



Appeal Decisions

Site visit made on 9 October 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal A -Ref: APP/E2001/W/19/3234321

Riding Stables, 24 Main Street, Skidby HU16 5TG

- 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 John Needham against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/01096/PLF, dated 27 March 2019, approved on 5 July 2019 was granted subject to conditions.
 - The development permitted is the Erection of extension to one workshop bay by 2.3m.
 - The Condition in dispute is No 7 which states that: 'the building shall not be used for any purposes other than car repairs and servicing within the use class of B2 (general industry) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)'.
 - The reason given for the condition is: 'this condition is imposed in accordance with policy ENV1 of the East Riding Local Plan as the proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case'.
-

Appeal B - Ref: APP/E2001/W/19/3234318

Riding Stables, 24 Main Street, Skidby HU16 5TG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Needham against the decision of East Riding of Yorkshire Council.
 - The application Ref 19/01094/VAR, dated 27 March 2019, was refused by notice dated 5 July 2019.
 - The application sought planning permission for Change of use of existing Barn/Hay store to (Class B2) car repair and servicing depot, including off road parking for customers and the retention of an existing tool shed without complying with a condition attached to planning permission APP/E2001/W/16/3143198 dated 27 October 2016.
 - The condition in dispute is No 7 which states that: 'the building shall not be used for any purposes other than car repairs and within the Use Class of B2 (General Industry) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)'.
 - The reason given for the condition is: 'the removal of permitted development rights allowing the appeal site to be used by any other Class B2 use would also be in the interests of residential amenity'.
-

Decisions

Appeal A - Ref: APP/E2001/W/19/3234321

1. The appeal is allowed and the planning permission 19/01096/PLF for the erection of extension to one workshop bay by 2.3m at Riding Stables, 24 Main Street, Skidby HU16 5TG granted on 5 July 2019 by East Riding of Yorkshire Council is varied by deleting condition 7 and substituting it for the following condition:

7. The building shall not be used for any purposes other than car repairs and servicing and for the repair and servicing of rigid fixed wheel heavy goods vehicles of up to 11m in length within the use class of B2 (general industry) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). At no point shall it be used for paintwork or spraying.

Appeal B - Ref: APP/E2001/W/19/3234318

2. The appeal is allowed and permission is granted for the change of use of existing Barn/Hay store to (Class B2) car repair and servicing depot, including off road parking for customers and the retention of an existing tool shed in accordance with application ref 19/01094/VAR, dated 27 March 2019, subject to the conditions in the attached schedule.

Main Issues

3. The main issues in both appeals are:
 - 1) The effect of the proposed use of the premises on the living conditions of the occupiers of nearby residential property; and
 - 2) The effect of the development on the character and appearance of the village and Important Landscape Area.
4. In light of my conclusions on these issues, I will consider whether the conditions attached to both planning permissions limiting the use of the premises to car repairs, thereby preventing the repair of HGVs, satisfy the requirement of the Framework that planning conditions should be kept to a minimum and only applied where they satisfy the six tests of necessity, relevance to planning, relevance to the development permitted, are enforceable, precise and reasonable in other respects. Bringing the above points together, I consider whether it is acceptable to amend the respective conditions 7 to allow the servicing and repair of HGVs at the site, having regard to the Development Plan, Framework and other material considerations.

Reasons

5. The appeal premises are located to the rear of a residential property at Main Street, Skidby. The car repair business is operating from a modern building which was converted from a barn/hay store under a planning permission granted at appeal in October 2016¹. The building is situated a short distance from other residential properties in this part of the village and accessed via a concrete driveway. In front of the building there is an area of concrete

¹ APP/E2001/W/16/3143198 dated 27 October 2016

hardstanding, and adjoining that, a riding arena and stables. At the time of my visit there were 2 large shipping containers beside the building, beyond which is a paddock and open countryside.

6. The building used for car repairs has 3 bays. In order to service HGVs of the size proposed, it would be necessary to extend one of these bays by approximately 2.3m length to the front. Planning permission has been granted for the extension but subject to a planning condition limiting the servicing work to cars only and no other activity falling within Use Class B2², which relates to general industry activities. This forms the subject of Appeal A.
7. The same condition is attached to the planning permission, granted at appeal in 2016, for the change of use of the barn/hay store to the car repair use. This forms the subject of Appeal B.
8. The appellant wishes to be able to service and repair HGVs in addition to cars. The HGVs would be up to 11m in length and a maximum of two such vehicles would be on the site at any one time. Although repairs would be undertaken, there would be no spray painting on site. In order for the specified HGVs to be able to enter from Main Street, it would be necessary to widen the pavement crossover, and move a low wall to the front of the appellant's property. As part of these works a small conifer tree would be removed. A plan was submitted with both applications detailing these works. A swept path analysis has been undertaken to demonstrate that HGVs would be able to turn within the hardstanding area and leave the site in forward gear and enter the bay as extended. The hours of operation would be 0800 – 16.00 Mondays to Fridays and 0900 – 13.00 on Saturdays.

Living conditions of occupiers of nearby residential property

9. The nearest residential properties, other than the appellant's, are located around 60m from the premises close to Main Street. The appellant has previously submitted a noise assessment as part of the original planning application³ and the Environmental Health Officer (EHO) is satisfied that providing the HGVs are serviced inside the building with doors closed there would be no change to the previous conclusion that noise from the use should not cause disturbance.
10. Some residents are concerned that the previous noise assessment did not consider the use of the workshop for servicing HGVs, and suggest that at times work may be undertaken within the building with doors open, and outside of the approved hours. However, I have no evidence to suggest that the noise arising from work associated with servicing a HGV would not be contained to acceptable levels providing the doors are closed during the approved working periods. Furthermore, the Council's EHO stated at the time of the application that no noise complaints have been received in relation to the existing servicing of cars.
11. The HGVs would need to reverse during manoeuvres to enter the building, as shown on the swept path drawings submitted by the appellant. Whilst it is suggested that the noise of reversing beepers was not covered in the previous noise assessment, such periods would be short in duration and would not take place early in the morning or late in the evening. This, together with the

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

³ The application leading to Planning Appeal reference APP/E2001/W/16/3143190

distance from the nearest houses to the area where the reversing would take place, does not give me cause to find that such noise would be a nuisance to local residents.

12. There are also concerns in relation to the impact on residents based on the movements of vehicles into and out of the entrance from Main Street and the noise, fumes and disturbance this would cause. The appellant has suggested that the numbers of HGVs visiting the site each week would not exceed 2. Regardless of this the periods when there would be any disturbance to the residents closest to the access would be brief, and compared with other traffic, including other HGVs travelling through the village, unlikely to have a significant effect on living conditions.
13. I therefore conclude on this main issue that the proposal would not conflict with Policies ENV1 and ENV6 of the ERLP SD which seek amongst other things to ensure that development respects the character of the area, does not harm living conditions or lead to environmental hazards or pollution, and the Framework which seeks amongst other things to ensure that development is of high quality and does not compromise the living conditions or health of residents, or cause air or noise pollution of the environment.

Character and appearance

14. The site lies on the edge of an attractive area open countryside which is designated as an Important Landscape Area (Yorkshire Wolds) (the ILA). The existing building is finished in green sheeting, and although a substantial structure, is reasonably well assimilated into the surrounding landscape and does not detract from the character or appearance of the ILA or the setting of the village. The proposed extension is small in scale and has planning permission. Any concern regarding the impact of the proposal on the rural setting must therefore relate to the comings and goings of the HGVs from the site, and possibly perceptions that such a use is not one you would normally expect to find in the countryside.
15. Given the intermittent nature of vehicles coming and going from the premises, and the degree of containment within the building during the servicing work, I conclude that the proposal would not have a harmful effect on the character and appearance of the village and ILA and would comply with ERLP SD Policy ENV2 which seeks to protect and enhance the character of such areas; and the Framework which seeks to protect valued landscapes

Other Matters

16. Some interested parties have commented on the heavy traffic passing through the village at peak times and consider that the movement of HGVs into and out of the site would add to queuing traffic and be potentially dangerous, especially given the proximity of the bus stop, parked cars, the junction with Mill Rise opposite the entrance, and the public house a short distance away. There is concern that there would be the potential for vehicles to come into conflict with passing pedestrians including school children, and horse riders and cyclists. Some interested parties are under the impression that HGVs would need to cross into the path of the opposite carriageway to make the turn into or out of the site.

17. One interested party has drawn my attention to the tight section of Main Street close to the church and the occasional damage to the church wall by vehicles as an indicator of the problems caused by traffic passing through the village.
18. The Highways Authority have not objected to the proposal subject to the widening of the pavement crossover and entrance, which is a condition under the planning permission for the bay extension. With this widening, I see no reason why the access would not function in a safe manner and without creating unacceptable risk to other highway users.
19. It is suggested that the building used for vehicle repairs lies outside the settlement boundary and should therefore be subject to Policy S4 of the East Riding Local Plan 2012 -2029 Strategy Document⁴ (ERLP SD) on supporting development in villages in the countryside. I have considered the terms of this policy and also the linked Policy EC1 on supporting growth and diversification and cannot see that the proposed HGV use, in addition to the approved car servicing, would conflict with either policy.

Conditions

20. In relation to Appeal A, condition 7 of the permission is deleted and varied in accordance with the terms described above. This permits the servicing of cars and HGVs together with the bay extension, but with the additional restriction that the garage shall not be used for paintwork or spraying. The appellant has not objected to this additional restriction. The reason the Council gave for the original condition is:

‘The condition is imposed in accordance with policy ENV1 of the ERLP SD East Riding Local Plan as the proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use having regard to the circumstances of the case’.

The reason for the new condition 7 is to protect the living conditions of residents living in the local area.

21. In relation to Appeal B, all previous conditions are re-imposed for the same reasons as those given in the previous appeal decision, with the exception of conditions 1,2 and 9 attached to the 2016 permission which no longer serve a purpose. Condition no 9 required the removal of 2 static caravans which are no longer on the site, prior to the commencement of the car garage use. Condition no 7 of the previous permission is varied for the reasons given above, but due to the deletion of conditions 1 and 2 becomes no 5.
22. The Council Planning Officer, and the Inspector who determined the previous appeal, have not sought to impose a planning condition limiting the number of HGVs being serviced at the site each week via a planning condition, and neither has the Council suggested such a condition should I conclude that the appeal should be allowed. I accept that such a condition would be over precise and could lead to confusion, for example if HGVs were to visit the site to make deliveries. Accordingly, I do not consider that the tests imposed by the Framework would be met and do not attach such a condition.

⁴ Adopted April 2016

Conclusion

23. I have considered all matters that have been raised but none demonstrate that condition 7, in respect of either planning permission, allows sufficient flexibility in respect of the type of vehicle which can be repaired or serviced at the premises whilst not causing harm. Therefore, as worded the conditions are not reasonable and do not conform to the Frameworks six tests.
24. Accordingly, I conclude the appeal should be allowed and the relevant condition in relation to both appeals should be deleted and varied to permit the servicing of cars and fixed wheel HGVs of up to 11m in length within Use Class B2.
25. For this reason, I conclude that both appeals should be allowed.

Tim Wheeler

INSPECTOR

Appeal B - Ref: APP/E2001/W/19/3234318

Schedule of Conditions

- 1) The development hereby approved shall only be carried out in accordance with the submitted Noise Impact Assessment prepared by Environmental Noise Solutions Limited (ref. NIA/6150/15/5979/v1) dated 8th September 2015 and the mitigation measures recommended in this report. The use shall be carried out in accordance with this thereafter and shall not be altered unless otherwise agreed in writing by the Local Planning Authority.
- 2) The repair and servicing of vehicles shall not take place anywhere on the site except within the portal framed building shown on drawing number JN/002/02 Revision A. Unless otherwise agreed in writing by the Local Planning Authority, the doors shall be closed at all times when vehicles are being repaired or serviced.
- 3) The use hereby permitted shall only be carried out within the following times:
8.00 – 16.00pm Monday to Friday
9.00 – 13.00 Saturday
And at no times on Sundays or Bank Holidays
- 4) Access to the site for customers shall be restricted to within the following times only:
8.00 – 16.00 Monday to Friday
9.00 – 13.00 Saturday
And at no times on Sundays or Bank Holidays
- 5) The building shall not be used for any purposes other than car repairs and servicing and for the repair and servicing of rigid fixed wheel heavy goods vehicles of up to 11m in length within the use class of B2 (general industry) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification). At no point shall it be used for paintwork or spraying.
- 6) No external lighting shall be installed unless details have first been submitted to and approved in writing by the Local Planning Authority. Lighting shall then only be installed and operated in accordance with the approved details.
- 7) Any facilities for the storage of oils, fuels or chemicals shall be provided with secondary containment that is impermeable to both the oil, fuel or chemical and water, for example a bund, details of which shall be submitted to the local planning authority for approval. The minimum volume of the secondary containment should be at least the capacity of the tank plus 10%. If there is more than one tank in the secondary containment the capacity of the containment should be at least the capacity of the largest tank plus 10% or 25% of the total tank capacity, whichever is greatest. All fill points, vents, gauges and sight gauge must be located within the secondary containment. The secondary containment shall have no opening used to drain the system. Associated above ground pipework should have no mechanical joints, except at inspection hatches and either leak detection equipment installed or regular leak checks. All fill points and tank vent pipe outlets should be detailed to discharge downwards into the bund.

- 8) The development hereby permitted shall not be commenced until such time as a scheme to dispose of surface water has been submitted to, and approved in writing, by the local planning authority. The scheme shall include measures to mitigate risks to groundwater from surface water drainage. The scheme shall be implemented as approved.

ENDS