
Appeal Decision

Site visit made on 14 January 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/U3935/W/19/3240396

Fairview, Kingsdown Lane, Blunsdon, Swindon SN25 5DL

- 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 Marc McDermott against the decision of Swindon Borough Council.
 - The application Ref S/17/0360/RM, dated 27 February 2017, was refused by notice dated 11 October 2019.
 - The development proposed is change of use of portal framed shed (30 x 12 x 4m) from canine care centre to use as vehicle body shop and campervan conversion centre.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use of portal framed shed (30 x 12 x 4m) from canine care centre to use as vehicle body shop and campervan conversion centre at Fairview, Kingsdown Lane, Blunsdon, Swindon SN25 5DL in accordance with the terms of the application, Ref S/17/0360/RM, dated 27 February 2017, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The application is described as retrospective and, on the application form the appellant confirms that at the time of submitting the application the work or change of use had commenced. From the evidence before me, and my observations on site, while some of the works to the building may not have been carried out, the appeal development has commenced with the use already operating from the site. I have considered the appeal on that basis.

Application for costs

3. An application for costs was made by Mr Marc McDermott against Swindon Borough Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues of the appeal are:
 - whether the site is an appropriate location for such a use with regard to local and national policies;
 - the effect of the development on the living conditions of the occupiers of nearby properties, with particular regard to noise and disturbance; and

- the effect of the development on the character and appearance of the area.

Reasons

Whether Appropriate Location

5. Policy SD2 of the Swindon Borough Local Plan (LP) sets out the development strategy for the borough. It seeks to concentrate development at Swindon. However, it also permits development in rural and countryside locations outside the rural settlement boundaries subject to certain criteria. One of these is that the development is in accordance with other policies in the plan permitting specific development in the countryside.
6. Policy EC4 of the LP relates to the conversion of buildings to employment use in the countryside. It sets out certain criteria where such proposals would be permitted. These include the structural soundness of the building and extent of works proposed to it, highway safety considerations and whether it leads to the dispersal of employment activity to a scale that would adversely affect the vitality of the neighbouring rural settlements.
7. I acknowledge that the previous permission at the site for kennels involved some employment. Nonetheless, Policy EC4 of the LP and its supporting text do not state that its applicability is limited to buildings of a certain original or existing use. Moreover, the policy does not specify that it only applies to proposals where the existing use is a non-employment use. Furthermore, it does not stipulate that evidence is required to demonstrate that other sites have been considered or that the proposed use is one that is not capable of being provided within urban or industrial locations. Therefore, from the evidence before me, I consider that this policy is applicable to the appeal scheme.
8. No definition of 'rural buildings' as referred to in the supporting text of Policy EC4 of the LP has been presented to me. The building is located in the countryside outside rural settlement boundaries. Therefore, in the absence of any clear case to the contrary, I consider that for the purpose of this policy, the appeal building is a rural building. There is no compelling evidence before me to indicate that the proposal would lead to a dispersal of employment activity on a scale to adversely affect the vitality of neighbouring rural settlements.
9. Policy EC1 of the LP seeks to enable the growth and retention of existing businesses with the supporting text stating sectors other than those referred to will not be restricted. Policy SD1 of the LP sets out sustainable development principles and supports the retention of jobs and growth of the local economy. These policies do not state that they only apply where there would be significant employment opportunities or economic growth, or that their aims exclude any particular type of business/use. From the information before me, the appeal scheme relates to businesses that have relocated from elsewhere in the borough.
10. The National Planning Policy Framework (Framework) states that decision should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings (paragraph 83). Again, this does not seek to limit or restrict the relevant uses, referring to 'all types of business'.

11. Consequently, the site is an appropriate location for such a use with regard to local and national policies. It accords with Policies EC4, SD2, SD1 and EC1 of the LP. These, amongst other things, seek to encourage the growth and retention of business and permit certain developments outside rural settlement boundaries, including the conversion of buildings in the countryside to employment uses. In addition, the scheme complies with the aim of the Framework to support a prosperous rural economy.

Living Conditions

12. No noise assessment was provided with the application or appeal. The details before me indicate that the businesses have been operating from the site for some time. No objection from the Council's Environmental Health have been presented to me. Furthermore, a condition was suggested by the Council and is imposed relating to the provision of a noise assessment and implementation of any required mitigation measures.
13. While I note that activities have taken place outside of the building at the appeal site, and late in the day, conditions can be imposed to restrict the location and timing of the activities at the site. There is some separation between the site and the nearest properties with outbuildings and boundary treatments between them. These factors and the imposition of conditions would reduce the impact of any noise and disturbance from the site.
14. Some traffic is generated from the site. Notwithstanding this, I saw that as well as dwellings, there are other businesses along Kingsdown Lane that result in traffic passing the residential properties along the road. Therefore, noise and disturbance from commercial and other vehicle movements is not uncommon or unexpected. I have not been persuaded that the scheme would lead to any significant additional traffic generation. Moreover, the nearest properties are set back from the road reducing the impact of vehicle noise on the road.
15. As such, the proposal does not unacceptably harm the living conditions of the occupiers of nearby properties with regard to noise and disturbance. It accords with Policies DE1 and EN7 of the LP where they, in part, seek to prevent significant loss of amenity in respect of noise and disturbance. The scheme also complies with the Framework where it requires developments to provide a high standard of amenity for existing and future users.

Character and Appearance

16. The appeal scheme relates to an existing building of typical agricultural form. While the scheme includes some external alterations to the building, these do not significantly alter its appearance, footprint or height. The building is located towards the rear of the site and is adjacent to other buildings that partly screen it from the road. While the external parking areas are visible from nearby properties and at the access to the site, they are partly screened by boundary treatments and vegetation. In addition, the previous use at the site involved a parking area.
17. The scheme before me does not include any separate spray booth or portable cabins. Therefore, they do not form part of my consideration of this appeal.
18. Consequently, the scheme does not harm the character and appearance of the area. It complies with Policies DE1 and EC4 of the LP, where these, in part,

require developments to respect the character and context of the existing built form.

19. Finally, it accords with the Framework where it states that development should be sympathetic to the local character.

Other Matters

20. My attention has been drawn to permissions in principle for residential development and the allocation of land near the site under Policy NC5 of the LP. Nonetheless, while there may be potential for alternative developments at or close to the site in the future, it has not been demonstrated that the appeal scheme would prohibit these. Moreover, I have assessed the proposal on its own merits and found it to be acceptable.

Conditions

21. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.
22. A condition relating to the commencement of the development is not necessary as the appeal scheme has begun. I have imposed a condition requiring that the development is carried out in accordance with the approved plans for certainty.
23. Further conditions are imposed restricting the hours of operation and limiting activities at the site, other than parking, to within the building. This is in order to protect the living conditions of nearby residents. For the same reason, and in the interest of highway safety, a condition restricting the use to that specified in the description of development is imposed.
24. The requirement to submit a noise assessment for agreement and the implementation of any necessary mitigation measures is subject to a further condition. This is to protect living conditions of nearby residents. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in this case it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already begun. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.
25. In the same way a condition requiring details of visibility splays, parking layout and cycle storage to be submitted, agreed and provided is imposed to facilitate sustainable transport options and for highway safety reasons.
26. I have found the scheme would not result in unacceptable harm and accords with local and national policy. Consequently, a condition granting temporary permission is not necessary or reasonable.

Conclusion

27. For the reasons given above, and taking all matters raised into account, I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

Stuart Willis

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan and Elevations Drawing No. CIV 1005-RT-02-17; Block Plan Drawing No. CIV 1005-RT-02-17; and Land Ownership Drawing No. CIV 1005-RT-02-17.
- 2) The site shall be used as a vehicle body shop and campervan conversion centre only and for no other purpose.
- 3) The premises shall not be open for business, no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside 0830-1830 on Monday to Friday, and not at any time on weekends or on Bank or Public Holidays.
- 4) The use hereby permitted shall cease within 7 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme for visibility splays at the access to the site, vehicle parking and turning, and secure cycle storage within the site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The use hereby permitted shall cease within 7 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a noise assessment, the scope of which has first been agreed in writing by the planning authority, shall have been submitted for the written approval of the local planning authority and the scheme shall include any necessary noise mitigation measures and a timetable for their implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6) Other than the parking of vehicles, no activities associated with the vehicle body shop and campervan conversion centre hereby approved shall take place outside the building shown on Plan and Elevations Drawing No. CIV 1005-RT-02-17 at any time.