
Appeal Decision

Site visit made on 25 August 2020

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

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal Ref: APP/W1850/W/20/3251878

New House Farm, Grafton Lane, Grafton HR2 8BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission.
 - The appeal is made by Gamber Logistics Ltd against the decision of Herefordshire Council.
 - The application Ref 193706, dated 22 October 2019, was refused by a notice dated 25 March 2020.
 - The development proposed is described as '*permission to operate a retail cartridge business from the existing GP storage building*'.
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Decision

1. The appeal is allowed and planning permission is granted for a retail cartridge business at New House Farm, Grafton Lane, Grafton HR2 8BL in accordance with the terms of the application, Ref 193706, dated 22 October 2019, subject to the following conditions: -
 - 1) The premises shall be used for the retail sale of gun cartridges and for no other purpose (including any other purpose in Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 2) The use hereby permitted shall only take place between the following hours; 0800 to 1800 Mondays – Fridays; 0800 to 1300 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.
 - 3) The loading and unloading of service and delivery vehicles together with their arrival and departure from the site shall not take place outside the hours of ; 0800 to 1800 Mondays – Fridays; 0800 to 1300 on Saturdays and not at any time on Sundays, Bank or Public Holidays.

Procedural Matters

2. The description of the development, in the banner heading above, is taken from the application form. In the formal decision above I have deleted the wording '*permission to operate*' and '*from the existing GP storage building*' as it is superfluous and does not relate to an act of development. I noted at the site visit that the retail cartridge business is currently operating from the appeal site. I have dealt with the appeal on this basis.
3. The appellant's evidence suggested that a condition could be applied to a planning permission if I was minded to allow the appeal in relation to

restricting the goods to be sold from the appeal site. Both parties were given the chance to comment on the wording of such a condition. Moreover, they were also given the chance to comment on whether The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (Regs), that amend The Town and Country Planning (Use Classes) Order 1987 (as amended)(UCO), have any implications in relation to this case.

4. The Council's response, states amongst other things, that as things stand now it does not consider that a change of use has taken place. Within the context of an appeal under section 78 of the 1990 Act it is not within my remit to formally determine whether the development requires planning permission. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal. If the appellant wishes to ascertain whether the development is lawful, they may make an application under section 191 of the 1990 Act.

Main Issues

5. The main issue is whether the development is in a suitable location with regard to local and national policies on accessibility and alternative methods of transport other than private motorised transport.

Reasons

6. The appeal site is a single storey, timber clad building that was granted planning permission as a garage and bat loft. The appeal building appears to be currently in use for the retail sales of gun cartridges. The evidence before me indicates that the retail sales of these items are generally associated with clay pigeon and game shooting. This building is adjacent to a barn that was converted to a dwellinghouse and subsequently planning permission was granted to make a material change in use to office accommodation in 2018¹ (2018 permission).
7. At the site visit, it appeared that the former barn is currently in use as offices. The barn and the appeal building are sited adjoining a large carpark area and there is a mobile home that is also adjoining the carpark. The site is served off Grafton Lane which, in the vicinity of the appeal site, is a narrow lane with passing places. At one end Grafton Lane has a junction with the A49 which is a main thoroughfare into Hereford.
8. Policy MT1 of the Herefordshire Local Plan Core Strategy 2011-2031 (LP) relates to traffic management, highway safety and promoting active travel. It states, amongst other things, that development proposals should incorporate six principle requirements covering movement and transport. The Council considers that the development does not meet requirements 2 and 3 of that policy as it fails to promote any alternative method of transport other than private motorised transport and also fails to encourage travel that reduces numbers of short distance car journeys.
9. LP Policy RA5 relates to the re-use of rural buildings. It states, amongst other things, that the sustainable re-use of individual redundant or disused buildings which will make a positive contribution to rural businesses and enterprise and support the local economy will be permitted where it meets a number of

¹ Application No: 182130

criteria. The Council states that the development is contrary to this policy as the site is an unsustainable location for a retail operation.

10. Grafton Lane is a narrow country lane that is mainly unlit and given the distance from bus stops on the A49 it is highly unlikely that customers would walk to or from the site or use public transport. I acknowledge that Grafton Lane is a cycle route and therefore customers could potentially cycle to the site. Nevertheless, given the nature and weight of the boxes of gun cartridges it is highly unlikely that it is practical for a cyclist to carry goods from the site. Consequently, it is more than likely that most customers, in relation to the existing retail use, access the site by private motorised transport.
11. Nevertheless, a transport survey of the vehicles visiting the site in connection with the retail of gun cartridges varied in 2019 from 14 vehicles in one month to a maximum of 66 vehicles in another. This indicates that the trips generated by the development are low in number. I acknowledge that several third parties have highlighted an increase in traffic, including lorries, on Grafton Lane. Though, it appears that there are other developments that could be generating that traffic. Based on the evidence before me, it is more than likely that the vehicle movements solely associated with the retail cartridge business are low in number.
12. Even though, the application is for a retail cartridge business unless that use is restricted by the imposition of a planning condition the appeal building could in the future be used for the sale of other retail goods. If an unrestricted planning permission for a retail use was allowed on this site that retail use could generate substantially more private motorised transport trips. Nonetheless, some of those trips may be more likely to be undertaken by cycle according to the type of goods sold.
13. In addition, on the 1 September 2020 the Regs came into force amending the UCO. The amendments to the UCO include the revocation of Class A (shops) and the creation of a Class E (Commercial, business and service) which incorporates the previous shops (Class A1), financial and professional services (Class A2), restaurants and cafes (Class A3) and offices and other business uses (Class B1). Uses such as gyms, nurseries and health centres (previously in Classes D1 Non-residential institutions and D2 Assembly and leisure) are also within Class E. It also includes "any other services which it is appropriate to provide in a commercial, business or service locality".
14. Article 3(1) of the UCO provides that '*where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land*'. This means that a change of use within a single use class does not involve development and therefore does not require planning permission. So, for example, if an unrestricted planning permission for the retail sale of goods was granted on this site a change from that use to a café, gym, nursery or other use within Class E would not be development and it would not require planning permission. Given the size of the appeal building the uses that would be practical in that building would be limited. However, a café use could generate substantially greater vehicle trips than the retail cartridge business.
15. As stated above, it is not within my remit to determine whether the development requires planning permission but the introduction of the Regs is a

material consideration in this appeal as it could provide a fallback position. This is because their introduction means that a Class B1, of the UCO, office and a Class A1 shop are now both in Class E. The Council has stated within its evidence that the lawful use of the appeal building is as a garage associated with the residential use of the barn. It has also stated that the appeal building could be used as an office.

16. As the application site of the 2018 permission included the appeal building and there is no condition on that permission restricting the office use to that of the barn only it is reasonable to consider that the appeal building could be lawfully used as an office. Nevertheless, condition 4 of that permission states, amongst other things, that the premises shall be used for offices and for no other purpose including any other purpose in Class B1 of the schedule to the UCO. In my opinion, that condition restricts the use of the *premises*, which would include the appeal building, to an office. Therefore, it is more than likely that planning permission would still be required to use it as a shop. This conclusion is for the purposes of the current appeal only and does not prejudice any future application for a lawful development certificate and/or any enforcement proceedings.
17. As a result, there is a significant probability that planning permission would be required for the retail cartridge business if I dismissed the appeal. This limits the weight that I can give it as a fallback position.
18. Without a condition restricting the retail use of the appeal building there are potentially other uses that the building could lawfully be utilised for which would be highly likely to generate a considerably higher number of private motorised transport trips, given its rural location. Whilst the criteria of LP Policy RA5 do not cite the accessibility of the rural building the policy does refer to the sustainable re-use of individual buildings. Moreover, the supporting text to the policy states that where required applicants will also be required to demonstrate that proposed uses address sustainable transport issues.
19. In this case I consider that, there is little evidence before me to indicate that the unrestricted retail use of the appeal building would comply with LP Policies MT1 and RA5. Nonetheless, there is no dispute that a planning condition could be imposed to restrict the goods sold. With such a condition in place, given the specialised nature of the retail business and the goods sold it is difficult to see how it would be possible for the appellant to promote access by other means or encourage active travel behaviour. Furthermore, the levels of vehicle trips associated with the use are low and therefore I consider that the imposition of the condition would address the accessibility issues associated with its rural location.
20. As a result, the imposition of the condition would ensure that the development would comply with LP Policies MT1 and RA5. Under these circumstances such a condition is necessary and reasonable. In addition, the National Planning Policy Framework (the Framework) at paragraph 83 states that planning decisions should, amongst other things, 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. Furthermore, paragraph 103 of the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. LP Policies MT1 and RA5

are broadly consistent with the Framework and with regards to paragraph 213 of the Framework they have substantial weight.

21. Considering all of the above, the operation of a retail cartridge business from the building with the imposition of a planning condition is in a suitable location with regard to LP Policies MT1 and RA5 and the Framework. Paragraph 11 c) of the Framework states that decisions should apply a presumption in favour of sustainable development - for decision-taking this means approving development proposals that accord with an up-to-date development plan without delay.
22. Consequently, the development would also comply with LP Policy SS1 which, amongst other things, states that when considering development proposals Herefordshire Council will take a positive approach that reflects the presumption in favour of sustainable development contained within national policy.

Other Matters

23. The fact that the development has been commenced without planning permission is not a reason in itself to dismiss the appeal. The development should be judged against material planning considerations. The evidence before me cites other developments that are allegedly being operated in the vicinity of the appeal site by the appellant and advertisements relating to the retail cartridge business. However, those developments and advertisements do not form part of the scheme before me. Concern has also been raised regarding the appellant complying with conditions imposed on the 2018 permission. Nevertheless, it would be open to the Council to enforce against any breaches of planning control in these respects.
24. Local residents and the Parish Council object to the development on a wider basis including in respect of highway safety, the safety and security of storing ammunition and noise. These did not form part of the Council's reasons for refusal in relation to the planning application. I have no substantive evidence before me that would lead me to disagree with the Council's Highway Engineer's findings that *'the submitted data shows that the level of vehicle movements associated with this application are low and would not result in a cumulative impact on the highway network that could be classed as severe.'* The issue of the safety and storing of ammunition is covered by separate legislation and is not a matter for my consideration in this appeal. The issue of noise appears to be associated with clay pigeon shoots rather than the development before me. In any case, there is little evidence before me to indicate that there are potential adverse impacts or significant adverse impacts on health and the quality of life resulting from noise generated by the retail cartridge business.
25. While I understand that my decision will be disappointing for some local residents and the Parish Council, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.
26. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

Conditions

27. I have considered the conditions put forward by the Council and the appellant against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness and enforceability the wording of some of the conditions has been amended and the main parties have had the chance to comment on the wording of the condition restricting the use of the building.
28. As stated above, a condition restricting the use of the building meets the tests of necessity and reasonableness in this case due to the rural location and the specialised nature of the goods sold. I have cited Class A1 of the UCO within the condition as paragraph 4 of the Regs states *'If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that application must be determined by reference to those uses or use classes.'* In other words, this appeal must be decided with reference to the previous use classes as the application was submitted prior to 1 September 2020.
29. Conditions in respect of the hours that the use and deliveries can take place are necessary in the interests of the living conditions of nearby residents.
30. A condition requiring secure covered cycle parking provision is not necessary as I have found that it would not be practical for customers to cycle to and from the site. As such, I have not imposed a condition in this respect.

Conclusion

31. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR