



Appeal Decision

Site visit made on 8 August 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 26th August 2022

Appeal Ref: APP/J4525/W/22/3298677

Units 1 & 2 Jacksons Complex, Woodbine Street, Sunderland SR1 2PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr D Lenton against the decision of Sunderland City Council.
 - The application Ref 22/00251/FUL, dated 10 February 2022, was approved on 29 April 2022 and planning permission was granted subject to conditions.
 - The development permitted is change of use and sub-division of existing car repair workshop from 2no. units (Use Class B2), to create 6no. light industrial units (Use Class E(g)) including associated elevational alterations (Amended Description).
 - The condition in dispute is No 3 which states that: The proposed units shall be used for light industrial use only under Class E(g)(iii) in order to protect the amenity of the adjacent properties and comply with Policies BH1 and HS1 of the CSDP.
 - The reason given for the condition is: to protect the amenity of the adjacent properties and comply with Policies BH1 and HS1 of the CSDP.
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Decision

1. The appeal is allowed and the planning permission Ref 22/00251/FUL for the change of use and sub-division of existing car repair workshop from 2no. units (use Class B2), to create 6no. light industrial units (use Class E(g)) including associated elevational alterations (Amended Description) granted on 29 April 2022 by Sunderland City Council, is varied by deleting condition 3 and substituting for it the following condition:
 - 3 The premises shall be used for Class E(g) use only and for no other purpose (including any other purpose in Class E 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)).

Preliminary Matters

2. In September 2020 the Town and Country Planning (Use Classes) Order 1987 (UCO) was amended and, amongst other matters, a number of class uses were revoked and grouped under a new Class E (Commercial, Business and Service) use. This included Class E(g) which effectively replaced Class B1 (Business). There are various historical references to the site being suitable for Class B1 (excluding B1(a)), B2 and B8, through the application and appeal documentation. However, the main parties agreed during determination of the planning application that the site would be limited to Class E(g) due to the proximity of nearby residential areas. Accordingly, the description of development, was amended to reflect this and I have based my decision on this agreed development use and description.

Main Issue

3. The main issue is whether condition 3 is necessary, relevant and reasonable to protect the living condition of occupiers of neighbouring residential properties.

Reasons

4. The National Planning Policy Framework (the Framework), through paragraph 56, advises that planning conditions should be kept to a minimum, and only used where they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise and reasonable in all other respects. These are referred to in the Planning Practice Guidance (PPG) 'Use of Planning Conditions' as the six tests, and any conditions imposed must satisfy them.
5. As was evident from my site visit, the site sits relatively close to residential areas. In all probability development on this site not covered by Class E(g) could adversely impact the living conditions of the occupiers of surrounding residential properties. To mitigate this the main parties agreed to restrict use to Class E(g) which can be carried out in a residential area without detriment to its amenity by reason of noise; vibration; smell; fumes; smoke; soot; ash; dust or grit. However, condition 3 was applied which limits the development use specifically to Class E(g)iii.
6. The appellant seeks deletion of this condition to allow all uses within Class E to be permitted. However, the wording within the UCO pertaining to Class E does not protect residential area amenity within all included classes, only within Class E(g). Policy HS1 of the Core Strategy and Development Plan 2015-2030 (CSDP) notes that development must demonstrate that it does not result in unacceptable adverse impacts which cannot be addressed through mitigation, including noise, dust, vibration, and emissions. CSDP Policy BH1 relates to design quality based on an understanding of local context. Other types of uses in Class E could well cause unacceptable emissions/harm in a residential area, and therefore would not comply with CSDP Policies HS1 and BH1. Different types of business would need to demonstrate compatibility on their merits. As such, relaxing to Class E would be a significant departure from the original planning permission and would not protect the living condition of occupants of neighbouring residential properties.
7. The current condition 3 places a further limit on the use beyond Class E(g). As all development uses under Class E(g) must be appropriate with in a residential area without detriment to amenity, there is no justification or reason for the existing condition 3 limitation. Therefore, condition 3 as written, is not relevant or reasonable and does not satisfy the six tests in the PPG. However, for the reasons discussed above, it is necessary and relevant to the development permitted that a condition restricting it to Class E(g) is imposed. I have therefore included a substitute condition 3 for this.
8. While the appellant contends that the Council did not acknowledge the existing and permitted development class uses for the site, it is clear in the Officer's Report that this was completed. Furthermore, it is acknowledged that the previous use of the site is referenced as Class B2. However, the appellant agreed to the Class E(g) use during the application stage, and this is what has been applied to the planning permission. To change the class use at this appeal

stage to something different to Class E(g) would be a significant departure from the planning permission.

Conclusion

9. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition 3 and substituting a new condition 3 in its place.

J Symmons

INSPECTOR