
Appeal Decision

Site visit made on 23 January 2018

by Alex Hutson MATP CMLI MARborA

an Inspector appointed by the Secretary of State

Decision date: 1 March 2018

Appeal Ref: APP/Z1510/W/17/3179561

Cobbs Fenn Workshop, Sible Hedingham, Halstead CO9 3RX

- 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 and Mrs Kim and Tanya Harding – Harding Joinery against the decision of Braintree District Council.
 - The application Ref 17/00026/FUL, dated 9 January 2017, was approved on 13 April 2017 and planning permission was granted subject to conditions.
 - The development permitted is "Application for a single dwelling with associated workshop and store building. The workshop and store building to be used for all uses within the B1 Business Use Class of the Town and Country Planning (Use Classes) Order 1987 (as amended)."
 - The conditions in dispute is No 4 which states that: *The approved storage building on the north western side of the site abutting the highway shall be used only for storage purposes ancillary to the domestic and/or B1 business use of the main building.*
 - The reason given for the condition is: *To protect the amenities of the occupiers of nearby residential properties and the surrounding area.*
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Decision

1. The appeal is allowed and the planning permission Ref 17/00026/FUL for "Application for a single dwelling with associated workshop and store building. The workshop and store building to be used for all uses within the B1 Business Use Class of the Town and Country Planning (Use Classes) Order 1987 (as amended)." at Cobbs Fenn Workshop, Sible Hedingham, Halstead CO9 3RX granted on 13 April 2017 by Braintree District Council, is varied by deleting condition No 4 and substituting it for the following condition:
 - 1) The approved storage building on the north western side of the site abutting the highway shall be used only for purposes ancillary to the domestic and/or B1 business use of the main building.

Application for costs

2. An application for costs was made by Mr and Mrs Kim and Tanya Harding – Harding Joinery against Braintree District Council. This application is the subject of a separate Decision.

Background and preliminary matters

3. The appeal site, a plot of land of a substantial size, contains the recently constructed steel frames of two buildings, with the rest of the site comprising open ground. One of the buildings is sited in the northeastern part of the site and the other within the northwestern part. The appeal site has an extensive

planning history. Of note is a planning permission granted in 2007¹ for the conversion of an existing joinery workshop to a dwelling with an associated and adjoining workshop. This consent has subsequently evolved over the years through other related planning permissions², culminating in a standalone and extant planning permission in 2016³ for, effectively, the replacement of the original buildings with new ones to provide a dwelling with an adjoining workshop and a separate store. This consent was subject to a number of conditions, two of which are pertinent. One requires that the workshop element is used solely for joinery purposes. The other requires that the store building is used only for purposes ancillary to the occupation of the main building.

4. The proposal the subject of this appeal is similar in many respects to that consented in 2016. The main difference is that it would widen the use of the 'workshop' element to any use falling within Class B1 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Order) and for the 'store' building to fall within this use class also. I note that the Council changed the description of the proposed development from that shown on the application form. However, the Council's description clearly identifies what is intended and it does not materially alter the scope of the application. Thus, I have no significant concerns with using it. Nor do I consider that the labelling of a building as a 'store' on the submitted plans preclude it from being considered for a Class B1 use under the proposal.
5. The Council granted consent for the proposal subject to a number of conditions. This includes condition No 4, which restricts the use of the 'store' building to storage purposes ancillary to the domestic and/or Class B1 use of the main building. It is this condition which is in dispute and the appellant wishes for it to be deleted.
6. It is my understanding that the steel frames I saw on the appeal site represent the commencement of development under the 2016 consent. It appears that some pre-commencement conditions imposed on this consent, including in respect of materials, landscaping, tree protection and a retaining wall, have not yet been discharged. On this basis, the Council raises the concern that the 2016 consent has not been lawfully implemented. However, whilst technically not implemented due to the outstanding discharge of some pre-commencement conditions, I have no substantive reasons to consider that these could not be discharged within the timeframe of the consent were the Council to take any enforcement action. Thus, the 2016 consent represents a valid fallback position to which I afford considerable weight. I recognise the matters surrounding the reported viability of this consent. I also note that there is a question over the viability of the proposal before me, even with the use of the 'store' building for Class B1 purposes. However, this matter has little bearing on my consideration of this appeal, which is against a grant of planning permission subject to conditions.
7. I have also dealt with another appeal (Ref APP/Z1510/W/17/3187037) in respect of the appeal site. That appeal is the subject of a separate decision.

¹ Ref 06/02075/FUL

² Including Ref 07/02021/FUL; Ref 08/01106/FUL; 08/01818/FUL; Ref 10/01182/FUL; Ref 12/01560/MMA; and Ref 14/00368/MMA

³ Ref 16/00638/FUL

Main issue

8. The main issue is whether condition No 4 is necessary in the interests of the living conditions of the occupiers of neighbouring properties with particular regard to noise and disturbance and whether it is reasonable in all other respects.

Reasons

9. The Council considers that a Class B1 use within the 'store' building, given the wide variety of uses possible and its proximity to nearby properties, would give rise to harmful effects on neighbour living conditions. This concern is primarily based on the potential for such a use to generate additional vehicle movements to and from the site and to generate noise within this building which would emanate to surrounding properties. Thus, without the condition, it is the Council's view that such a use within this building would cause an unacceptable level of noise and disturbance.
10. The extant planning permission granted in 2016 allows for the use of the 'store' building for purposes ancillary to the joinery or residential use within the main building. The relevant condition does not restrict such ancillary use to storage. Thus, were this planning permission to be fully implemented, the 'store' building could realistically be used in a manner similar to that of any joinery business itself, including the use of any necessary machinery within it. In addition, there is no condition imposed on the 2016 planning permission that limits the hours of use of any machinery within the 'store' building. Furthermore, the Council acknowledges that a joinery business might better fall within Class B2 (General Industrial) rather than Class B1. I have no substantive reasons to take an alternative view on this matter. It also seems to me that even if the 'store' building were to be used solely for storage purposes associated with any joinery business, this would be likely to require the moving around of materials within it, the delivery of materials to it and the collection or distribution of finished products from it, by means of vehicles.
11. Similarly, the use of the 'store' building for storage associated with a Class B1 use, as specified by the disputed condition the subject of this appeal, might also generate some vehicle movements, dependant on the specific business. There is no substantive evidence to demonstrate that the use of the 'store' building for Class B1 purposes would inevitably increase the level of vehicular activity significantly over and above that which would occur with the disputed condition imposed. Nor is there any substantive evidence to demonstrate this would be the case when compared with the use of the 'store' building under the extant 2016 planning permission.
12. Notwithstanding the above, the Order sets out the uses which fall under Class B1. These include: for office purposes other than a use within Class A2 (financial and professional services); for research and development of products or processes; or for any industrial process. This is subject to the provision that these uses can be carried out in any residential area without detriment to the amenity of that area, including by reason of noise. Therefore, a Class B1 use within the 'store' building would not, by definition, give rise to the harm anticipated by the Council. Moreover, if any business were to operate from the site where such noise and disturbance did occur, it would not fall within Class B1. The Council has powers to take enforcement action against such a situation were it to occur.

13. I therefore consider that the use of the 'store' building for Class B1 purposes would not have a detrimental effect on the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance. Indeed, any noise and disturbance generated would be little different from the use of the 'store' building solely for storage associated with a Class B1 use and would be likely to be less than for purposes ancillary to a joinery business.
14. Conditions should not substantially alter the nature of development applied for. The Government's Planning Practice Guidance makes it clear that it may be possible to impose a condition making a minor modification to the development permitted. However, a condition that modifies it in such a way as to make it substantially different from that set out in the application should not be used. As the development applied for included the use of the 'store' building for Class B1 purposes, the disputed condition restricting its use to storage ancillary to a residential and/or Class B1 use constitutes a substantial modification, as it reduces the amount of Class B1 floorspace available by a substantial degree.
15. In light of my reasoning above, I find that Condition 4, insofar as it restricts the use of the 'store' building for storage purposes only, is not necessary in the interests of the living conditions of the occupiers of neighbouring properties with regard to noise and disturbance. Moreover, on the basis that it substantially alters the nature of the development applied for, it is not reasonable in all other respects and, therefore, does not satisfy one of the six tests set out in Paragraph 206 of the National Planning Policy Framework in any event. If the Council had substantive concerns in respect of the effects on neighbour living conditions, then the best course of action would have been to refuse planning permission for the amount of Class B1 use proposed rather than impose a condition that substantially modifies the development.
16. However, rather than deleting the disputed condition in its entirety, I consider that it could be substituted with a condition of similar wording, though without any reference to the word 'storage' where it appears for a second time. This would allow the 'store' building to be used for residential or Class B1 purposes, whilst ensuring it would remain ancillary to the residential and/or Class B1 use of the main building. The appellant does not appear to have any specific concerns in respect of the use of the 'store' building being tied to the use of the main building. The condition, as substituted, would appear to satisfy the appellant's requirements and to provide the flexibility that was originally sought. It would also ensure that the development is maintained as a single planning unit which would minimise any undue intensification of the site.
17. The Council has requested, in the case that the appeal is allowed, that condition Nos 3, 6 and 7 be amended to include reference to the 'store' building. Condition No 3 states *Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (or any Order amending, revoking and re-enacting that Order) the south eastern part of the building (attached to the dwelling) shall only be used for purposes falling within Use Class B1 of the schedule to that Order and for no other purpose.* Condition No 6 states *No machinery shall be operated or industrial processes be carried out in the workshop/store on the north eastern part of the site in connection with the B1 use outside the following times:- Monday to Friday 0700 hours - 2000 hours; Saturday 0700 hours - 1300 hours; No commercial use whatsoever shall take place in the workshop/store on Sundays, Public Holidays and Bank Holidays.* Condition No 7 states *There shall be no use of machinery or power tools within the storage building on the north*

western side of the site abutting the highway at any time, aside from for the purposes of construction, maintenance or upkeep of the building structure itself.

18. However, by allowing the appeal and substituting the disputed condition with the new one, the use of the 'store' building would be ancillary to the use of the Class B1 element of the main building anyway and thus would assume the same use class automatically. Thus, condition No 3 can remain as it is. Condition No 7 already makes reference to the 'store' building and restricts the use of machinery and power tools in it already. Thus, there is no reason to include any reference to the 'store' building within condition No 6. Whilst the necessity of condition Nos 6 and 7 is questionable, given that a Class B1 use is one that cannot, by definition, be detrimental to the amenity of a residential area, including by reason of noise, the appellant has not formally applied to have these conditions varied or deleted. Thus, I have not considered it appropriate to do so.
19. The Council also suggests, in the case that the appeal is allowed, that further conditions should be imposed in respect of a noise impact assessment and noise level restriction. However, again, given the nature of a Class B1 use, such conditions would be unnecessary.

Other matters

20. I have had regard to the concerns of a number of interested parties including in respect of highway safety, the condition of the road, ecology, footpaths, and views. With regard to highway safety, neither the Highways Authority (HA) nor the Council has raised any concerns in this regard. On the basis of the evidence before me, I have no substantive reasons to take a different view on this matter. The condition of the road is a matter for the HA and lies largely outside the scope of this application. In addition, a condition imposed on the planning permission would ensure a retaining wall is erected to mitigate against some damage to the road surface which has already occurred as a result of previous building works. The application is supported by an Extended Phase 1 Habitat Survey. I am satisfied that this, in combination with a condition relating to a Habitat Protection Plan, would be sufficient to ensure that no harm would arise to any protected species. The submitted plans indicate the retention of a public footpath which crosses the site and its availability for use during any construction works. The proposed buildings on the site would be no different to those consented under the 2016 planning permission. As such, they would have no greater effect on any views from neighbouring properties. Moreover, given the degree of separation between them and neighbouring properties, they would not appear overbearing for the occupiers of these properties and would not have a harmful effect on their outlook in any event. On the basis of these factors, I do not consider that the abovementioned interested party concerns weigh against the proposal.

Conclusion

21. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed and the planning permission varied as set out in the formal decision.

Alex Hutson

INSPECTOR