



Appeal Decision

Site visit made on 17 February 2020

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Appeal Ref: APP/L2440/W/19/3240662

15 Mandervell Road, Oadby LE2 5LQ

- 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 M Kazilionis against the decision of Oadby & Wigston Borough Council.
- The application Ref 19/00216/COU, dated 8 May 2019, was approved on 18 October 2019 and planning permission was granted subject to conditions.
- The development permitted is change of use from storage and distribution (Use Class B8) to a gym (Use Class D2).
- The conditions in dispute are Nos 2 and 3, which state that:
 - 2) Within three months of the date of this decision the metal containers situated on the car park shall be removed in order to allow the parking provision, as shown on the Car Parking Plan submitted to the Local Planning Authority on 11 June 2019, to be provided.
 - 3) Within four months of the date of this decision, the parking and cycle storage spaces as well as the turning area, as shown on the approved Car Parking Plan submitted to the Local Planning Authority on 11 June 2019, shall be provided and thereafter maintained and retained.
- The reasons given for the conditions are:
 - 2) To ensure the parking area shown on the submitted and approved Car Park plan as being available is able to be provided in the interests of parking provision.
 - 3) To ensure that adequate off-street parking provision is made to reduce the possibility of the proposed development leading to on-street problems locally (and to enable vehicles to enter and leave the site in a forward direction) in the interests of highway safety, and to promote travel by sustainable modes in accordance with the National Planning Policy Framework (2019).

Decision

1. The appeal is allowed and the planning permission Ref 19/00216/COU for change of use from storage and distribution (Use Class B8) to a gym (Use Class D2) at 15 Mandervell Road granted on 18 October 2019 by Oadby & Wigston Borough Council, is varied by deleting conditions 2 and 3.

Application for costs

2. An application for costs was made by Mr M Kazilionis against Oadby & Wigston Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have used the appellants name as it appears on the application form.

Background and Main Issues

4. The appeal site is located within an industrial estate. It comprises part of an industrial unit which is currently a gym with use of an adjacent shared car parking area.
5. During the course of the Council's consideration of the planning application for the gym¹, a number of metal containers were placed on the shared car park and the parking layout was altered from the parking plan accompanying the planning application. Planning permission was granted for the gym² subject to various conditions, including conditions 2 and 3 requiring removal of the containers and provision of the parking in accordance with the submitted layout. The appellant seeks to remove these conditions on the basis that their requirements do not meet the tests within the National Planning Policy Framework (the Framework) and in Planning Practice Guidance (PPG).
6. In light of the above, the main issues are:
 - Whether conditions 2 and 3 meet the tests for the use of conditions contained in the Framework and in the PPG.

Reasons

Condition 2 and 3

7. Condition 2 requires the containers to be removed from the car park within three months to allow parking to take place in accordance with the submitted parking plan. Condition 3 has a similar end objective, but giving four months to provide the parking, cycle spaces and turning area in accordance with the submitted parking plan, and thereafter to be retained.
8. There is a planning purpose to the conditions and the parking area and containers are within the red line of the application site. However, on the basis of the evidence before me, the containers do not belong to the appellant and are not used in conjunction with the gym. In addition, the parking area is shared on an ad-hoc basis by all businesses in the unit and is not in the appellant's ownership.
9. Accordingly, the conditions require actions which the appellant does not have the power to carry out without the authorisation of a third party. Moreover, there is no substantive evidence to indicate that there is a reasonable prospect of the required actions being performed within the very short time limits imposed. The appellant cannot therefore be reasonably expected to comply with the conditions, nor is it clear how non-compliance could be enforced for these reasons.
10. In addition, the appellant states that the parking requirement for the gym is 11 spaces, which has not been contested by the Council. That represents only a small proportion of the total number of parking spaces which the conditions unreasonably require the appellant to provide and retain. Furthermore, during my site visit there were 9 unoccupied parking spaces at a time when the gym and other businesses in the unit were open. I also noted provision of 2 disabled parking spaces and bicycle racks in a not too dissimilar location to the original parking plan. The arrangement of the parking allows vehicles to negotiate the

¹ LPA Ref: 19/00216/COU

² Dated 18 October 2019

car park and exit in forward gear. In the absence of any substantive evidence to show such arrangements are inadequate for the development, I have no basis to conclude that the conditions are reasonable or necessary in the interests of parking provision and highway safety.

11. Paragraph 55 of the Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, otherwise known as 'the 6 tests'. The PPG states that any condition that fails to meet one of the 6 tests should not be used. For all the reasons above, I conclude that the conditions are not reasonable, enforceable or necessary and therefore, do not meet all the relevant tests. Accordingly, conditions 2 and 3 should be deleted.

Other Matters

12. In reasoning my conclusions I acknowledge the concerns of the Council and a third party in respect of the presence of the containers in the car park, however, I have found that the approach taken to seek removal of the containers through the conditions of the planning permission was unreasonable. It is open to the Council to take separate enforcement action against the containers if deemed expedient.

Conclusion

13. For the reasons given, I conclude that the appeal should succeed, and that the planning permission should be varied by deleting conditions 2 and 3.

Adrian Caines

INSPECTOR