



Appeal Decision

Site visit made on 11 July 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 8th August 2017

Appeal Ref: APP/B1930/W/17/3168788

Units 15 and 16, North Orbital Trading Estate, Napsbury Lane, St Albans, Hertfordshire AL1 1XB

- 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 Peter Dickey (Citygate Holdings Limited) against the decision of St Albans City & District Council.
 - The application Ref 5/16/2931, dated 28 September 2016, was refused by notice dated 23 November 2016.
 - The development proposed is use of premises for storage of motor vehicles including vehicle cleaning, vehicle imaging, associated mechanical and minor body work repairs and retention of supply and extract system; construction of single storey side extension to provide jet wash booth.
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Decision

1. The appeal is allowed and planning permission is granted for use of premises for storage of motor vehicles including vehicle cleaning, vehicle imaging, associated mechanical and minor body work repairs and retention of supply and extract system; construction of single storey side extension to provide jet wash booth at Units 15 and 16, North Orbital Trading Estate, Napsbury Lane, St Albans, Hertfordshire AL1 1XB in accordance with the terms of the application, Ref 5/16/2931, dated 28 September 2016, subject to the conditions set out in the Schedule attached to this decision.

Background

2. The proposal seeks to regularise an ongoing use of two business units on the North Orbital Trading Estate. These units occupy a corner position in this estate with residential development abutting to the rear at Meadowcroft and to the side along New Barnes Avenue.
3. When approved these units were restricted to a B8¹ use for warehousing. The subsequently adopted St Albans District Local Plan Review of 1994 identified the site as an employment area where Policy 20 applies. This policy states that B1², B2³ and B8 uses are normally acceptable in employment areas with the caveat that B2 uses be permitted only in environmentally acceptable locations.

¹ The Class B8 Use is for storage or as a distribution centre as defined in the Town and Country Planning (Use Classes) Order 1987 (UCO).

² Class B1 is a business 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, as defined in the UCO.

³ A Class B2 Use is for the carrying out of an industrial process other than one falling within Class B1.

4. The operation for which approval is sought is the preparation of used cars for re-sale elsewhere. This involves vehicles being delivered, stored, checked, being subject to minor repairs and paint sprays, valeted, imaged and then taken away for sale. This proposal follows an earlier refusal of retrospective permission for these uses which was the subject of an appeal dismissed on 12 August 2016⁴ following a hearing on 8 June 2016.
5. In dismissing the previous appeal the Inspector had concluded that it had not been clearly shown that this is a suitable location for a mixed Class B2, B8 and B1 use in terms of being able to adequately mitigate the impact on the living conditions of the nearby residents by way of noise and disturbance.
6. Compared to the previous appeal the proposal now incorporates a single storey side extension to fully enclose the jet wash operation, with evidence of its sound insulation efficacy through a noise impact assessment⁵, and an updated odour appraisal⁶ of the effect of installing carbon filters to the venting to the spray paint booth and paint mixing room. These measures seek to address the concerns raised in the previous appeal, where the Inspector's findings are a material consideration in my decision.
7. In dismissing the earlier appeal the Inspector had concluded that the operations having commenced without planning permission was not reason alone for the proposal to be found unacceptable and that there was no objection in principle to the proposal subject to the living conditions of neighbouring residential occupiers being safeguarded. I concur with this.
8. In addition to the issue of noise, the Council's decision continues to find there to be concerns in respect of odour and so consequently the main issue in the appeal is as set out below.

Main Issue

9. The effect of the proposal upon the living conditions of the occupiers of nearby dwellings in Meadowcroft and New Barnes Avenue, with particular regard to noise and odour.

Reasons

Noise

10. The previous Inspector had agreed that, with the re-directing of the extract ducting from the rear of the premises adjacent to the housing in Meadowcroft to the front of the building and the adding of silencers, both measures already carried out, noise from the spray booth and paint mixing room exhaust venting would be at 11dB, below the measured background level of 40dB. This noise issue source remains a concern for some nearby occupiers but since the re-ducting the Council does not consider this aspect of the operations to give rise to a harmful impact upon living conditions. I find no grounds to differ from the Council's position.
11. Regarding noise generated from the uses within the main units, the previous Inspector considered this could be limited to a level that did not result in harm

⁴ APP/B1930/W/16/3141738

⁵ Environmental Noise Impact Assessment – North Orbital Trading Estate by Sound Planning 21 September 2016.

⁶ Citygate Holdings Limited – Units 15 & 16 North Orbital Estate, St Albans Updated Odour Appraisal of 23 January 2017

- to the living conditions of neighbouring occupiers through a condition requiring the building doors to be kept shut during working hours other than for access.
12. Contrary to the Council's view, I concur with the last Inspector that a condition requiring that all external doors or other openings to Units 15/16 be kept closed during the authorised hours of operation other than when access is required would be enforceable and satisfy paragraph 206 of the National Planning Policy Framework (the Framework). I accept that this might be a matter that depended upon evidence from other parties but am satisfied that on this basis, and with the power if necessary to apply a breach of condition notice, this could be reasonably and effectively enforced.
 13. The main reason the last appeal was dismissed was over the previous Inspector's main concern that the noise of jet-washing and the vacuuming cars at the side of the building could be clearly heard and was intrusive from the end of New Barnes Avenue. This noise was demonstrated to be at 15dB above measured background levels which the Inspector considered indicated a significant adverse impact, not sufficiently mitigated by the screens that were proposed.
 14. The intention now is to completely enclose the jet-washing and vacuuming operations within an acoustic booth. The evidence is that enclosed these activities would be at a calculated noise level of 28 Db(A) which would be substantially below the background level of 40 dB(A). The Council's first concern is that this would be dependent upon the shutter door to this building being closed when the car valeting was taking place and that a condition to this effect would also have the same drawbacks of enforceability as in respect of Units 15/16. However, based on my reasoning in respect of the main units, I consider that an enforceable condition could be applied to the jet wash booth, whereby any cleaning and valeting within it should only take place with the shutter closed.
 15. The Council's second concern regarding noise from the proposed car washing booth is that the appellant's noise impact assessment provides only theoretical figures based on test calculations with no guarantee these could be delivered in practice. To address this concern I sought the views of both main parties, without prejudice, over a further condition that limited noise levels at the site boundary. Having taken into account the responses I find a condition requiring that specific noise levels shall not exceed 36 dB as measured on the north boundary of the site 8m from the spray wash booth would be reasonable, necessary and enforceable and adequately address the Council's concerns.
 16. Finally, I am not persuaded that permission could reasonably be refused on the basis of the noise and disturbance generated by the cars being moved in and out of the outside space to Units 15 and 16. I consider some noise and disturbance would be likely were an already authorised warehouse use to operate from this site.
 17. On the basis of the above, and subject to the conditions referred to, the proposal would adequately mitigate the impact on the living conditions of nearby residents by way of noise and associated disturbance. As a consequence it would, in respect to this issue, satisfy LP Policy 20 which allows for a B2 use in designated employment areas in environmentally acceptable locations and accord with the principle in the Framework to always seek to

secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Odour

18. The operations continue to be the subject of complaints from neighbouring residents due to the smells of paint fumes. The concerns are not just over the smell but the potentially adverse effects on health. The appellant's updated Odour Appraisal concludes that the ducting arrangement carried out to date still given rise to a medium risk of adverse impacts on nearby residential properties, which are high sensitivity receptors, but that the fitting of carbon filters would reduce this to a low risk.
19. The Council acknowledges that the Inspector in the previous appeal was satisfied that suitable filters, and a programme for their proper maintenance, could be required by condition and with these place, together with suitable controls on hours of operation, odour emissions from the site would be reduced to the extent that there would not be an unacceptable adverse impact on the living conditions of nearby residential occupiers. However, the residual low risk of odour resulting from the installation of carbon filters is considered by the Council not to produce environmentally acceptable conditions for nearby residential occupiers.
20. The Odour Appraisal considers the carbon filters very effective at reducing levels of odorous materials and the Council has provided no technical evidence to dispute this. The evidence is that, subject to the installation and subsequent proper maintenance of carbon filters to the duct outlets from the spray booth and paint mixing room, which could be required by condition and made subject to suitable hours of operation, there would be no unacceptable adverse impact on the living conditions of nearby residential occupiers due to odour.
21. The Council's statement note the Odour Appraisal concludes that the spray both exhaust vent does not meet minimum height requirements. The report does state that should the proposed carbon filters not provide sufficient odour mitigation that there was the further option of increasing the stack height to 3m above the tallest point of the roof to improve dispersion further. The report notes that the below minimum height of the vent may result in building downwash effects but that these would only be significant in higher winds when odours would be well dispersed. The evidence persuades me that the carbon filters would provide acceptable odour mitigation so as not to require the raising of the exhaust vent height.
22. As a consequence, I am persuaded that making the proposals conditional upon the odour mitigation measures submitted would secure the acceptable living conditions of neighbouring residential occupiers and satisfy LP Policy 20 and the relevant Framework principle.

Other Matters

23. As other changes of use should be considered on their individual merits the proposal would not be unacceptable due to establishing a precedent for further general industrial uses throughout the North Orbital Trading Estate. In the previous appeal the amount of space used for outside storage, limiting space for car parking, added to the Inspector's concerns over the use. Whilst the evidence is that there is a general parking problem in this business park the

Highway Authority has not substantiated an objection on highway safety grounds and has noted that the roads are not public and the site is at the end of a cul-de-sac with no passing traffic. On this basis there would not be adequate grounds for me to find this use unacceptable due to the amount of outside storage.

24. The proposed Jet Wash Booth is not considered to be of a scale or design that would result in material harm to the character and appearance of the area or to the visual outlook of neighbouring residents. Although employment levels are high in St Albans this factor would not be adequate grounds for resisting the continuation of these operations.

Conditions

25. Consideration has been given to the conditions suggested by the Council. Although largely retrospective a condition is still considered necessary, in the interest of certainty, to set out the application drawings to which the approval relates.
26. Further conditions are necessary to secure measures that are in the interests of safeguarding the living conditions of neighbouring residential occupiers. The spray booth and ducts modification, which include the installation of the carbon filters, is required to be installed within one month of this approval and thereafter retained. Similarly, a condition requires that the jet wash booth be provided as proposed within three months of this permission and be thereafter retained. It is necessary that the cleaning and maintenance of the extract filter system and carbon filters be carried out in accordance with agreed details.
27. A further condition restricts noise levels at the north side boundary 8m from the Jet Wash booth. Paint mixing and spraying is restricted to between 0800 and 1700 on weekdays only and the operation of machinery and in and outbound deliveries are limited to these hours and between 0900 and 1300 on Saturdays.
28. Activities outside of buildings are restricted to hand washing, parking and manoeuvring of vehicles. Other than for access the doors and other openings of the buildings, including the Jet Wash booth, are to be kept closed.

Conclusion

29. For the reasons set out above, and having taken into consideration all other matters raised, I conclude that the appeal should be allowed subject to the conditions specified.

Jonathan Price

INSPECTOR

Schedule of Conditions
Appeal Ref: APP/B1930/W/17/3168788
Units 15 and 16, North Orbital Trading Estate, Napsbury Lane, St Albans,
Hertfordshire AL1 1XB

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, 7710-AB01 Rev A, 7710-AB02 Rev A, 7710-AB03 Rev A, 7710-AB04 Rev A, 7710-AB05 Rev C.
- 2) The spray booth and ducts modification work hereby approved shall be installed within one month of the date of this permission in accordance with the details set out in the updated Odour Appraisal report dated 23 January 2017 and in Drawing No 7710-AB04 Rev A. Thereafter the extraction system shall be retained as such in perpetuity.
- 3) The Jet Wash Booth shall be constructed within three months of the date of this permission, and shall be constructed fully in accordance with Drawing No.7710-AB05 and the mitigation measures set out in Environmental Noise Impact Assessment J02538R1 dated 21 September 2016. Thereafter the Jet Wash Bay shall be retained as such in perpetuity.
- 4) The specific level of noise emitted from the Jet Wash Booth shall not exceed 36 dB LAeq, 1 hour at any time as measured, in accordance with the relevant guidance of BS4142:2014, on the north boundary of the site 8m from the Jet Wash Booth proposed.
- 5) No machinery shall be operated, no process shall be carried out and no deliveries taken or dispatched from the site except during the following times: (a) 0800 to 1800 on Mondays to Fridays; (b) 0900 to 1300 on Saturdays. No such activities shall take place at any time on Sundays or Bank or Public Holidays.
- 6) Notwithstanding condition 5 (above) paint mixing or spraying works relating to the use hereby approved shall only take place at the site between 0800 and 1700 on Mondays to Fridays.
- 7) No activities shall take place outside of the main building or Jet Wash Booth other than the washing of vehicles with hand tools and the parking and manoeuvring of vehicles.
- 8) All external doors or other openings in the Jet Wash Booth hereby approved and in the main building at Units 15/16 shall be kept closed during the authorised hours of operation other than when access is required.
- 9) Within three months of the date of this permission details of a maintenance and cleaning programme for the extract filter system and carbon filters, which shall be in accordance with the manufacturer's recommendations, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter cleaning and maintenance shall be carried out in accordance with the details as approved.

---End of Conditions---