



Appeal Decisions

Site visit made on 1 September 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2022

Appeal A Ref: APP/P1133/C/22/3299614

Appeal B Ref: APP/P1133/C/22/3299615

Land at Higher Osier Court, Buckland Road, NEWTON ABBOT, Devon, TQ12 4SA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by CamperWorx Ltd and Appeal B by Osier Court Ltd against an enforcement notice issued by Teignbridge District Council.
 - The notice, numbered 20/00164/ENF, was issued on 21 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land and building hatched blue on the attached plan from B8 (storage and distribution) to B2 (general industrial) consisting of a campervan conversion business.
 - The requirements of the notice are
 - a) Cease using the land and building hatched blue on the plan attached to the notice to operate a campervan conversion business;
 - b) remove from the land and building hatched blue on the plan attached to the notice all equipment and other items associated with the campervan conversion business.
 - The period for compliance with the requirement is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2) (c), (f), (g)
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Appeal C Ref: APP/P1133/W/22/3291878

Higher Osier Court, Buckland Road, Newton Abbot, Devon, TQ12 4SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended. The appeal is made by CamperWorx Ltd against the decision of Teignbridge District Council.
 - The application Ref 20/0208/FUL dated 2 November 2020 was refused by notice dated 2 August 2021.
 - The development proposed is the change of use from B8 storage and distribution to B2 general industrial.
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Decisions

Appeal A Ref: APP/P1133/C/22/3299614

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of the land and building from B8 (storage and distribution) to B2 (general industrial) consisting of a campervan conversion business at Higher Osier Court, Buckland Road, Newton Abbot,

Devon, TQ12 4SA as shown on the plan attached to the notice and subject to the following conditions:

- i) The site shall be used for the purposes of a campervan conversion business only and for no other purpose.
- ii) The proposed sound mitigation measures shown on Drawing No HOC001.1 Revision 001 dated 29.03.2021 shall be implemented within 3 months of the date of this decision and such measures shall be retained thereafter.
- iii) The collective acoustic impact from the use of equipment or machinery from the B2 use hereby approved shall not significantly increase the existing background noise levels, La90 at the nearest point on the boundary of the site. It is considered that an increase of 5dba for 10 minutes or more would be significant. The sound level of any mechanical system should be designed to operate 5dba below the background sound level and without tonal element when measured at the facade of the neighbouring properties.
- iv) All work associated with the campervan conversion business shall take place within the newly enclosed building with the doors and any windows shut.
- v) The use hereby approved shall not take place other than between the hours of 08:00-18.00 Monday to Friday, 08:00-13.00 on Saturdays and not at all on Sundays or bank holidays. The delivery and collection of goods shall only occur between the hours of 0:800-18:00 Monday to Friday, 08:00-13:00 on Saturdays and not at all on Sundays or bank holidays.
- vi) Within two months from the date of this decision an external lighting scheme shall be submitted to and approved in writing by the local planning authority and implemented thereafter. Only lighting that has been approved in writing by the local planning authority shall be installed.

Appeal B Ref: APP/P1133/C/22/3299615

2. As no appeal was made on ground (a), the appeal fails.

Appeal C Ref: APP/P1133/W/22/3291878

3. The appeal is allowed and planning permission is granted for the change of use from B8 storage and distribution to B2 general industrial at Higher Osier Court, Newton Abbot, TQ12 4SA in accordance with the terms of the application, Ref 20/02028/FUL, dated 2 November 2020, subject to the same conditions as attached to Appeal A.

Applications for costs

4. Applications for costs have been submitted by the appellants in respect of the s78 and s174 appeals. These are the subject of separate decisions.

The site and relevant planning history

5. The appeal site is located on the south side of a narrow country lane in a designated Area of Great Landscape Value close to a mare and foal sanctuary, a water treatment works and the Grade II listed Buckland Barton House which has been converted into a number of dwellings and is some 48.5m distant. There is also a dwelling to the east of the site.
6. The appeal relates to Higher Osier Court (adjacent to Lower Osier Court) within which is a modest sized pitched roof barn and attached open sided lean-to used for a camper van conversion business. The workshop contains a substantial flat-bed router machine and sawdust extractor, a quantity of hand and electric tools and miscellaneous equipment, and there is an elevated storage space over part of the workshop. The north side of the barn and lean-to is open to allow vehicles to access the rear of the site.
7. Within the site are a number of dark green shipping containers which the Council advises are used in association with the permitted B8 storage use of the appeal site and Lower Osier Court. This benefits from a Certificate of Lawfulness (06/03204/CLDE) granted in 2006 for the use of land and buildings for the storage of materials, equipment and vehicles and ancillary office and mess room in connection with paving contractors.
8. In November 2020 the application subject to Appeal C was submitted. Following its refusal a second application (21/01966/FUL) was submitted and refused (but no appeal made) on similar grounds relating to the use causing a nuisance to neighbouring residential properties.

Appeals A and B: the appeals on ground (c)

9. An appeal on this ground is that there has not been a breach of planning control as the appellant considers that the use is permitted development within a former B1 Business (c) use and that a lawful change of use from B8 took place under the Town and Country Planning (General Permitted Development) Order 2015, as amended, prior to the change in the legislation on 1 August 2021. The appellant refers to the definition of Class B1(c) from the Town and Country Planning (Use Classes Order) 1987 which defines Business as a use that can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, etc.
10. Details of the 25 day conversion process have also been submitted in which it is stated that it is only the cutting of the roof on day 2, taking 4 minutes, which makes any noise. The rest of the conversion process involves procedures that could be legitimately carried out in domestic garages. It is also stated that no work is carried out on engines or exhaust systems, or to bodywork repairs or painting.
11. The Council advises that the Land Use Gazetteer makes no reference to any specific use to convert vans to campervans, but that a van rebuilding place, a van reconditioning place and a van restoring place all fall within a B2 use. The Council consider that the current works involves aspects of each process and is within a B2 use. Whilst this may be the case, the Gazetteer is not the sole determinant of a use classification as local factors are also relevant
12. Noise complaints have been received by the Council since October 2020 and it is evident from the representations made to the planning applications that

noise and disturbance are of concern. However, neither the appellants nor the Council have submitted any acoustic reports although the Council's Environmental Health Officer has referred to the lawful storage use of the site impacting on neighbouring homes. The Officer has made recordings of items being moved, banging and crashing of materials being loaded and unloaded early in the morning and throughout the day.

13. A resident in one of the flats at Buckland Barton has submitted a record of incidents amounting to a nuisance for the period 30 June 2022 to 14 July 2022 in which CamperWorx machinery noise is recorded on 5 occasions for periods of up to a maximum of 3.5 hours. The record also refers to people yelling across the site, metalwork hammering and the revving of cars and vans for prolonged times.
14. Because of the lawful use of the site and the noise and activity associated with that use, it is difficult to establish the extent and duration of unacceptable levels of noise that cause a disturbance directly attributable to the alleged use from that which may arise from the lawful use. At the time of my site inspection the background noise levels were typical of a peaceful rural location, but no power tools or machinery were in use at the time and the routing machine was not able to be operated. I would expect some machinery when in use to be audible beyond the boundaries of the site, which would be accentuated by its elevated position and be intrusive in a rural environment.
15. I find that as a matter of fact and degree, and having had regard to the appeal decisions submitted by the appellants, that the campervan conversion use has generated sufficient concern over the level of noise arising through disturbance to residents that it falls within the B2 use class. The onus of proof rests with the appellants and the standard of proof is on the balance of probability. In this case the appellants have not shown that the use is a B1 business use and consequently is not permitted development.
16. The appeals on this ground fail.

Appeal A and C: the appeal on ground (a) and the s78 appeal

17. An appeal on this ground is that planning permission should be granted.
18. The main issue is the effect of disturbance through noise on local residents arising from the activities of the CamperWorx business.
19. The Council accepts that the development complies with various adopted policies set out in the Teignbridge Local Plan 2013-2033 other than the impact of noise on nearby residential properties which would be contrary to the sustainable development criteria of Policy S1.
20. The site has been used for employment purposes for over 30 years and has a permitted B8 storage use, the operation of which is not constrained by planning conditions albeit that like any other activity it would be subject to the provisions relating to statutory nuisance. There is a degree of noise emanating from the wider site occupied by shipping containers under this lawful use about which local residents have raised complaints.
21. The physical extent of the land and building subject to the notice is small and to some extent physically contained by the positioning of the shipping containers. The noise generating activities causing most concern to residents

appears to emanate from the open sided lean-to part of the building but in view of the size and scale of the business, the noise is of relatively modest impact. Notwithstanding the other grounds of appeal, the appellant accepts that the impact of noise could be mitigated by the building being enclosed and other conditions controlling activities on the site, reflecting the advice of the Council's Environmental Health Officer. I share a similar view that appropriate conditions would mitigate the adverse effects of noise from the site and on balance would make the development acceptable.

22. During the course of the application subject to Appeal C, the Council sought amended plans from the appellant to enclose the building on the site in order to contain noise. Revised plans showing the full cladding of the building were submitted by the appellant but were not accepted by the Council for reasons relating to the inclusion of a 2.4m high fence and the site boundary. I am satisfied that the full cladding of the building would have a significant effect on reducing the impact on noise levels associated with the campervan conversion business. Further conditions to protect the living conditions of residents include restrictions on the hours of operation and deliveries; restrictions on the cumulative acoustic impact from the use of equipment or machinery; and the provision of an external lighting scheme. The appellant has suggested that the use should also be restricted to a campervan conversion business only and this would also be appropriate in controlling the appeal site further.
23. The appellant refers to the fallback position of an operating yard and workshop without planning constraints being more detrimental to local amenity than the current campervan conversion business. Although the extent of noise created by the lawful use of the site is somewhat speculative, I regard this as a realistic alternative scenario.
24. I am satisfied that the development has no significant impact on the Area of Great Landscape Value or to the nearby listed building, its features or its setting.
25. Haccombe-with-Combe Parish Council supports the enforcement action and the local residents in opposing the continuation of the use of the site. I also note that local residents have raised a range of matters connected with highway safety, the loss of trees and to the shipping containers. Some of these issues are not relevant to these appeals but to the wider lawful use of the site. However, concerns over noise do not outweigh the acceptability of the development, subject to appropriate conditions.
26. I conclude that for the reasons given above and having taken all relevant considerations into account, the development would comply with the relevant policies of the Local Plan subject to the imposition of appropriate conditions intended to mitigate the affects of noise on local residents.
27. The appeals on this ground succeed.

Conclusions

Appeals A and B

28. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice.
29. The appeals on grounds (f) and] (g) do not fall to be considered.

Appeal C

30. For the reasons given above I conclude that the appeal should be allowed.

P N Jarratt

INSPECTOR