



Appeal Decision

Site visit made on 30 September 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2019

Appeal Ref: APP/U1620/W/19/3233404

Goodridge Business Park, Goodridge Avenue, Gloucester GL2 5EB

- 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 Peter Mackay against the decision of Gloucester City Council.
 - The application Ref 18/00423/FUL, dated 5 April 2018, was approved on 18 June 2019 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of existing building and erection of new B1(c), B8 Building divided into two units with ancillary access, parking and associated works.
 - The condition in dispute is No 8 which states that: The development hereby permitted shall be not be in use outside of the following hours; Monday- Friday 8:00am- 6:00pm, Saturday 8:00am - 1:00pm nor at any time on Sundays, Bank or Public Holidays.
 - The reason given for the condition is: To safeguard the amenity of the area in accordance with Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy.
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Decision

1. The appeal is dismissed.

Preliminary matters and main issue

2. Planning approval was given in 2019 for the erection of a building for use for light industrial or warehousing. Condition 8 restricts the use of the building to daytime use, excluding Saturday afternoons and Sundays. The condition was applied to protect the living conditions of occupiers in adjacent residential properties. The appellant seeks to delete the condition, the effect of which would be to allow 24-hour use of the building.
3. Consequently, the main issue is whether the condition is reasonable and necessary to the development permitted.

Reasons

4. The site is within the Goodridge Business Park, which is accessed from Goodridge Avenue. The Business Park and Goodridge Avenue include a number of industrial and commercial activities. The site shares a boundary with rear gardens of adjacent dwellings. The boundary consists of a fence of around 2m. Some trees and hedges are also adjacent to this fence providing some screening. The site is therefore at a transitional point between commercial and residential activity within the business park.

5. The approved building would be between 5m and 7m from the rear boundary. It would include parking to its side and has loading doors to its frontage. The site currently contains a smaller building and car park.
6. The site is within an industrial estate that has developed over a number of years. It is apparent that opening times vary between premises. This is unsurprising as such restrictions would be partly depended on the nature of the business, its scale, access arrangements and relationship to noise sensitive neighbouring uses. The Use Classes Order¹ defines a B1(c) use as being one 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 or grit. A B8 use is not included within this definition.
7. However, the associated attended activity of both B1(c) and B8 use and their scope for night-time disturbance, is a material consideration which can, in itself, result in harm. Furthermore, there is no evidence that other existing commercial premises within the estate operate at night or benefit from unregulated operational hours. The letter from Kurt Wyman is not specific and its comments with regard to the absence of hours of use restrictions contradicts other evidence submitted. A gym and party supply business has been referred to in evidence. However, there is no evidence to indicate their location, scale or any conditions governing how they operate. Therefore, this can only afford limited weight in my consideration. Furthermore, there is no indication that the approved hours are demonstrably inconsistent with conditions imposed on other commercial premises within the estate.
8. The existing business on site, appears to operate under a slightly less onerous operating hours condition. However, that building is substantially smaller and still nevertheless restricted from operating after 21:00 hours.
9. Conditions 9 and 11 relate to associated activity during construction and construction vehicles. Therefore, apart from condition 8, only condition 7 relates to the management of operational disturbance. This condition requires a noise survey and mitigation strategy. Although the required noise survey includes reference to "vehicle movements intrinsic to the use" this would be unlikely to fully prevent the type of noise disturbance possible through late night use. Late night use would include the movement of staff and goods vehicles. This would be likely to result in the use of the adjacent car park, with raised noise levels and general disturbance. Such raised noise levels could be frequent and sustained. An operator would be unlikely to be able to adequately suppress these effects with mitigation.
10. Accordingly, although the condition would place an operational restriction on a future business occupier, the otherwise resultant harm to adjacent residential living conditions would be of greater weight in the planning balance. As such, the condition is both reasonable and necessary, taking into account the advice of the National Planning Policy Framework and the Planning Practice Guidance.
11. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR

¹ The Town and Country Planning (Use Classes Order) 1987 (as amended)