



Appeal Decision

Site visit made on 22 March 2022

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/Y1138/W/21/3287719

Cadhays, Ashill Moor, Ashill, Cullompton EX15 3NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA, Paragraph MA.2.(2) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr/Ms Paul/Valerie Yelland/Platt against the decision of Mid Devon District Council.
 - The application Ref 21/01510/PNCOU, dated 1 August 2021, was refused by notice dated 23 September 2021.
 - The development proposed is conversion of existing workshop and store to one 3-bedroom, single-storey dwelling house.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would be permitted development with regard to whether the existing building has been in a commercial, business and service use for at least two years preceding the date of the application.

Reasons

3. Under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) development is not permitted if, for a continuous period of at least 2 years prior to the date of the application for prior approval, the building was not in a specified use. The specified uses include those uses in Class B1 (prior to 1 September 2020) and Class E (since 1 September 2020) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO).
4. The appellant confirms that the historic use is an industrial process, as defined by the UCO. The B1/E use classes include 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. Although no processing of raw materials and manufacture of goods is carried out at the site, an industrial process outside this definition of class B1/E would fall within the B2 use class.
5. The building has been used in connection with the appellant's repair and maintenance business and is currently vacant. An Environmental Noise Assessment (ENA) has been provided that appears to have been prepared in support of a proposal to demolish the appeal building and replace it with a new

- build dwelling. As was a Geo Environmental Assessment that analyses contamination risks and indicates the building was being used as a vehicle maintenance workshop, but does not give substantive evidence as to the use class of the building.
6. The purpose of the ENA was to demonstrate that a new dwelling could be built on the site of the appeal building without being adversely affected by noise from the existing business. It was not intended to demonstrate whether the business could operate without causing adverse impacts in any residential area. Nevertheless, the ENA does provide useful information about noise generation at the site. It describes noise monitoring at a point just outside the appeal building at a time that the business was said to be operating normally.
 7. The report indicates that internal sound levels, with windows open for ventilation, would be just above those levels recommended for a dwelling. It concludes that, with the demolition of the appeal building, noise would be substantially less and noise sources would be further away, so a dwelling at the site would not require specific mitigation measures to be put in place to achieve acceptable noise levels.
 8. However, to fall within a B1/E use class, the activity has to be capable of being carried on in any residential area. It appears to me that if a dwelling were sited near to the location of the monitoring equipment and the business were to continue to operate as it had done during that period, acceptable levels would not be achieved. Moreover, there is no discussion within the ENA about likely noise levels within garden areas, where disturbance may also cause detriment to amenity.
 9. The whole site is adjacent to another dwelling, but some occupiers may be content with the presence of the business and its effect on their lifestyle. The simple presence of this neighbour is not, therefore, acceptance that it does not suffer detriment to amenity from activities at the site even in the absence of an environmental health complaint from its occupiers.
 10. Permission was previously granted for a live/work unit at the site. The residential accommodation is within a building that also contains business floorspace. Residential occupation was limited to occupiers of the industrial premises and such could help to ensure that residents did not suffer undue disturbance. It may be that the Council did not articulate concern about the use of other buildings at the site, but it would appear that they have all been used as part of one business, so, in practice, activity would have been within the occupier's control. Suggestion that a live/work unit would not have been permitted in connection with a B2 use is unsubstantiated by evidence.
 11. With regard to the above, it has not been demonstrated that the previous business activities would have been capable of being carried on within any residential area, without detriment to the amenity of that area.
 12. I note that a vehicle workshop at a site known as Marlin Cars was deemed by the Council to fall within the B1 use class. Beyond photographs of that site, there is limited evidence comparing the two businesses' activities. Importantly, an officer report relating to development at that other site indicates that express planning permission had been granted for a B1 use, so the established use was clear. It is not, therefore, instructive of the historic use class of the appeal site.

13. On the evidence before me it has not been demonstrated that the building was in Class E or B1 use for the two years preceding the date of application to the Council. Therefore, I find that the proposal would not be permitted development.

14. Accordingly, the appeal is dismissed.

M Bale

INSPECTOR