Reinhardt Estate Agents dated 31 August 2016, together with a copy of the associated advert in Zoopla. That advert confirms that the property was marketed since September 2015, and also contains some limited information about the particulars of the building together with a guide price.
13. The limited level of information provided in that advert falls a long way short of the minimum requirements set out in the Guidance Note. Moreover, whilst I accept that the property has been marketed from September 2015, I have no information about the duration of that marketing or the intensity with which the property was marketed. Similarly, I have no information about whether

the property was also marketed through other avenues, such as the Estates Gazette, or whether it was listed on the Bucks Land and Property Database as required by the Guidance Note.

14. I accept that Apex House is currently in relatively poor condition. As a general principle, I can also accept that there may be other properties within the District on the market in better condition, in a better location or which provide better facilities. However, the applicant has not demonstrated through evidence that this is the case now or when Apex House was first marketed in September 2015. In the absence of this evidence, and on the basis of the very limited marketing that has taken place to date, I cannot discount the possibility that a tenant or purchaser interested in using or redeveloping Apex House for employment use could not be found if the property was marketed at the right price and in accordance with the requirements of the Guidance Note.
15. As the appellant points out, that part of Apex House now used as a house in multiple occupation was in part used as a workshop and in part as ancillary offices. The use as a workshop was a use that would itself have fallen with Use Class B.1 (c). The use of the workshop that continues in operation also falls within Class B.1 (c). However, because the primary use of the site falls within Class B.1 (c), that office space could also be potentially used for purposes within Class B.1 (c). It follows that, whilst one workshop remains, the breach of planning control involving the loss of one workshop and the ancillary office space has resulted in the loss of a significant amount of B.1 (c) floorspace.
16. Having regard to the above, I conclude that the breach of planning control has resulted in the loss of employment floorspace which could potentially meet the needs of local businesses or which could provide employment opportunities for local people. I therefore conclude that the breach of planning control unacceptably erodes the supply of employment sites in the District, and as such is contrary to Core Policy 10 of the Core Strategy.

*Collection of refuse and recycling storage*

17. Although no specific proposals for the collection of refuse or recycling storage have been put forward, the appellant suggests that this could be addressed by the imposition of a suitably worded condition. However, the land subject to the enforcement notice (even as amended) is drawn tightly around the building. I observed during my site visit that the land surrounding the appeal property is used primarily for car parking and manoeuvring space, albeit I did note various storage bins in some locations.
18. In the absence of a worked-up proposal showing a precise location for the storage of refuse and recycling, I cannot be certain that refuse or recycling could be stored in and collected from a location that is acceptable in terms of highway and pedestrian safety, and which would not cause inconvenience to or obstruct the occupiers of other buildings on the land. Similarly, in the absence of any firm details about the size of the area to be allocated for the storage of refuse and recycling bins, I cannot be certain that sufficient space is available for that purpose. Moreover, I have no information to indicate that the appellant owns or has control over the land outside of the building subject to the enforcement notice. In these circumstances, I am not satisfied that a condition could be imposed that would meet all the tests set out in the Planning Practice Guidance.

19. I conclude that the development does not make adequate provision for the collection of refuse and recycling storage. I therefore conclude that the development does not accord with Policies H9 and EP3 of the South Bucks Local Plan. These policies require, amongst other things, that the development of land for residential purposes will only be permitted where there is satisfactory access for refuse collection.

*Other matters*

20. I have found that the breach of planning control fails to accord with the development plan. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, it is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
21. The appellant has made reference to the ad hoc use of the second workshop although, at the time of my site visit, there was no evidence that this space was being so used. The appellant also indicates that the building is being used as a live/work unit but, again, there was no evidence of that at the time of my site visit. I did observe some examples of creative work but there was no indication that these were commercial ventures and I have been provided with no evidence of such activity providing a source of income for those residing at the premises. I therefore have no evidence to show that the use of the building as a house in multiple occupation contributes to the provision of employment in the District or generates activity in the local economy.
22. The appellant also refers to paragraph 51 of the National Planning Policy Framework (Framework), which indicates that local planning authorities should normally approve planning applications for change to residential use from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate. The appellant has not, however, demonstrated through evidence that there is additional need for housing in the area in the form of a house in multiple occupation, for which the appeal premises are currently used and to which the breach of planning control alleged in the notice relates.
23. Furthermore, given that the Council has adopted a specific policy to safeguard the supply of employment land and has supported that policy with detailed guidance, it is evident that the loss of employment land is an issue of particular concern to the Council. Consequently, in accordance with the language in paragraph 51 of the Framework. I am satisfied that there are strong economic reasons why the use of the appeal property as a house in multiple occupation is not appropriate in this case.
24. In relation to the above, I acknowledge that from October 2017 the change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of that Schedule will be permitted under Article 3, Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). The appellant contends that, should this appeal be dismissed, it is almost certain that the building will be fully converted into residential units after October 2017 under permitted development.

25. However, the provisions under Class PA of the GPDO are subject to the limitations at Class PA.1 and the conditions at Class PA.2. One of the conditions at Class PA.2 is that the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to matters including the transport and highways impact, contamination risks and flooding risks. Having regard to the location of and means of access to the appeal site, its proximity to a water course and the use currently taking place in the workshop, any or all of these matters could potentially fall to be considered as part of an application for prior approval. There is, therefore, no guarantee that prior approval would be forthcoming. For that reason, I do not share the appellant's degree of certainty that Apex House will be fully converted into residential units after October 2017 pursuant to the provisions at Class PA of the GPDO.
26. Moreover, Class PA permits the change of use from a use falling within Class B1(c) to a use falling within Class C3. The latter is defined as use as dwellinghouse (whether or not as a sole or main residence) by (a) a single person or by people to be regarded as forming a single household; (b) not more than six residents living together as a single household where care is provided for residents; or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4). The breach of planning control subject to the enforcement notice is a house in multiple occupation having, at the time of my site visit, eight rooms in use as bedrooms. It follows that the provisions within Class PA would not permit a change of use from light industrial to the current use of the premises as a house in multiple occupation.
27. I fully recognise the direction of travel in terms of the Government's approach to the permitted change of use of office/B1 buildings to residential use. Nevertheless, for the reasons set out above, I consider that the provisions within Class PA of the GPDO do not provide justification for the breach of planning control that has taken place at Apex House.
28. I recognise also that the appeal site is not located within a defined employment area and is located within a predominantly residential area. In this context, I am mindful that Core Policy 10 of the Core Strategy specifically cites situations where a site is causing significant amenity issues as being another of the limited circumstances in which an employment site may be reused or redeveloped for an alternative economic use. There is, however, no suggestion or evidence that the use of the appeal site has caused any significant amenity issues. Indeed, by definition, the lawful use of the appeal property as two workshops with ancillary offices within Class B1(c) of the UCO is a use that may be carried out in any residential area without detriment to amenity. The location of the appeal site within a predominantly residential area does not therefore provide justification for the breach of planning control that has occurred.

*Conclusion on the ground (a) appeal*

29. I recognise that the use of the appeal property as a house in multiple occupation and workshop would make an efficient use of the building and would not result in harm in terms of the visual amenities of the locality, the living conditions of the occupiers of neighbouring residential properties, car parking or highway safety. Nevertheless, neither these considerations nor the

other matters considered above are individually or collectively of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. I therefore conclude that planning permission ought not to be granted.

30. Accordingly, the appeal on ground (a) fails.

### **Conclusion**

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction, and refuse to grant planning permission on the deemed application.

### **Formal Decision**

32. It is directed that the notice be corrected by deleting the Plan attached to notice and replacing it with the plan attached to this Decision. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Paul Freer*

INSPECTOR

## Plan

This is the plan referred to in my decision dated: 18 May 2017

by **Paul Freer BA (Hons) LLM MRTPI**

**Land at: Land at Apex Works, Willow Avenue, New Denham, Buckinghamshire  
UB9 4AF**

**Reference: APP/N0410/C/16/3158637**

Scale: Not to scale

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