

Appeal Decision

Site visit made on 30 June 2021

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL
an Inspector appointed by the Secretary of State

Decision date: 15 September 2021.

Appeal Reference: APP/H2265/W/20/3264313

Platt Industrial Estate Unit 12, Platt, Maidstone Road, Sevenoaks TN15 8JL

- 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 C Barton-Grimley (Prime Securities Ltd) against the decision of Tonbridge & Malling Borough Council.
 - The application (reference TM/20/02088/FL, dated 21 September 2020) was refused by notice dated 13 November 2020.
 - The application sought planning permission for "*Erection of 3 industrial buildings for mix of B2 (General Industry) and B8 (Storage/Distribution) use, and associated vehicle access and parking*", without complying with a condition attached to planning permission reference TM/16/01766/FL, dated 31 January 2017.
 - The condition in dispute is condition number 10 which states: "*The premises shall not be in use (including for any deliveries to or from the site) outside the hours of 07:00 to 22:00 Mondays to Fridays and 07:00 to 13:00 Saturdays, with no working on Sundays or Public or Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority*".
 - The reason given for the condition is: "*To avoid unreasonable disturbance to nearby residential properties*".
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Decision

1. The appeal is allowed and planning permission is granted for "Erection of 3 industrial buildings for mix of B2 (General Industry) and B8 (Storage/Distribution) use, and associated vehicle access and parking", at Platt Industrial Estate Unit 12, Platt, Maidstone Road, Sevenoaks TN15 8JL in accordance with the application (reference TM/20/02088/FL, dated 21 September 2020), without compliance with condition number 10 previously imposed on planning permission TM/16/01766/FL, dated 31 January 2017, but subject to the revised condition number 10 and other conditions set out in the attached Schedule of Conditions (including conditions attached to the previous planning permission and now reapplied).

Preliminary points

2. The site address given above is that given in the application form, although the appeal form refers to "Phase 3" of the Platt Industrial Estate. The premises to which the condition applies is defined by reference to the application drawings, however.

3. This appeal follows an “application for removal or variation of a condition following grant of planning permission” and the application form sought the removal of the disputed condition. Nevertheless, the parties have also responded to a request for comments on the possibility of varying the disputed condition.

Main issue

4. The main issue to be determined in this appeal is whether unacceptable disturbance would be caused to neighbours unless the disputed condition is imposed (and whether the condition in dispute is necessary and reasonable, therefore).

Reasons

5. The appeal site is located to the north of Platt, in an area that is somewhat isolated from the main part of the settlement. The A25 trunk road (Maidstone Road) runs to the north of the settlement, in approximately an east-west direction, with a railway line north of the trunk road and roughly parallel to it. A road running northwards from the A25 and crossing the railway line over a bridge, provides access to the Platt Industrial Estate.
6. There is some frontage development on the A25 in the vicinity of the junction with the access road but the enclave to the north of the railway line is essentially self-contained. This area includes an extensive group of large industrial buildings, some of which are very new, with a range of different enterprises. The site as a whole gives rise to significant numbers of movements by heavy lorries.
7. Nevertheless, there are three residential properties immediately adjacent to the access road, and a short way to the north of the bridge over the railway. These are ‘The Old Coach House’ (also, apparently, referred to as ‘The Old Stables’), ‘Bassett’s Cottage’ and ‘Holly Mount House’, the last being set back from the road.
8. Planning permission was granted in 2017 for the construction of further industrial buildings at the Platt Industrial Estate. A number of conditions were imposed including a condition restricting the use of the premises (including for deliveries to or from the site) during the night-time, at weekends and on bank holidays. This condition is the subject of the current appeal.
9. Planning policies include the aim of achieving a high quality environment, notably at Policy CP24 of the ‘Tonbridge and Malling Borough, Local Development Framework, Core Strategy’ (which was adopted in September 2007). In the context of this appeal, attention is drawn to the policy aim of protecting amenity.
10. Likewise, the ‘National Planning Policy Framework’ also requires planning decisions to take account of the effect of development on health and living conditions, among other things. The potential impact of noise is of particular concern and recent changes to the ‘National Planning Policy Framework’ have maintained the importance of this.
11. The site of the new buildings is identified (by cross-hatching in red) on the submitted “Site Location Plan” (drawing number 4863-001). It is located some

distance away from the houses that share the access road. The restriction that has been imposed on working within the premises (the cross-hatched area) would not be of particular benefit to the residential properties, because of the distance of the buildings from that part of the access road and the existence of intervening buildings.

12. I have been referred to a previous appeal relating to Phase 4 of the Platt Industrial Estate but I have noted that this section of the Estate is adjacent to the residential properties on the access road and that the circumstances are markedly different in the present case.
13. On the other hand, of course, vehicles making deliveries to or from the premises that are the subject of the current appeal would pass by the residential properties and this type of vehicle movement would particularly affect the two houses that are nearest to the access road. Evidently, the houses are already affected by any delivery vehicles passing during the night, travelling to or from premises that are not subject to any restriction on their hours of operation, but I am convinced that their living conditions would be made worse if additional night-time delivery traffic were to be permitted. Moreover, I accept that it would not be possible to differentiate between different types of delivery (which might involve different types of vehicle).
14. I have therefore concluded that a restriction on all deliveries during unsociable hours is necessary and proportionate, to protect the living conditions of nearby residents from disturbance by heavier vehicles. At the same time, it is unnecessary for the restrictions to be extended to prevent working at the premises themselves. The disputed condition will, therefore, be modified accordingly.
15. Evidently, the appeal site lies within an established industrial and commercial area and the economic benefit of the proposal clearly weighs in favour of the appeal. Nevertheless, the need for restrictions that I have identified, in order to afford a reasonable degree of protection to residential amenities of those living alongside the access route, outweighs the arguments in favour of removing the disputed condition in its entirety.
16. In short, I am persuaded that the scheme before me can properly be permitted, subject to the revised condition, and, although I have considered all the matters that have been raised in the representations, I have found nothing to cause me to alter my decision.
17. I have, however, also considered the need for the retention of other conditions that were imposed on the previous planning permission. Condition number 1, as originally imposed, specified the time within which the planning permission was to have been implemented and is no longer relevant. The remaining conditions, including pre-commencement conditions are still relevant in whole or in part (or may be so) and the original decision gives reasons for imposing them. I have reimposed those conditions, for the avoidance of doubt, with the exception of condition number 10 which has been varied for the reasons that have been given above.
18. I have noted the appellants' suggestion that some more limited restriction on working at the premises might be acceptable to them (although the suggested wording is not entirely clear) but I have formed the opinion that the amended

condition that is now imposed meets the tests that are set out in the 'National Planning Policy Framework', including the tests of necessity and reasonableness.

Roger C Shrimplin

INSPECTOR

SCHEDULE OF CONDITIONS

1. [not applicable]
2. No development shall take place until details and samples of all materials to be used externally on the buildings have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.
3. The premises shall be used for Class B2 (General Industry) or B8 (Storage or Distribution) and for no other purpose.
4. Prior to first use of any of the units for Class B2 (General Industry), a scheme of noise insulation/attenuation for the unit for which it relates that satisfies BS 4142:2014 shall be submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented prior to first use of the unit for which it relates.
5. No development shall take place until a plan showing the finished floor levels of the buildings in relation to existing ground levels has been submitted to and approved by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Class O of Part 3, or Class H of Part 7, of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.
7. No retail sales shall take place from the premises.
8. Notwithstanding the provisions of Section 55 of the Town and Country Planning Act 1990 or the Town and Country (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), the layout of the development shall not be varied by means of sub-division or amalgamation of any units, nor by the insertion of additional floors, without the prior permission in writing by the Local Planning Authority.
9. None of the buildings shall be occupied until the areas shown on the submitted layout as turning and vehicle parking space have been provided, surfaced and drained. Thereafter those areas shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown (other than the erection of a garage or garages) or in such a position as to preclude vehicular access to this reserved turning and parking space.
10. No deliveries to or from the premises (or any movements by heavy goods vehicles) shall take place outside the hours of 07:00 to 22:00 Mondays to Fridays and 07:00 to 13.00 Saturdays and not at any time on Sundays or Public or Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.
11. No materials, plant or other equipment of any description shall be kept or stored in the open other than in areas and to such heights as may be approved in writing beforehand by the Local Planning Authority.
12. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of hard and soft landscaping and boundary

treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or similar structures as may be approved shall be erected prior to first occupation of the buildings.

13. The development shall be carried out in strict accordance with the Tree Survey (ref.131102v2 dated 4 December 2013) and Addendum (Ref.161008v2 dated 29 November 2016) prepared by Philip Wilson Arboriculture, unless the Local Planning Authority gives written consent to any variation.
14. The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees, including their root system, or other planting to be retained as part of any approved landscaping scheme by observing the following:
(a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread (or as otherwise agreed in writing by the Local Planning Authority). (b) No fires shall be lit within the spread of the branches of the trees. (c) No materials or equipment shall be stored within the spread of the branches of the trees. (d) Any damage to trees shall be made good with a coating of fungicidal sealant. (e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees. (f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level, except as may be otherwise agreed in writing by the Local Planning Authority.
15. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.
16. No development shall commence until details of the refuse enclosures and cycle stores have been submitted to and approved by the Local Planning Authority. The refuse enclosures and cycle stores shall be provided in accordance with the approved details prior to occupation of any of the buildings and shall be retained at all times thereafter.
17. No external lighting shall be installed on the site, except in accordance with a scheme of external lighting that has been submitted to and approved by the Local Planning Authority. Any such scheme shall have regard to Bat Conservation Trust guidance relating to lighting. The development shall thereafter be carried out in accordance with the approved scheme.
18. Prior to the installation of the solar panels on the buildings, a section/elevation plan showing the height of the solar panels above the roof planes of the buildings shall be submitted to and approved by the Local Planning Authority. The solar panels shall be installed in accordance with the approved details.
19. The development shall be carried out in accordance with Section 4 (Discussion and Recommendations set out in the submitted Extended Phase 1 Habitat Survey (Report No.LM-P1BBG-2009 - January 2012) prepared by Greenspace Ecological Solutions, unless any variation is approved in writing by the Local Planning Authority.
20. Prior to the commencement of the development, an updated reptile survey and mitigation strategy shall be submitted to and approved by the Local Planning Authority. The development shall be undertaken in strict accordance with the approved survey

and mitigation strategy, unless otherwise approved in writing by the Local Planning Authority.

21. (i) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of without increase to flood risk on or off the site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and (ii) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include: a) a timetable for its implementation, and b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
22. No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.
23. Prior to the commencement of development, details of the junction alterations and a strategy and timetable for measures to improve both the safety and the environmental conditions of the access road for vehicles and pedestrians around the A25/Platt Industrial Estate junction shall be submitted to and approved by the Local Planning Authority. The junction alterations and strategy shall be implemented as approved.
24. No development shall be commenced until the following have been submitted to and approved by the Local Planning Authority: (a) a contaminated land desktop study identifying all previous site uses, potential contaminants associated with those uses including a survey of the condition of any existing building(s), a conceptual model of the site indicating sources, pathways and receptors and any potentially unacceptable risks arising from contamination at the site; (b) based on the findings of the desktop study, proposals for a site investigation scheme that will provide information for an assessment of the risk to all receptors that may be affected including those off site. The site investigation scheme should also include details of any site clearance, ground investigations or site survey work that may be required to allow for intrusive investigations to be undertaken. If, in seeking to comply with the terms of this condition, reliance is made on studies or assessments prepared as part of the substantive application for planning permission, these documents should be clearly identified and cross-referenced in the submission of the details pursuant to this condition.
25. No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved by the Local Planning Authority: a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all

works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended). The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use. (b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

26. Following completion of the approved remediation method statement, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.
27. This permission shall be an alternative to outline planning permission TM/11/03020/OA granted on 21.07.2015, and shall not be exercised in addition thereto or in combination therewith.