



Appeal Decision

Site visit made on 14 May 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 18th September 2019

Appeal Ref: APP/U5930/W/19/3221137

Land to the rear of 282 Forest Road, Walthamstow, London E17 5JN

- 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 Andre (Regents Developments Ltd) against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 162233, dated 6 July 2016, was approved on 23 October 2018 and planning permission was granted subject to conditions.
- The development permitted is demolition of existing workshops and construction of single storey building to provide 5 self-contained B1 workshops.
- The conditions in dispute are Nos 5 and 6 which state that:
 - 5. *No machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times Monday – Friday 08.00 – 18.00, Saturdays 09.00 – 13.00 nor at any time on Sunday, Bank or Public Holidays.*
 - 6. *The workshop use hereby approved, shall only operate between the hours of 08.00 and 18.00 on any day and at no other times unless otherwise agreed in writing by the Local Planning Authority.*
- The reasons given for the conditions are:
 - 5. *To protect the amenities of adjoining occupiers in order to comply with Policy CS13 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policies DM24 and DM32 of the adopted Waltham Forest Local Plan – Development Management Policies (2013).*
 - 6. *To protect the amenities of adjoining occupiers in order to comply with Policy CS13 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policies DM24 and DM32 of the adopted Waltham Forest Local Plan – Development Management Policies (2013).*

Decision

1. The appeal is dismissed insofar as it relates to condition No 5.
2. The appeal is allowed insofar as it relates to condition No 6. The planning permission Ref 162233 for demolition of existing workshops and construction of single storey building to provide 5 self-contained B1 workshops at Land to the rear of 282 Forest Road, Walthamstow, London E17 5JN granted on 23 October 2018 by the Council of the London Borough of Waltham Forest, is varied by deleting condition 6.

Procedural Matter

3. The appeal relates to the planning permission for demolition of existing workshops and the construction of a new building to provide 5 self-contained

workshops. The permission includes conditions to restrict the hours of operation the premises. This appeal seeks to remove these conditions, on the grounds that they are unnecessary and unreasonable.

Main Issues

4. The main issue is whether Conditions 5 and 6 are necessary, reasonable and relevant to the development permitted, in the interests of the amenity of adjoining occupiers.

Reasons

5. The B1 workshops building is located to the rear of 282 Forest Road, in a mixed commercial and residential area. It is on a private road which also serves a number of other commercial and industrial premises. Access is provided from both Forest Road and Borwick Avenue, which is a terraced residential street.
6. The building is immediately to the rear of Borwick Avenue, and the rear elevation forms the garden boundary of several terraced properties on the street. As a result of the modest size of the gardens, and the limited separation between the building and the terrace, there would be potential for activities within and around the B1 workshops to impact upon the neighbouring residential occupiers.
7. From Borwick Avenue, the private access road is between Nos 28 and 32. Occupiers of these properties would therefore also be aware of vehicle movements associated with the nearby commercial and industrial premises, including the B1 workshops building.
8. Forest Road is a busy commercial thoroughfare. Borwick Avenue is however a quiet residential street. As such, occupiers could reasonably expect to enjoy their properties free from disturbance associated with commercial and industrial activity, particularly at quieter times of the day and week.
9. Third party representations highlight issues associated with the existing use of the site, including commercial vehicles accessing the site from Borwick Avenue and the adverse effect of noise disturbance on neighbouring occupiers. I appreciate that there are other commercial and industrial premises in this area. However, there is little information before me in respect of their hours of operation, noise generation, vehicle movements, or their relationship to residential properties. There is also very little evidence in terms of the operation of the existing B1 workshops, including the timing of deliveries and types of vehicles.
10. The relative contribution that each of the premises makes in terms of noise disturbance, including vehicle movements, has not been established. Given the apparently unrestricted nature of the existing B1 use, I cannot be certain that the existing workshops do not contribute to cumulative adverse effects on residential amenity. There is also no evidence before me in respect of the proposed uses or vehicle movements that would be generated in connection with the permitted B1 workshops building. Consequently, I cannot be certain that the permitted use would not give rise to unacceptable harm to residential amenity. Therefore, it is reasonable to seek to mitigate adverse effects by restricting harmful activities to less sensitive times of the day and week.

11. I therefore find that the restrictions on the timing of operation of machinery and processes and of deliveries and dispatches, set out in Condition 5, are both necessary and reasonable in the interests of avoiding harm to the living conditions and amenity of nearby residential occupiers.
12. My attention has been drawn to Condition 7, which is not contested. This requires that noise from the operation of the new units is not audible outside of the hours of 08.00 - 18.00 Mondays to Fridays, and does not exceed certain thresholds within these hours. Taken together, conditions 5 and 7 appear adequate to mitigate the adverse effects of noise and vehicle movements.
13. Subject to the provisions of Conditions 5 and 7, Condition 6 would allow workshop use on weekends and public holidays between 08.00 – 18.00. However, it would effectively prevent any activity outside of these hours, such as cleaning of the premises or paperwork. Particularly since the development will be car-free, it seems unlikely that such low key activities would give rise to any significant impact on nearby residents. Moreover, given the protections within Conditions 5 and 7, I find that Condition 6 is neither necessary nor reasonable in the interests of protecting the amenity of neighbouring occupiers.
14. I conclude that Condition 5 is reasonable and would ensure compliance with the development plan, including Policies CS13 of the Core Strategy and Policy DM24 of the Local Plan. These require, among other things, that development supports the creation of healthy and sustainable places and communities, minimising pollution, and ensuring satisfactory amenity for surrounding occupiers.
15. I conclude that Condition 6 is not necessary to ensure compliance with the development plan and the aforementioned policies.
16. Use Class B1 is by definition a use which can be carried out in any residential area without detriment to the amenity of that area. The appellant therefore suggests that the definition is adequate for the purposes of protecting residential amenity. However, it does not set thresholds or quantify what would constitute harm in any particular area. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that determination is made in accordance with the development plan, unless material considerations indicate otherwise. In this case, I have found that conditions are necessary to ensure compliance with policies in the development plan. I am not aware of any material considerations which would justify setting aside the development plan and relying on the Use Class definition to protect the living conditions of neighbouring occupiers.

Other Matters

17. There is evidence before me that the appeal site has been used previously for anti-social purposes. However, the unauthorized use of the site, including for fly-tipping, is not a matter that can be addressed as part of this appeal. I also note the desire of local residents to have a formal method of communication with the owners of the appeal site in order to resolve potential issues. However, there are already formal mechanisms for the reporting of breaches of planning control or environmental nuisance and resolving communication would be a matter between the residents and owners.

Conclusions

18. For the reasons set out above, I conclude that the appeal should fail insofar as it relates to condition No 5 and the appeal should succeed insofar as it relates to condition No 6. I will vary the planning permission by deleting condition No 6.

Sarah Manchester

INSPECTOR