
Appeal Decision

Site visit made on 26 June 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 31 July 2017

Appeal Ref: APP/X1545/W/17/3171404

Units 1 and 2, Old Maltings, Hall Road, Heybridge, CM9 4NF

- 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 Miss Martyna Jackowska against the decision of Maldon District Council.
 - The application Ref FUL/MAL/17/00003, dated 22 December 2016, was refused by notice dated 28 February 2017.
 - The development proposed is change of use to a mixed use B1/B2/D2.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to a mixed use B1/B2/D2 at Units 1 and 2, Old Maltings, Hall Road, Heybridge, CM9 4NF in accordance with the terms of the application, Ref FUL/MAL/17/00003, dated 22 December 2016, subject to the conditions in Annex A.

Procedural Matter

2. The Council has advised that post examination modifications have been made to the Local Development Plan (LDP) including changes to policy E1 to increase the amount of employment land. Since these emerging policies are at an advanced stage of preparation, I am able to give them significant weight in my consideration of the appeal, in accordance with paragraph 216 of the National Planning Policy Framework (the Framework).

Main Issue

3. The main issue is the effect of the proposal on the supply of employment generating land.

Reasons

4. The site is located within the Hall Road industrial estate and within policy E1 of the Maldon District Replacement Local Plan (RLP) identified as the 'Causeway Employment Area' (E1/8) which the policy identifies is about 50 ha in area. Policy E1 identifies appropriate uses for each area which in this case would be B1, B2 and B8. RLP policy E6 seeks to protect existing employment uses. The policy sets out a number of criteria that would have to be met for the loss of a site to be permitted.
5. The site in its current form is not harmful to the character and appearance of the area. The unit is a single storey building. The application form gives the floor area as about 523 square metres. The policy as worded does not require

all the requirements to be met it can be one or the other. It allows for loss of an employment site where *'The site would have a greater benefit to the community if an alternative use were permitted'*. The supporting text to the policy suggests that *'...this could be through the provision of local services and community and leisure facilities'*. The appellant has provided a letter from the landlord regarding the ability to rent the site out and the frequency of requests to put a gym on the site. This is not evidence that demonstrates that the site has been marketed for a period of three months. Nevertheless, it confirms a continued lack of interest in the premises from small companies. In addition apart from the claims management business it was vacant at the time of my site inspection. Further the appeal proposal seeks a mixed use rather than the total loss of the site for employment.

6. The appellant refers to emerging policy E1 of the Maldon Local Development Plan (LDP). In particular that it refers to *'Complementary and supporting uses may be considered acceptable where they serve an essential ancillary function to the employment area and will not result in a material change of the area's Class B character and function'*. However, it also sets out that *'In principle, designated employment areas will be retained and protected for Class B Uses...'*
7. The current claims management business operates from a small office within the building. This is a B1 use and the appellant estimates that it uses about 20% of the building floor space. This business currently employs about 5 staff. The appellant sets out that the provision of a gym and boxing club would utilise the remaining vacant space within the unit. It would make a small contribution to employment through the provision of a further 7 new jobs (5 full time and 2 part time) at the site. The appellant also highlights the social benefits to the health and well being of the community.
8. There is no dispute that the mixed use of the building would be in conflict with RLP policy E1 by introducing a D2 use. Further I note that there is a demand for more employment floor space. Nevertheless, the emerging policy and E6 allow for some flexibility in future use of floor space and that the proportion of this change may not be significant within the wider estate. The use would be a complementary use that would benefit employees on the immediate site, wider estate and wider community. In this case the scheme would provide a mixed use of the building that would allow it to be fully occupied. This would assist in enhancing and sustaining the vitality and vibrancy of the estate as a whole. In this regard the provision of the D2 use would not detract from the overall function of the estate. Accordingly the Council's objectives would not be undermined by this particular development. The National Planning Policy Framework also strongly supports employment growth and flexibility in accommodating business needs and the need for different land uses to support sustainable local communities. I therefore conclude that the proposal would not have a harmful effect on the supply of employment generating land.

Other matters

9. Whilst not reasons for refusal raised by the Council I have carefully considered other issues raised by local residents. I appreciate that residents are concerned about traffic from the development and noise and disturbance. There is no objection from the Local Highway Authority and there would be parking on site. On the issue of noise the hours of operation of the building can be controlled along with a scheme for soundproofing.

10. The Council has referred me to a recent appeal decision¹ for the replacement of a B1 use with a nursery and dwelling. It has also pointed out an appeal that was allowed² for a smaller unit to be changed to a gym. Neither case is directly comparable in size, use or location to the appeal premises which I have in any event judged on its individual merits.

Conditions and Conclusion

11. I have considered the suggested conditions in the light of the relevant tests in paragraph 206 of the National Planning Policy Framework. In addition to the standard implementation condition it is necessary to define the plans with which the scheme should accord. In the interests of the living conditions of existing occupiers nearby it is necessary to control the D2 use, its hours of use, require a scheme of sound insulation and require the provision of car parking and cycle parking. The Council's suggested condition 4 relates to dwellings and would not be necessary in this case.
12. For the reasons given above and having regard to all other matters raised I conclude that the appeal should be allowed.

D J Board

INSPECTOR

¹APP/X1545/W/16/3154913

²APP/X5145/W/17/3171404

Annex A – Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The premises shall be used for B1/B2/D2 gymnasium and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 3) The D2 use hereby permitted shall only take place between the following hours: 0700 to 2100 Mondays – Saturdays and 1000-1600 on Sundays, Bank and Public Holidays.
- 4) The use hereby permitted shall not commence unless and until the building has been constructed to provide sound insulation against internally generated noise in accordance with a scheme which shall have been submitted to and approved in writing by the local planning authority. The scheme as approved shall be retained as such thereafter.
- 5) The development shall not be occupied until such time as the car parking area, indicated on the approved plans, including any spaces for the mobility impaired has been hard surfaced, sealed and marked out in parking bays. The car parking area shall be retained in this form at all times and shall not be used for any purpose other than the parking of vehicles related to the use of the development.
- 6) Prior to commencement of the proposed development, details of the provision for parking of powered two wheelers and bicycles, of a design that shall be approved in writing with the Local Planning Authority. The approved facility shall be secure, convenient, covered and provided prior to the first occupation of the proposed development hereby permitted and shall be maintained free from obstruction at all times for that sole purpose in perpetuity.