
Appeal Decision

Site visit made on 2 May 2017

by Matthew Birkinshaw BA(Hons) Msc MRTPI

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

Decision date: 30th May 2017

Appeal Ref: APP/F2415/W/17/3168568

Unit 4 Evergreen Field Farm, Pincet Lane, North Kilworth, LE17 6NE

- 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 Mr Simon Green against the decision of Harborough District Council.
 - The application Ref 16/01971/FUL, dated 5 December 2016, was refused by notice dated 23 January 2017.
 - The development proposed is described as an 'Application for change of use to B2 General Industrial.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to a modern steel-framed building approved under planning permission Ref 15/01722/FUL. A condition of that planning permission restricts its use for storage in connection with a decorative surfacing firm also operating from Evergreen Field Farm.
 3. At the time of my site visit the appeal building was primarily being used for storing furniture and antiques by occupiers of the adjacent unit, 'Albert's Archived Vintage and Loved'. The tenant also carries out auctions from the building on Tuesday evenings.
 4. The planning application sought permission for a 'change of use to Class B2 General Industrial'. Upon receipt the Council unilaterally changed the description to read 'retrospective change of use of building to Auction House'. It is on this basis that the planning application and appeals have been notified, and that any potentially interested parties would have considered the proposal.
 5. At appeal the appellant maintains that this change was not agreed, and that the application is *"...for a change of use to B2 General Industrial for...an expansion of the business activities taking place in Unit 2, Albert's Archived Vintage and Loved, with the addition of an auction-style event taking place on a Tuesday evening..."*. Subsequent correspondence also states that *"The general and overwhelming use of the property falls into the category of B2 insofar as items of furniture and general brick-a-brack are stored here to either be sold directly or to form part of upcoming auction lots...In summary the building is used for storage 95% of the time, with a very small amount of auction activity taking place."*
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6. Based on observations at my site inspection it is apparent that the building is being used in connection with 'Albert's Archived Vintage and Loved'. A connecting doorway allows customers to walk between the two units and the position has been confirmed in writing by the appellant. It is therefore not open to me to adopt the description of development used by the Council, as this would amount to a substantive change to the nature of the use for which planning permission was sought.
7. On the other hand, it would not be appropriate to allow the appeal on the basis of the description of development set out on the application form. The original planning application was for Use Class B2. This is defined by The Town and Country Planning (Use Classes) Order 1987 (as amended) as a use for the carrying out of an industrial process other than one falling within Class B1. Neither the planning application nor the appeal have been advertised or consulted on this basis. As a result, should the appeal succeed, it would disadvantage interested parties and statutory consultees who have been unable to comment on, or adequately consider, the use of the building for industrial purposes.
8. Furthermore, I would have no evidential basis for such a decision as neither the Council's case nor the case for the appellant have addressed the land use implications of a general industrial use. Although planning conditions could be used to control details such as car parking, deliveries and operating hours, their approval would not be subject to the same process of consultation as a planning application. In addition, the principle of development would already have been established.
5. In summary therefore, it is apparent that the terms of the original application do not reflect the appellant's current intentions for the building. However, that is not a matter which can be rectified through the appeal proposal. As a result, for the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Matthew Birkinshaw

INSPECTOR