
Appeal Decision

Site visit made on 18 December 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/Q3305/W/19/3236337

Units 17 & 18, Lodge Hill Industrial Estate, Station Road, Westbury Sub Mendip, Wells BA5 1EY

- 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 Jake Lloyd (Lloyds Property Southwest Ltd) against the decision of Mendip District Council.
 - The application Ref 2019/0544/FUL, dated 7 March 2019, was refused by notice dated 7 May 2019.
 - The development proposed is conversion of two units into one and change of use from Use Class B1 (Light industrial Business) to the sale of motor vehicles (sui generis).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development that I have used in the banner heading differs to that used on the application form, which referred to motor vehicle sales as being an A1 use. The parties have agreed that the sale of motor vehicles is a sui generis use, so I have used the description from the appeal form.
3. I saw at my site visit that the two units have already been conjoined and are in use for the sale of motor vehicles. I am therefore dealing with this appeal retrospectively.

Main Issues

4. The main issues are:
 - a) Whether the proposed use is suitable having regard to the policies of the development plan and the impact of the development on employment generation;
 - b) The effect of the development on the living conditions of the occupants of residential properties in Lodge Hill; and,
 - c) The effect of the development on highway safety.

Reasons

Development plan policy and employment generation

5. The appeal site lies on a small business park on the southern edge of Westbury sub Mendip. The park comprises a range of unit sizes and accommodates a variety of employment uses. At the time of my visit, occupancy levels were high with few, if any, vacant units. It therefore plays an important role in providing employment opportunities in an accessible location on the edge of a relatively small settlement.
6. The supporting text to Policy DP20 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (adopted 2014) (the Local Plan), identifies that 23 Hectares of employment land was lost in the area in the 15 years up to 2006. Nevertheless, a net increase in employment land of 10 Hectares was achieved. The Local Plan refers to strong levels of small business creation and self-employment in the district, and the importance of a stock of middle and lower end premises being available, to enable this activity to emerge and grow. Policy DP20 therefore says that proposals for the development of buildings used for B1, B2 or B8 purposes¹ will be supported, where it can be demonstrated that the re-use for other purposes will deliver comparable employment generation (based on number of jobs created), or wider economic benefit.
7. In 2017, the council adopted its Marketing and Business Evidence to Support Planning Applications Supplementary Planning Document (the SPD). This document sets out the council's expectations where evidence of marketing or business viability is required to support a change of use application. It identifies that marketing information should be provided for proposals involving the loss of employment premises, where equivalent replacement employment is not provided. Where it is proposed to change the use of a B1, B2 or B8 site to a use which does not include comparable employment generation, evidence that there is a wider economic benefit for other reasons will also be necessary. Otherwise it will need to be demonstrated that the current use is not viable, and that the site has no viable future as an employment site
8. The appeal proposals involve the combination of two comparatively small employment units, to provide a single larger unit of 304.9 square metres, which is being used for the sale of motor vehicles. As this is a sui generis use, there has been a loss of the previous B1 floorspace. The motor vehicle sales operation currently employs 1.5 staff. As the units were previously vacant, the appellant argues that the proposal results in an increase from 0 employees. However, comparison should be made with the level of employment that might be expected if the B1 uses had been retained. There is, of course, an element of speculation in determining what this may be. However, it would not be unreasonable to expect that two units, in B1 use, would result in a significantly higher number of employees.
9. The appellants claim that it is difficult to find B1 users for all the buildings, and that some flexibility in permitted uses would help to avoid units remaining empty. However, no marketing or viability evidence has been submitted to demonstrate that efforts were made to find a B1 user for the premises, or to show that such a use would not be economically viable. I saw no evidence at

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

my site visit that empty units were prevalent, or that the current high levels of occupancy were dependant on non-employment uses. On the evidence before me, therefore, it has not been demonstrated that the loss of the employment use is necessary to maintain occupancy of the building.

10. I am mindful that the vehicle sales operation provides a modest level of employment, and that it also provides some economic benefits to other businesses on the site and in the general area. To this extent, the current use is beneficial when compared to a vacant building. However, similar, or greater, benefits would be likely to accrue from the re-use of the buildings for employment purposes. Therefore, in the absence of evidence to demonstrate that a B1 use could not be reinstated, I only give these benefits limited weight.
11. Therefore, having regard to development plan policies and the likely impact on employment levels within the building, I conclude that the proposed use is not suitable. The development would therefore be contrary to Policies CP3 and DP20 of the Local Plan, which seek to support business development and growth, and ensure that the change of use of employment buildings to non-employment use will deliver comparable job creation.

Living conditions

12. The houses in Lodge Hill lie immediately to the north of the part of the business park that accommodates the appeal site. They are set at a higher level than the appeal building, behind a close-boarded boundary fence and hedgerow. The access road serving the entire business park runs close to the rear garden boundaries of these properties. The appeal premises lie on the opposite side of this access road, beyond an area of associated car-parking. The employment buildings lie within about 15 metres of the residential boundaries, and the related car-parking and access road are closer still. It is, therefore, likely that the normal day to day activities associated with the business park will have some impact on the living conditions of the occupants of these residential properties.
13. The approved use of the building for B1 purposes could, by definition, be carried out in a residential area without detriment to its amenity. It is evident from representations on the planning application and appeal, that the current use has given rise to complaints of noise and disturbance. These relate to the impact of additional vehicle movements to the site, extended operating hours and the use of equipment, such as power washers and vacuum cleaners. I did not observe any significant noise emanating from the premises at the time of my site visit and there were no vehicle movements associated with the property, although I did observe 16 vehicles entering or leaving the park for other purposes. I appreciate that this may not have been representative of the conditions over a longer period as described in representations.
14. Nevertheless, the process of selling cars is not an inherently noisy activity. Many of the complaints stem from the associated activities involved in preparing cars for sale. It appears that this has been exacerbated by the extended opening hours of the business into evenings and weekends. If I had been minded to allow the appeal, I could reasonably have imposed enforceable conditions to limit the hours of operation of the use, and to prohibit the use of powered equipment for the preparation of cars, other than inside the building with the doors closed. If the business were to operate in compliance with such conditions, the impact on the living conditions of nearby residents would be

- reduced to a level commensurate with that which may reasonably be expected adjacent to a business park.
15. There would still, of course, be noise associated with the coming and going of vehicles to the site. It is stated by the council that a car showroom of this scale would generate a significant increase in vehicle movements, but I have not been provided with empirical data to demonstrate that this is the case. The approved B1 use of the Units would generate traffic movements, which would vary depending on the nature of the use, the number of employees and the number of visitors associated with the use. Such movements would result in similar noise to the traffic associated with the proposed car sales use. There is also the potential for employment uses to attract larger delivery vehicles, depending on the nature of the operation.
 16. Furthermore, the appeal premises are only a constituent part of the overall business park. All the traffic generated by the other businesses on the park must pass along the access road close to the rear boundaries of the houses. The traffic associated with Units 17 and 18 is, therefore, only a limited proportion of the overall vehicular activity on the park. The other businesses in the block that contains the appeal building also have car-parking areas, equally close to the houses in Lodge Hill. The use of these areas will also give rise to noise from vehicle engines, deliveries, doors slamming, etc. The relative amount of activity will depend on the nature of the business, and will vary over time with changes of tenancy. Against this background, even if the proposed use has resulted in some increase in vehicle movements to the appeal premises itself, the overall traffic movements associated with the business park, as a whole, are unlikely to have significantly altered.
 17. I therefore conclude, on this issue, that the living conditions of the occupants of residential properties in Lodge Hill could be protected by the imposition of suitably worded planning conditions. Subject to such conditions, the proposed development would comply with Policies DP7 and DP8 of the Local Plan, which seek to protect residential amenity. The proposals would also accord with paragraph 127(f) of the National Planning Policy Framework (the Framework), which aims to maintain a high standard of amenity for existing and future users.

Highway safety

18. The appeal site is accessed via the private estate road that runs through the business park. This private road has a complicated junction with Station Road, which also gives access to Lodge Hill. Access to the wider road network is gained via the A371, which has a junction with Station Road approximately 200 metres to the northwest.
19. The junction of the private road with Station Road is at quite an acute angle, and it is combined with a separate junction to Lodge Hill, in very close proximity. I observed a number of vehicles using this junction arrangement, and saw that traffic speeds in the vicinity are low. Drivers approaching along Station Road from the south west must first negotiate a hump backed bridge, so cannot attain any speed before arriving at the junction. Drivers approaching from the northeast have good visibility of the junction from some distance, and therefore approach with due caution.

20. The junction is already used by all the traffic associated with the business park, as well as the houses in Lodge Hill and Farm Close. I have not been provided with any evidence, in the form of accident data, to demonstrate that it is inherently hazardous. I therefore conclude that any modest increase in its use, as a result of the appeal proposal, would not result in an increase in highway danger.
21. Station Road meets the A371 on the outside of a bend. Consequently, vehicles leaving the appeal site via this route would have good visibility in both directions at the junction. Those attracted to the site, via this route from the east, would be able to turn safely into Station Road. For vehicles approaching from the west, the manoeuvre would involve a right turn close to a bend in the road. A driver waiting to turn right into Station Road would have good forward visibility of opposing vehicles approaching from the east. However, a following driver would have more limited visibility of the stationary vehicle waiting to make the manoeuvre.
22. However, this junction is used by all the traffic associated with the business park, a significant area of housing, and the wider area to the south. Consequently, any additional vehicle movements resulting from the appeal proposals would be a very small proportion of the overall traffic using this junction. Again, I have no accident data to demonstrate that the existing use of the junction is dangerous. From my own observations, however, I saw that the Station Road junction was wide, and readily visible to traffic approaching from both directions. Consequently, I formed the view that it was not inherently hazardous.
23. The council has drawn my attention to an appeal decision from 2009, where an Inspector concluded that the development proposed at that time would generate an increase in traffic using the junction, which he viewed to be substandard. I have not been provided with details of the development that was proposed, or the evidence that was before him in arriving at that judgement. However, in this case, I conclude that the proposed development would not result in a significant increase in the level of traffic using the junction, so there would not be an increase in highway danger.
24. The development would therefore comply with Policy DP9 of the Local Plan, which seeks to ensure that development proposals make safe and satisfactory provision for access by all means of travel. The proposal would also accord with the paragraph 109 of the Framework, which advises that proposals should only be refused on highways grounds if there would be an unacceptable impact on highway safety.

Conclusion

25. I have found that the development would not result in highway danger, and that the impact on the living conditions of occupants of nearby residential properties could be overcome by appropriate conditions. However, this does not outweigh the loss of the employment use of the building, which would be contrary to development plan policies. I therefore conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR