The Planning Inspectorate

Appeal Decision

Site visit made on 1 September 2020

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Appeal Ref: APP/L2820/W/20/3250352
The Old Poultry Farm, Stoke Albany Road, Desborough, Northamptonshire NN14 2SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Rory Kier, RK Electrical against the decision of Kettering Borough Council.
- The application Ref KET/2019/0552, dated 5 August 2019, was refused by notice dated 4 October 2019.
- The application sought planning permission for a B8 storage unit with ancillary B1 office with erection of entrance gates and security fencing without complying with a condition attached to planning permission Ref KET/2019/0070, dated 30 April 2019.
- The condition in dispute is No 5 which states that: *This permission shall enure for the benefit of Mr Rory Kier/RK Electrical only and shall not enure for the benefit of the land and the use hereby permitted shall be discontinued on the date when Mr Rory Kier/RK Electrical ceases to occupy the premises*.
- The reason given for the condition is: *Because an open B8/B1 use in this location raises wider issues of impact, highway and neighbour amenity issues therefore the local planning authority needs to retain control over future occupiers and users of the proposed building*.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The original description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. I have used the description given on the original application form as this reflects that shown on the Council's decision notice.

Main Issue

3. The main issue is whether the condition is reasonable and necessary in the interests of highway safety and protecting the living conditions of nearby residents.

Reasons

4. The appeal site is located off Stoke Albany Road and comprises an access road and an industrial unit and office. It was formerly occupied by a poultry unit. Within the surroundings are other industrial and commercial premises, residential properties and open countryside. Permission was granted under application reference KET/2019/0070 for the B8 light industrial storage unit and ancillary B1 office which is now present on site. This permission includes the disputed condition restricting the permitted use to the Appellant and his current business.

5. The site was subject to a prior approval application which gave consent for the change of use under Class R of the General Permitted Development Order. However, due to the condition of the existing building on site this was demolished leading to the requirement for a full planning application. The previous consent did not include a personal condition despite having the same footprint as the original building. I note the Council's comments that this was a prior approval application, however one of the matters for consideration under Class R.3(b) is the transport and highways implications of the development.

6. I find therefore that there is a degree of inconsistency between the consideration of the two applications in respect of highway matters. Nevertheless, whist this is unfortunate, the subsequent application did consider the highway impacts in respect of the submitted details relating to the specific vehicle movements of the Appellant's business, and the fall-back position of an unrestricted permission under the prior approval route was no longer applicable following the demolition of the building.

7. I note that the B1/B8 consent restricts the use of the appeal site to storage, distribution or office use, and I have had regard to the scale of the building on site and the overall size of the site. Nevertheless, these in themselves do not guarantee an acceptable level of HGV and vehicle movements. Whilst Condition 4 of KET/2019/0070 restricts the size of vehicles to a maximum of 7.5 tonnes the acceptability of the development was based on the specific vehicles identified by the Appellant and therefore Condition 4 would not sufficiently address highway impacts to an extent where condition 5 is then unnecessary.

8. I note that there are neighbouring land uses which are not similarly restricted. However, I have limited details of these before me in order to determine if they are wholly comparable to this case. I have little information regarding their parking arrangements or specific details relating to their traffic movements and access visibility for example, therefore these examples do not alter my findings above.

9. The Appellant has pointed out that the retention of the disputed condition would be likely to cause issues when taking a mortgage on the property. Whilst this may be likely, I have been presented with very little evidence to support this and consequently this in itself does not sufficiently demonstrate that the condition is unreasonable and should be removed.

10. Consequently, based on the evidence before me, I find that it has not been sufficiently demonstrated that the removal of the condition would not lead to the potential for an increase in vehicular activity resulting in adverse impacts on highway safety and the living conditions of nearby residents in terms of noise and disturbance from traffic movements should the site be occupied by a

different business. I acknowledge that the condition does not completely prevent a new user from taking over the site but that it would require the Council's permission. As such, I find that the condition meets the six tests and is necessary to ensure that the development meets the requirements of Policy 8 of the North Northamptonshire Joint Core Strategy 2011 – 2031 (2016) which seeks to ensure that development provides a satisfactory means of access, parking, servicing and manoeuvring and protects amenity, amongst other things.

Conclusion

11. For the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be dismissed.

R Norman

INSPECTOR