



Appeal Decision

Site visit made on 27 May 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 July 2020

Appeal Ref: APP/Y0435/X/20/3246458

Eagle Farm, Cranfield Road, Wavendon MK17 8AX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by McCann Homes against the decision of Milton Keynes Council.
 - The application Ref 19/02701/CLUP, dated 14 October 2019, was refused by notice dated 9 December 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The development for which a certificate of lawful use or development is the change of use of the building and its curtilage to residential use comprising 10 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address in the banner heading above is taken from the application form. In addition, the description of the development is taken from the covering letter that was submitted with the LDC application. It is clear from the evidence before me that the LDC relates to the proposed residential use of Unit 1 on the above site. I have dealt with the appeal on this basis.
3. There are 3 additional appeals¹ on other units at Eagle Farm and I have dealt with each in a separate decision letter.

Background and Main Issue

4. Article 3(1) and Schedule 2, Part 3, Class PA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) grant planning permission for the change of use of a building and any land within its curtilage from a use falling within Class B1(c) (light industrial) of the Schedule to The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to a use falling within Class C3 (dwellinghouses) of that Schedule.
5. Article 2(1) of the GPDO states, amongst other things, that 'In this Order-
"building"- (a) includes any structure or erection and, except in ... [Classes P and PA of Part 3] ...of Schedule 2, includes any part of a building...'².
Therefore, Class PA cannot apply to part of a building.

¹ Ref Nos: APP/Y0435/X/20/3246459, APP/Y0435/X/20/3246460 & APP/Y0435/X/20/3246461

² Words inserted by Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2018/343 art.3(a) (April 6, 2018)

6. In April 2019 the appellant applied to the Council seeking confirmation as to whether its prior approval would be required for a change of use of the appeal building from light industrial use (B1(c)) to 10 dwellings (C3). The application was given reference 19/01039/PANB1C. There are several limitations and conditions within paragraphs PA.1. and PA.2. of Class PA of the GPDO. Paragraph PA.1.(b) states that development is not permitted if the building was not used solely for a light industrial use on the qualifying date which is 19 March 2014 or, in the case of a building which was in use before that date but was not in use on that date, when it was last in use.
7. The appellant argues that the use of the building falls within Class B1(c), whereas the Council maintains that it falls within Class B2 (general industrial) of the UCO. There is no suggestion from either party that any of the other limitations in PA.1. or conditions in PA.2. would not be complied with and I have no reason to disagree with that approach.
8. There is no dispute that the land within the '*curtilage*' of the building as shown on the submitted location plan would comply with the definition of '*curtilage*' as stated at paragraph PA.3.(b) - '*an area of land immediately beside or around the building in light industrial use no larger than the land area occupied by the building*'.
9. There is also no dispute that the Council did not determine that application and as such the prior approval is deemed to have been granted. However, a Court of Appeal decision³ makes it clear that if an application for prior approval is submitted for works that do not fall within the scope of permitted development, and the Council fails to issue a decision within the specified period, the works do not become permitted development. Therefore, the appellant sought to demonstrate through an LDC application, which is the subject of this appeal, that the change of use to residential use comprising 10 dwellings was lawful at the date of the application.
10. The Court of Appeal decision also states that crucially, the grant of planning permission itself comes about not through the procedure to be followed under article 3(2) of the GPDO and the specific provisions for 'Conditions' in a class, but through the operation of article 3(1) of the GPDO and the provisions for permitted development in that class. As such, to be permitted development in the first place, the development in question must come fully within the relevant description of the permitted development provided for within each class.
11. Against all of the above background information, the main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This will turn on whether the proposed development would entail a change of use of a building and any land within its curtilage from a use falling within Class B1(c) of the UCO to a use falling within Class C3 of the UCO.

Reasons

12. The onus is on the appellant to make their case on the balance of probability. If there is no evidence to contradict or make the appellant's version of events less than probable, and their evidence alone is sufficiently precise and unambiguous, an LDC should be granted.

³ Keenan v Woking BC and SSCLG [2017] EWCA Civ 438.

13. The appeal building constitutes a relatively modern building that forms part of a larger complex that was originally part of a farm. Several buildings have been used for various commercial/industrial uses and are sited within a communal parking/access area. The appeal building is within proximity of the M1 Motorway and the A421 and I noted that there are currently construction works being undertaken on sites close to it. There are residential dwellings that are close to parts of the overall Eagle Farm site. However, there is no dispute that currently the appeal building is not within a residential area and that the proposed use of it would fall within Class C3 of the UCO.
14. The evidence before me indicates that in 1987 planning permission⁴ was granted for a '*change of use from agricultural grain store to cabinet making workshop*'. I have not been provided with a copy of the decision notice associated with that planning permission. There is no indication as to whether that planning permission cited any reference to one of the classes specified in the UCO.
15. The UCO describes a Class B1(c) use as including a use '*for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit*'. The compatibility with residential area amenity is the governing criterion for this class and such uses should be capable of being carried out in *any residential area* [my emphasis]. A Class B2 use is defined in the UCO as a use for the carrying on of an industrial process other than one falling within Class B1.
16. The meaning of the term '*industrial process*' is given in Article 2 of the UCO and subparagraphs (a) and (b) are directly relevant. An industrial process is a process for, or incidental to, (a) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording), or (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article.
17. I note that the company occupying the appeal building at the time the LDC application was submitted was S M Manufacturing rather than New City Manufacturing Ltd as stated within the appellant's evidence, but that is not determinative. Based on the evidence before me it appears that both companies manufacture/d cabinets and furniture. The screenshots of the website, submitted as part of the Council's evidence indicate that S M manufacturing '*offers commercial furniture solutions across the range from 'one-off' bespoke furniture pieces, to large runs of modular furniture. We manufacture office furniture to suit any situation, from curved reception counters, boardroom tables, audio visual walls, office storage solutions and large fit out projects.*'
18. At the time of my site visit the appeal building was vacant but I noted that a mezzanine area appeared to have been used as an office/showroom. Furthermore, internal photographs of the appeal building, taken by the Council in November 2019, form part of the evidence before me. These photographs include several different pieces of machinery that were used in the manufacture process. I acknowledge that the photographs only provide visual and not auditory evidence in relation to that machinery. Nevertheless, they do

⁴ Ref: MK/400/87

- illustrate the type of machinery that was involved in the manufacture of the products.
19. In addition, the Council's Officer Report states that *'it was observed that the unit contains a range of machinery including: both hand held and static vertical drills, fixed to the ground circular saws, routers and dust extraction systems, all of which are used in the process of producing the bespoke furniture units. Other activities observed involved the gluing of parts together and painting furniture pieces.*
 20. I note that the size of the machinery shown in the photographs is required to ensure that furniture of all sizes including large bespoke pieces can be manufactured. In addition, the manufacturing process does not appear to have been mass producing large runs of the same product. Nonetheless, from the written submissions before me the activities on the site mainly comprise the sale and design of products, cutting and painting materials to form the product, assembly of those materials into the product and the packaging and distribution of those products.
 21. The assembly production process would have involved some manual handling and processes that were undertaken using hand tools. However, the assembly of the products would also, more likely than not, generate noise from drilling and hammering the materials to fix the sections of the product together. In addition, whilst the use of the power machinery for the cutting of materials may have been used mainly at the beginning of the production process it would also, more likely than not, have generated noise. Taking all these points together, the type of activities that were taking place can reasonably be described as an *'industrial process'*.
 22. The Council considers that due to the range of machinery and activities associated with the use of the appeal building that its use would be likely to have a detrimental impact on amenity within a residential area. Its Officer Report states that *'Within the unit, the noise produced by powered woodworking tools and equipment and adjacent dust extraction systems was highly evident. The noise of the equipment in use was also audible outside the unit, with none of the front doors to the unit open at the time..... It is considered that, due to the wide array of powered woodworking equipment present within the building and the high level of noise experienced by the planning officer during the site visit, it is difficult to clarify the use of the building as one which would be suitable and not likely to have a detrimental impact on amenity within a residential area.'*
 23. The appellant has stated that the Officer Report does not indicate where the officer was standing and that it is the subjective view of that officer in relation to the level of noise generated by the equipment in the building. However, that report does indicate that the noise of the equipment in use in the building was audible when standing outside of the building.
 24. The appellant has also submitted a Noise Assessment Report (NA) that concludes *'the noise emission from Unit 1 measured at the site boundary was too low to accurately measure in comparison with the prevailing environmental noise in the locality'*. The NA also indicates that when the survey was carried out that there was no significant workshop activity noise breaking through the building that was audible above the constant road traffic noise. I noted at the site visit that there was a high level of background noise which appeared to

consist mainly of traffic noise, and this is not unsurprising given the proximity of the M1 Motorway and the A421. However, there was also an element of additional noise from construction works that were ongoing near to the appeal site.

25. The NA concludes that *'The noise assessment undertaken demonstrates that the existing workshop building with its current light industrial manufacturing use, can attenuate noise breaking through the building envelope to a level that would be entirely satisfactory to be located adjacent to residential properties, by definition appropriate to a B1 classification'*. Nevertheless, as indicated above it also concludes that the noise emission from the unit was too low to accurately measure due to the prevailing environmental noise. Moreover, it is not clear how the conclusions within the assessment section of the NA have been derived. This includes there being little explanation as to why the workshop activity noise being transmitted through the building envelope to the measurement location 5m away would be at least 10dB less than the background noise level.
26. In addition, only one location was utilised to measure noise levels. In my experience the nearest boundary to a potential noise sensitive receptor is the most likely place for readings to be taken. In this case, that boundary is also the closest to the M1 motorway and the A421 and the road traffic noise generated by the traffic on those parts of the highway network. As such, additional noise level readings at alternative locations, further away from the highway network, whilst still adjacent to Unit 1 would have provided a more robust and precise assessment of the noise levels produced by its use. Moreover, whilst the background noise levels in this location are high it is reasonable to consider that a large proportion of residential areas would have appreciably lower background noise levels.
27. I also note that adjoining land appears to be part of a Strategic Land Allocation (SLA) for housing through the development plan. However, I have no other details of that SLA other than the submitted Proposal's Map extract. Moreover, even though the whole of the SLA may be allocated for housing the acceptability of housing on a specific part of the overall SLA would need to be assessed through the submission of a planning application. In addition, there are dwellings close to Unit 9. Nevertheless, a few other units are between the appeal building and those dwellings and the appeal building is an appreciable distance from the dwellings.
28. As stated above, a mezzanine area of the building appears to have been used as an office and showroom. The size of the mezzanine area is small when compared to the overall size of the building. Based on the evidence before me it is reasonable to consider that the use of this area as an office/showroom was incidental to the primary use of the building.
29. For the above reasons, while the NA is of some value it has some deficiencies. As such, the information before me does not offer sufficient precision and unambiguity to be able to conclude that the industrial process being carried out would have constituted a use which could have been carried out in any residential area without detriment to the amenity of that area by reason of noise. Taking into account all of the above, in relation to the nature and type of the industrial process that was being undertaken within the building it is

more likely than not that the character of the primary use of Unit 1 would have fallen within Class B2 of the UCO at the date of the LDC application.

30. The evidence before me in this case is such that I do not consider that it has been demonstrated, on the balance of probability, that the use of the building and any land within its curtilage, at the time of the LDC application, would have been from a use falling within Class B1(c) of the UCO. Accordingly, therefore, I find that the proposed development would not be lawful as it would not fall within the provisions of Article 3(1) and Schedule 2, Part 3, Class PA of the GPDO and so would not be permitted development on this basis.

Conclusion

31. Consequently, for the reasons given above, I conclude that the Council's refusal to grant an LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D. Boffin

INSPECTOR