



Appeal Decision

Site visit made on 10 March 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2020

Appeal Ref: APP/E2340/C/19/3237970

Land at Unit 2, Victory Business Park, West Close Road, Barnoldswick, Lancashire BB18 5DH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Alex Wilson against an enforcement notice issued by Pendle Borough Council.
- The enforcement notice was issued on 20 August 2019.
- The breach of planning control as alleged in the notice is without planning permission and within the last ten years, the material change of use of the land from a use for industrial use to a use for assembly and leisure being a childrens play area.
- The requirements of the notice are to cease the use of the land for the purpose of assembly and leisure.
- The period for compliance with the requirements is 56 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The appeal on ground (a) and the deemed planning application

1. The Council in their appeal statement accept that the sequential assessment, submitted by the appellant as part of the appeal, adequately demonstrates that there are no suitable and available sequentially preferable sites. Consequently, there is no conflict with Policy WRK4 of a Local Plan for Pendle Core Strategy 2011-2030 Adopted 17 December 2015 (the Core Strategy).
2. On the basis of the above, I consider the main issues are therefore the effect of the development on (i) the availability of employment space in the area and (ii) highway safety.

Availability of employment space

3. The appeal site is an industrial building located within a complex of industrial units, in the settlement of Barnoldswick around 500m away from the boundary of the town centre. The area within which the site is located is designated by Policy 22 of the Replacement Pendle Local Plan 2001-2016 (the Local Plan) and Policy WRK2 of the Core Strategy as a Protected Employment Area.
4. Policy 22 of the Local Plan seeks to retain land within the Protected Employment Area for use for B1, B2 and B8 purposes only. However, it states that all developments will be considered suitable if they, meet the requirements of all other policies and where the premises can be shown to be obsolete for industrial, business and storage use and, evidence demonstrates

that the premises have remained vacant for over four years (continuous) or, there would be a significant benefit to the local economy.

5. Policy WRK2 of the Core Strategy states that within the Protected Employment Areas only employment generating development proposals falling within Use Classes B1, B2 and B8 will be permitted, with the exception of a small allowance for the provision of public open space, shops and leisure facilities to serve the immediate needs of the area and reduce the need to travel. It goes on to state that where there is no reasonable prospect of a site allocated for employment use being used for that purpose, applications for alternative uses of land or buildings will be treated on their own merits having regard to market signals and the relative need for different land uses to support sustainable communities.
6. The explanatory text to Policy WRK2 states that offering protection to the best employment areas, by restricting the re-development of land within them for non-employment uses, will help to ensure that an adequate supply of good quality land and premises remains available for short, medium and long-term economic investment. It will also support sustainable development objectives and reduce the demand to allocate Greenfield land for employment uses.
7. The appellant considers that the boundaries of the Protected Employment Areas are out-of-date primarily due to their age but offered little explanation beyond this generalised assertion. The National Planning Policy Framework (the Framework) states that planning policies should recognise and address the specific locational requirements of different sectors. This includes making provision for clusters or networks of knowledge and data-driven, creative or high technology industries; and for storage and distribution operations at a variety of scales and in suitably accessible locations. I find that the provision of Protected Employment Areas is broadly consistent with the Framework in this regard and as such Policy 22 of the Local Plan and Policy WRK2 of the Core Strategy attract significant weight in decision making terms.
8. The figures in the Council's latest Annual Monitoring Report (AMR)¹ identify that the occupancy rates for Protected Employment Areas is 92% for the Long Ing, Crownest and Bankfield Protected Employment Area and 100% for the West Craven Business Park Protected Employment Area in Earby. I have had regard to the figures referred to by the appellant from the Pendle Employment Land Review (Adopted September 2014) however, the AMR which contains more up-to-date figures shows that there is a shortfall of 4.35ha of new employment land needed in the Borough. This lends weight to the intention of Policy 22 of the Local Plan and Policy WRK2 of the Core Strategy to protect existing employment areas for use for B1, B2 and B8 uses.
9. There is no dispute that the appeal development is characteristic of uses falling within class D2². However, the appellant contends that the appeal site in its original condition was obsolete for industrial, business and storage use and had been vacant for over four years. Further, that the use is a leisure use that serves the needs of the immediate area and the economic, social and environmental benefits associated with the use outweigh the loss of a site within the Protected Employment Area.

¹ Local Plan for Pendle Authority's Monitoring Report (AMR) Appendices 1st April 2015 to 31st March 2016

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

10. Footnote 33 to the explanatory text of Policy 22 of the Local Plan sets out the circumstances when premises will be considered to be obsolete, including where the fabric or design of the building (including size and layout) will not suit modern industrial, storage or business use or, it can be shown that the access is unsuitable for modern vehicles/processes or that financial viability precludes continued employment use.
11. The appellant provided an image of the building prior to its renovation in which the building appears to have no roof. The appellant stated that the site had been vacant for over four years when it was purchased by the current landlord, was marketed by the landlord for over six months before the appellant viewed the property in February 2019 and that the property was only refurbished when the appellant signed a lease. Whilst the Council have indicated that the marketing period was too short, there is no requirement in policy for a particular marketing period.
12. However, beyond an assertion and a letter from the landlord, the appellant has provided no explanation concerning the period of vacancy or evidence of what the marketing consisted of. Although in its former condition any use would have been unlikely, this does not demonstrate that the building was obsolete for business purposes, particularly as the landlord renovated the property for the appellant's use.
13. Notwithstanding dispute between the main parties regarding the availability of other B1, B2 and B8 units in the immediate vicinity of the site, neither has provided detailed evidence about this and as such this has little weight in my assessment.
14. The use is an employment generating use and there are some economic benefits associated with the employment of six full-time and five part-time employees who live in the local area. I also acknowledge the links with local colleges offering work experience placements and apprenticeships in the kitchen. I note from figures provided by the appellant that the use with 8.5 FTE (full-time equivalent) employees, employs around 4.5 more than would be anticipated for a B8 use, just under one more than a B2 use and around 2.5 more than a B1(c) use.
15. In the absence of explanation, it seems that the economic benefits are largely derived from the employment of a greater number of employees than might be expected from a B1, B2 or B8 use. However, the difference in terms of B2 and B1(c) uses is modest and as such, whilst acknowledging the contribution that employment makes, the economic benefits of the development are only moderate.
16. I note that Policy 22 of the Local Plan also states that any developer permitted to use the site/premises for a use other than for business or general industry must provide a relevant contribution to the Brownfield Site Development Fund. Neither party has made representation about this and there is no evidence about if and how this could be secured.
17. Consequently, for the reasons given above, in the absence of detailed evidence which demonstrates that the building is obsolete for industrial, business and storage use and that it had remained vacant for over four years, or that there is a significant benefit to the local economy, the development is contrary to Policy 22 of the Local Plan.

18. There is dispute between the main parties about the interpretation of Policy WRK2 of the Core Strategy, in respect of to what area the 'immediate area' relates. The Council considers this to be the Protected Employment Area whereas the appellant considers this to be Barnoldswick. There is nothing in the policy or justification text to justify the Council's interpretation of 'immediate area'. In the absence of a definition and giving the words their ordinary meaning, I consider that the immediate area is not limited to the Protected Employment Area.
19. Additionally, there is no definition or explanation of what constitutes a 'small allowance'. I find that the development, with a floorspace of around 281sqm, represents a small allowance in the context of the Protected Employment Area as a whole. Notwithstanding the dispute about the accessibility of the nearest similar facility in Nelson, the development undoubtedly results in the reduced need for local residents to travel to access such facilities.
20. It is evident that the play centre is well used by the community in Barnoldswick and I note since the play centre opened all sessions have been full. There is also significant local support for the development as evidenced by the submitted representations, including the support of Barnoldswick Town Council.
21. For the reasons given above and on the basis of the submitted evidence, I conclude that the development constitutes a small allowance which serves the needs of the immediate area and reduces the need to travel. Consequently, the development accords with Policy WRK2 of the Core Strategy.
22. There are evidently social benefits associated with the use and I note that the centre offers Special Educational Needs and Disability (SEND) Sessions with no other facility offering these sessions in the area. It also acts as a community hub for parents, demonstrably well used by the local community and groups including school children and the Brownies. Further, as already stated, there is significant local support for the development. I attach significant weight to these matters.
23. I have had regard to the evidence submitted in relation to the health of children and young people and the distance to the nearest similar facilities and acknowledge the modest health benefits associated with the use.
24. The appellant stated that they searched for a suitable property for over two years prior to signing the lease and that the approval of applications for housing on employment sites outside of Protected Employment Areas, means that there is a lack of suitable and appropriate properties for uses such as the appeal development, which requires buildings which are often not found in town centre locations and are more commonly found in industrial areas.
25. In this respect the appellant referred to decisions by the Council to grant planning permission for housing developments on employment land within and on sites outside of Protected Employment Areas, in particular 148 homes at Barnsey Shed where the appellant stated there was no assessment of the loss of land in the Protected Employment Area in the officer's report. However, I have not been provided with details of these permissions and therefore I do not know the circumstances of those developments being permitted.
26. The appellant also referred to and provided documents relating to the permission for a nearby superstore and associated development within the

Protected Employment Area. It is evident, from the officer report, that the Council considered that proposal was contrary to Policy WRK2 of the Core Strategy however, as acknowledged by the appellant, it was considered that the benefits outweighed the harm in terms of loss of employment land.

Although a deed of release was issued in respect of a section 106 agreement, I note that it was on the basis that a further contract would be entered into which would result in greater investment in the site. In any event, that development is evidently of a much greater scale than the appeal proposal and is therefore not directly comparable.

27. Whilst I acknowledge the appellant's argument, these developments reinforce the purpose of those policies which seek to protect existing employment land from development for non-employment uses. Consequently, that permission has been granted for non-employment uses elsewhere has little weight in my assessment of the planning merits of this case.
28. I acknowledge that the development included the use of recycled/upcycled materials and there are some limited environmental benefits associated with this. That there is no harm to visual or residential amenity are neutral matters and I note that the Council found no harm in respect of these matters.

Highway safety

29. There are a small number of parking spaces for the play centre located directly in front of and adjacent to the unit, with a further seven spaces located close to the access with West Close Road. From those spaces' customers walk along a pedestrian route which is not a dedicated and separate footway but has been marked out.
30. At my site visit I observed loading doors on a unit adjacent to the play centre which are located in relatively close proximity to the parking spaces. Furthermore, the forecourt area and circulation space between these units is only modest. It is not clear whether the adjacent units are currently in use however, it is necessary to assume that they could be used.
31. The appellant stated that the access to the appeal site from West Close Road serves the appeal site only and the remaining units will be accessed from the rear however, there is no explanation about how this is controlled. Should vehicles make deliveries to or collections from this entrance this would result in vehicles manoeuvring in the circulation space in close proximity to customers of the play centre. This would pose an unacceptable risk to the safety of pedestrians.
32. Similarly, although the parking closest to West Close Road is located further away from the large loading doors on the nearby units and the circulation space between them is larger, there remains an unacceptable risk to the safety of pedestrians from the manoeuvring of large vehicles in this shared space. Given the use involves children, the risk is particularly great.
33. That the local highway authority did not comment on the development does not alter my judgement. I have reached my own conclusions on the basis of the evidence before me and my site observations.
34. Consequently, notwithstanding the adequate number of spaces for the use and the markings and signage, the proximity of the spaces and the access to existing business uses and their circulation areas results in an unacceptable

risk to highway safety. This is contrary to the Framework which states that development should be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

35. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding the use for SEND sessions. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed. I recognise that those users of these sessions may have to travel elsewhere to access similar sessions. However, given that the planning system operates in the wider public interest which has legitimate aims of upholding the purposes of planning policies, while taking this into account, the proportionate response and that supported by the development plan is that the appeal should be dismissed.

Conclusion

36. I have found favour with the appellant's argument in respect of Policy WRK2 of the Core Strategy. However, in the absence of substantive evidence which demonstrates that the site is obsolete for industrial, business and storage uses and in respect of vacancy or, that there is significant benefit to the local economy, the development is contrary to Policy 22 of the Local Plan and therefore conflicts with the development plan taken as a whole.
37. I acknowledge that the development has provided an economic use for what was vacant floorspace, provides employment opportunities and accessible leisure facilities for the local community. However, these benefits do not outweigh the harm caused by the loss of employment land, for which there is an identified need, and by the adverse effects on highway safety, to which I attach substantial weight. Consequently, the advanced considerations do not indicate that the appeal should be determined other than in accordance with the development plan.
38. Therefore, having regard to all matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (g)

39. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that given the difficulty they had sourcing the unit and in order to ensure there is no detrimental effect on the 11 employees, they consider a more reasonable time period to be six months.
40. In cases involving business uses, it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice.
41. The use enforced against is occupying a designated employment site and poses an unacceptable risk to highway safety and weight must be attached to these harms. Such harm should not be permitted to continue for any longer than absolutely necessary.

42. Notwithstanding that the appellant occupied the building in the knowledge that planning permission would be unlikely to be granted, the enforcement system is not intended to be punitive. The business employs 11 people, six of those on a full-time basis and undoubtedly the closure of the business will have some impact on them.
43. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development. I conclude, however, that even if account is taken of the need to remedy the harm, the notice does not afford the appellant reasonable time to look for alternative premises or for employees to find alternative employment, in particular those full-time employees. Looking at the case in the round, the requirements to cease the use within 56 days would place a disproportionate burden on the appellant and their employees.
44. Taking all these matters into account I conclude that the period for compliance should be extended to six months. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to bring this harmful development to an end and the interests of the appellant and their employees. To this extent, the appeal on ground (g) succeeds.

Formal Decision

45. It is directed that the enforcement notice is varied by the deletion of 56 days and the substitution of six months as the period for compliance. Subject to this variation I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR