The Planning Inspectorate

Appeal Decision

Site visit made on 16 September 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 December 2022

Appeal Ref: APP/Y3940/W/22/3296059
Griffin Farm, Bowden Hill, Lacock SN15 2PP

- 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 Spye Farm Ltd against the decision of Wiltshire Council.
- The application Ref PL/2022/00194, dated 21 December 2021, was approved on 16 March 2022 and planning permission was granted subject to conditions.
- The development permitted is Erection of replacement Building (Class E).
- The condition in dispute is No 4 which states that: 'The site shall only be used for uses within Classes E(c), E(e) and E(g) and for no other purpose (including any other purpose in Schedule 2, Part A, Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)(or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that Order with or without modification'.
- The reason given for the condition is: 'The proposed use is acceptable, but the Local Planning Authority wishes to consider any future proposal for a change of use within the same Use Class, noting that other uses within Class E would have potential to create additional traffic movements accessing the site on a narrow road network creating a potential highways danger and potential for increased disturbance by way of increased activity within the vicinity of residential properties'.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by the appellant and is subject to a separate decision.

Background and Main Issues

3. Planning permission was granted for the erection of a replacement building at the appeal site under Use Class E of The Town and Country Planning (Use Classes) Order 1987 (as amended) ('UCO'). However, it was restricted by condition so that it could only be used within Class E(c) (i.e. financial, professional or other services principally to visiting members of the public), E(e) (i.e. medical services not attached to the residence of the practitioner) and E(g) (i.e. office; research and development of products or processes; or industrial process, which can be carried out in any residential area without causing detriment to the amenity of the area).

4. The Council imposed the condition due to concerns that other uses within Class E could cause harm to highway safety and increased disturbances to neighbouring residents.

5. The National Planning Policy Framework (the Framework) 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) as the 'six tests', and any conditions imposed must satisfy them. The appellant seeks to remove the condition on the basis that it does not meet the relevant tests.

6. The main issue is therefore whether Condition 4, restricting the use of the premises, is reasonable and necessary having regards to the effects of the development on a) highway safety; and b) living conditions of neighbouring properties.

Reasons

Highway Safety

7. The appeal site is in an elevated position on Bowden Hill. The site lies at the initial entrance gateway to the wider Griffin Farm site. Vehicular access to the site is from a rather narrow highway that lacks road markings. The access is near a significant bend in the road that is on a steep ascent/descent. Although the site's access off the main highway is initially wide, it soon narrows to a pinch point between stone boundary walls, whereby the passing of two vehicles is constrained. No changes to the access arrangements are proposed as part of the appeal scheme.

8. The wider Griffin Farm site (outside the current appeal site boundary) contains a range of commercial uses and associated car parking. There is also redevelopment activity taking place on the wider Griffin Farm site, which I understand is for commercial uses (restricted Class E) approved under a separate permission.

9. The appeal building that is to be replaced was vacant at the time of my site visit. From the evidence before me it appears that it was last in use as office accommodation and a soft furnishing craft workshop, which would now fall within Use Class E of the UCO. However, it is unclear for how long these uses were established or indeed whether this is the lawful use of the building. The main parties dispute the building's lawful use, but each acknowledges that its use has not formally been established through a planning permission or lawful development certificate (LDC).

10. The appellant, nevertheless, claims that the existing building is lawfully within Use Class E. Various information has been provided to support this view. This includes reference to the building within other planning applications, a statutory declaration from Griffin Farm's previous owner (Mr Nolan) that formed part of a certificate of lawfulness for other buildings at the site (ref 125/035751/CLE), terms associated with the lease of 'The Offices' to 'Thin Air Limited' (from circa 2003), a letter from another business at the Griffin Farm site (dated March 2022) that describes the historic use of the building, as well as further details of the recent businesses to occupy the property. A letter from Mr Nolan addressing comments made as part of application 125/035751/CLE and describing the use of the site during his long-term ownership has also been provided (albeit not a statutory declaration).

11. It is not the purpose of this appeal to formally establish the lawful use of the existing building at the site. Nonetheless, I recognise that this is material to the consideration of the appeal proposal. Despite the site appearing to have a prolonged B1 Use (now Class E) this is not sufficient for me to consider that is its lawful use. The evidence provided by the appellant extends over a considerable period and suggests the site was continually in office use for over 20 years. However, the evidence is frequently anecdotal, patchy in coverage, and not supported by robust details of continuity of use (e.g. full lease details, evidence of business rates etc.). Therefore, in the absence of a LDC, and based on the information before me, I am not persuaded that the lawful use of the existing building is within Class E.

12. Although the appellant indicates that there is no contradictory evidence to suggest that the premises is within another use, the onus to prove the lawful established use is with the appellant. Consequently, from the evidence before me, the proposal does not involve the replacement of a lawful Class E unit. Whilst the proposed unit is of a smaller footprint than the building it seeks to replace, the introduction of an unrestricted Class E unit has the potential to intensify activity at the site.

13. I also acknowledge that changes to the UCO were introduced to make it easier for all uses within Class E to seamlessly change without requiring planning permission. Despite this, and the fact that uses in Class E are recognised as having broad similarities, there will inevitably remain differences in impacts between the various types of operations that fall under this use. This includes traffic generation. In some locations, for example a town centre, these differences in impacts would most likely be alleviated by the availability of public transport options, parking, dedicated servicing space etc. However, the appeal site's specific circumstances are such that variations in the level of traffic generated by different operations under Use Class E could prove to have significant impacts.

14. Alongside the constrained access arrangements, there is very limited parking associated with the appeal building. There are further areas of car parking associated with the wider surrounding development at Griffin Farm (both existing and emerging). However, at the time of my site visit (late morning in mid-week) I observed that the car parks were very near capacity. Furthermore, from the information before me I do not know how the emerging adjacent development will impact on parking arrangements across the remaining Griffin Farm site, nor do I have details of the site's accessibility via public transport.

15. In seeking to justify the unrestricted use, the appellant has highlighted that the current proposal would negligibly add to the level of traffic movements associated with the wider approved developments at Griffin Farm. To support this position, space standards for a gym have been provided to illustrate that the size of the appeal building could not accommodate large user numbers at any one time. However, this is only a narrow view of the potential uses that could emerge under the appeal proposal, and to my mind is unlikely to reflect either a probable end use or worse-case scenario.

16. A broad scope of potential uses could alternatively come forward as part of the appeal proposal. For example, the use of the appeal site as a creche or for children's classes, may instead result in a considerable number of vehicles arriving/departing the site at similar times. Meanwhile, a retail, café or

restaurant use may also attract more vehicle trips, including from delivery vehicles of varying sizes.

17. No transport statement has been provided detailing matters such as existing parking capacity at Griffin Farm, the potential trip generation and parking demand associated with the appeal uses, or delivery vehicle tracking. I have therefore not been able to thoroughly consider the precise impacts of the proposed wider range of uses. Nevertheless, given the potential for significant additional vehicle movements alongside the access, parking and local highway conditions, the appeal scheme has the potential to harm highway safety.

18. It is suggested that the Council has not provided evidence to demonstrate dangers to highway safety. The appellant also cites Paragraph 111 of the Framework which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety. Again though, the onus is on the appellant to establish the safety of the proposed development. I am mindful that the Council's highway officer did not object to the application. However, the comments received from the Council's highways department are extremely vague and do not provide me with any detailed analysis. I am also unable to ascertain whether the comments were made with a belief that the site already benefited from a lawful Class E use, as was implied within the initial application submission.

19. Accordingly, I am not satisfied that the removal of the condition would suitably maintain highway safety at the site. The proposal is therefore in conflict with Core Policies 57, 61 and 62 of the Wiltshire Core Strategy (adopted 2015) (Core Strategy). The policies together, amongst other matters, requires new development to be safe and accessible and not cause adverse impacts on the transport network. As such, Condition 4 is deemed reasonable and necessary in the interest of highway safety.

Living Conditions

20. The appeal building lies particularly close to residential properties to the north-east and west. Given this close relationship, I share the Council's concern that alternative Class E uses have the potential to provide far greater disturbance to neighbouring residents through intensification of activities and associated noise.

21. Notably, uses such as a creche, café, restaurant or a shop could result in more significant noise impacts through customer behaviours, as well as increased traffic activity. Additionally, the potential trading hours and delivery requirements associated with the wider range of uses may also result in activities that are more intrusive in nature to neighbouring residents.

22. Inevitably activity associated with the existing commercial facilities at Griffin Farm already influences the area's noise climate. However, I have no details of the baseline noise conditions at the site, or the likely noise impacts of the range of uses that could emerge should the appeal be allowed.

23. In the absence of robust evidence to demonstrate the likely noise impacts of alternative Class E uses, I cannot be certain that the removal of the condition would not harm the living conditions of neighbouring occupiers. The proposal is therefore contrary to Policy CP57 of the Core Strategy. The policy requires development to be of a high standard of design that, amongst other matters,

has regard to its compatibility with adjoining buildings and uses, including the impact on amenities of existing occupiers.

24. As such, Condition 4 is also deemed reasonable and necessary in the interest of living conditions of neighbouring occupiers. Clear justification therefore exists to restrict the use of the proposed replacement building.

Other Matters

25. The appeal site lies within the Bowden Hill Conservation Area (CA). It is therefore necessary for me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.

26. The CA covers an extensive area, largely comprising of open common land, woodland, interspersed with dwellings. The CA has a pleasant, rural, verdant, and tranquil quality which contributes positively to its significance. It also contains a range of historic properties which further adds to its significance. Within this context, the appeal site is not an important contributor to the significance of the CA.

27. No objection has been raised by the Council with regard to the CA. Indeed, the removal of the condition would not otherwise give rise to any obviously adverse visual effects or harm to the character of the area. Consequently, the character and significance of the CA would be preserved.

28. My attention has been drawn to Paragraph 54 of the Framework which states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification. Changes within a use class do not constitute development and therefore do not involve the use of permitted development rights. Even so, the Framework is explicit that restrictions on permitted development rights are not prohibited provided there is clear justification.

29. Whilst Paragraph 84 provides support for the sustainable growth and expansion of all types of rural businesses within the countryside, this does not outweigh the proposal's identified conflict with development plan policies.

Conclusion

30. I recognise that the Government's clear intention as part of its changes to the UCO was to make it easier for all uses within Class E to seamlessly change without requiring planning permission. However, there may remain situations, such as this appeal proposal, where restrictions on the specific use within a proposed Class E development are justified based on its specific circumstances.

31. For the reasons set out above, having regard to the development plan and all other material considerations, I conclude the appeal should be dismissed.

Lewis Condé

INSPECTOR