



Appeal Decision

Site visit made on 18 May 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/Y9507/W/22/3302678

Brickyards Industrial Estate, Rockpits Lane, Steep Marsh, Petersfield GU32 2BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Marcus Neal against South Downs National Park Authority.
 - The application Ref SDNP/21/05284/CND is dated 11 October 2021.
 - The application sought planning permission for three industrial units - amendment to previously approved scheme (SDNP/12/00513/FUL) without complying with a condition attached to planning permission Ref SDNP/13/01966/FUL, dated 6 August 2013.
 - The condition in dispute is No 10 which states that: *Notwithstanding the changes of use permitted within Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2005 (as amended), the development hereby permitted shall be used for purposes within Class B.1 (c) of the Town and Country (Use Classes) Order, 1987 only, and for no other purpose.*
 - The reason given for the condition is: *In order to maintain control over future use of the premises in the interests of the general amenity of the area and because the car parking provision of the site is insufficient to meet the needs associated with other B.1 uses which if implemented could be detrimental to the interests of highway safety.*
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Decision

1. The appeal is allowed and planning permission is granted for three industrial units - amendment to previously approved scheme (SDNP/12/00513/FUL) at Brickyards Industrial Estate, Rockpits Lane, Steep Marsh, Petersfield GU32 2BN in accordance with application Ref: SDNP/21/05284/CND dated 11 October 2021 without compliance with condition No 10 previously imposed on planning permission Ref: SDNP/13/01966/FUL, dated 6 August 2013, but subject to the conditions set out in the attached schedule.

Preliminary and Procedural Matters

2. I have determined this appeal on the basis of the Council's failure to determine the planning application within the statutory timescale. The Council have subsequently confirmed that they have no objection to the proposal, subject to conditions. I have also taken into account the appellant's statement of case and representations received from interested parties. I have drawn on these, to inform the main issues in this appeal.
3. During the course of the appeal, the appellant has provided an additional plan, hereafter referred to as Unit G3 Plan, which indicates the position of Unit G3

within the building. Interested parties have had the opportunity to comment on the plan and I have taken any comments received into consideration.

4. The appeal is seeking to vary condition 10 of the permission granted by SDNP/13/01966/FUL (referred to hereon as the original permission). The appeal scheme does not seek to amend condition 6 of the original permission, which controls hours of operation, and I have proceeded to make my decision on this basis.
5. A number of interested parties have raised concerns about existing activities taking place within the appeal building and the wider Brickyards Industrial Estate. Within the context of this appeal, it is not before me to determine whether or not a breach of conditions in regard to times of operation or works outside the permitted uses has occurred.
6. The appeal is made under section 73 of the Town and Country Planning Act 1990 (as amended). Despite the application form stating that development has not commenced, I am aware from the evidence before me, including the appellant's statement and my own observations on site, that the appeal is seeking to regularise the existing uses taking place on-site. During my visit, I was able to access the building and could see various pieces of arboricultural equipment and maintenance areas within Unit G3 such that there is no substantive evidence to conclude that the appeal building was in operation solely for storage and distribution.
7. Given these current circumstances, it would be more appropriate for the appeal to be considered under Section 73A. The fundamental difference between these 2 types of appeal is that a Section 73A is used where an application has been made retrospectively and, if allowed, retrospective permission is granted for a development which has already been carried out. The practical differences of determining these different types of appeal, however, are limited and have not altered my assessment and analysis, which would have been the same regardless of the approach taken. Therefore, no injustice would arise from this approach. I have therefore considered the appeal on this basis.

Background and Main Issues

8. Planning permission for the appeal building, which consists of three separate units, was granted consent under planning ref: SDNP/12/00513/FUL. However, due to the scheme not being built in accordance with the approved drawings, a further planning application was submitted and approved under ref: SDNP/13/01966/FUL. This appeal relates to Unit G3 of the appeal building only and is seeking to vary the use class of Unit G3 imposed by condition 10 of the permission granted the original permission.
9. The application subject to this appeal was submitted to the Authority following a planning enforcement review of the uses taking place at Unit G3. The appellant operates an arboricultural business from the premises. There is no disagreement between the main parties that maintenance and repair of the equipment associated with the premises can take place within the appeal building. However, as the business also requires equipment to be stored and collected daily from the premises, the appellant seeks planning permission to regularise this use. The appeal scheme, therefore, seeks to amend condition 10 to allow this B8 (storage and distribution) use to continue in and from Unit G3.

10. In light of the above, the main issues in this case are:

- the effect that varying condition 10 would have on the living conditions of the occupants of neighbouring properties, with particular regard to noise and disturbance; and
- the effect that varying condition 10 would have on highway safety.

Reasons

Living conditions

11. At the time the original permission was granted it was allowed under Use Class B1. (c). This was for 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. The 1987 Use Class Order (UCO) has been amended a number of times including by the 2020 Regulations¹. Through these amendments, Use Class B1. (c) has now been superseded and incorporated within Class E (Commercial, business and service uses) of the amended UCO. Class E.(g)(iii).
12. The appeal site benefits from an existing permission which allows for any industrial process under Class E (g)(iii). of the UCO. Additionally, the appeal proposal before me is only seeking to amend condition 10, which controls the permitted use and not condition 6, which restricts hours of use. As such, I have had regard to the additional harm resulting from the B8 storage and distribution element only in so far as it relates to the lawful hours of operations.
13. The appeal building is formed by three separate planning units and also sits within a complex of other small industrial units occupied by various businesses. In addition, there are areas of hard standing around the wider site which provide parking and delivery/servicing areas. There is a small number of residential properties located to the east, which are separated from Unit G3 by the remaining units in the building and by a band of trees.
14. Whilst I appreciate it was only a snapshot in time, at the time of my visit late morning on a weekday. Most of the units within the industrial estate were active. In addition, to parked cars/vans, there were a number of vehicle movements taking place which involved both cars and vans. There were no heavy goods vehicles (HGVs) present.
15. I acknowledge that there has likely to have been an increase in noise breakout arising from vehicles arriving and loading and unloading the appellant's arboricultural equipment. This would come in the form of engines running, vehicles being loaded/unloaded and manoeuvring, as well as the sound of equipment being moved and the voices of workers.
16. However, the appeal site is of a modest size and the mixed-use nature of the business means that it does not involve significant vehicle movements in contrast to a sole B8 storage and distribution use. The limited noise generated by such movements is heard within the context of a working industrial park occupied by other uses generating different levels of noise.

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

17. I acknowledge that interested parties have raised concerns about excessive noise from Unit G3. However, there is no substantive evidence before me to demonstrate that unacceptable levels of noise or disturbance have occurred during the lawful hours of operation. During my visit, I did not observe a forklift truck within or near the appeal building or equipment being used outside of the unit. In any event, the Authority can investigate the noise and other nuisance it considers falls outside the scope of the approved use under Class E.(g)(iii) and take any appropriate action. As such, the additional noise from the introduction of the additional B8 use does not result in unacceptable levels of noise and other nuisances to the occupiers of nearby dwellings.
18. I therefore conclude that subject to a condition on restricting the uses of Unit G3 and in accordance with the re-imposition of the condition on hours of operation, the proposed development would not cause harm to the living conditions of nearby residents. It would comply with the relevant requirements of Policies SD5, SD7 and SD35 of the South Downs Local Plan (SDLP). These seek, amongst other things, that new development avoids harmful impacts upon any surrounding uses and amenities and conserves the relative tranquillity of the area.

Highway safety

19. The appeal building sits within an existing industrial park known as the Brickyards. Most local routes to access the industrial park are down narrow roads. Despite these narrow roads, the land is relatively flat, with ample passing places to allow vehicles of varying sizes the opportunity to pass safely. Although there is a lack of dedicated footway, there is good visibility for pedestrians along these routes. On my site visit, I observed that the relatively flat topography of the surrounding area and users of the lane have good visibility, and it is lightly trafficked. Within the industrial park, there was adequate room for vehicles and pedestrians to pass unimpeded whilst entering and exiting the site.
20. The public representations raise concerns about increased vehicle numbers, vehicle speeds, and damage to verges and hedges. Reference is also raised to the safety risks posed to pedestrians and other road users using the wider road network. I accept that the additional B8 use has likely increased, albeit to a limited amount, the number of vehicle trips associated with Unit G3, which are likely to be included in the traffic survey undertaken by the residents of Steep Marsh. However, I have no substantive evidence before me that the increase has resulted in inappropriate or reckless driving or that the levels of additional vehicular movements have caused damage to verges or hedges/trees solely from Unit G3.
21. The appellant has provided evidence that shows low levels of vehicle movements associated with the operation of the premises. I do not find that the limited vehicle movements from this modestly sized industrial unit are likely to be making a meaningful contribution towards these safety concerns to any significant extent.
22. Therefore, the proposed variation of condition No 10 to allow the additional use of B8 storage and distribution from Unit G3 would not, subject to appropriately worded conditions, be harmful to highway safety. As such, the proposal complies with Policies SD19 and SD35 of the SDLP, which seek, amongst other things, that development demonstrates the continued safe and efficient

operation of the strategic and local road network and avoids any adverse impact on the landscape and other special qualities of the National Park including by reason of traffic or pollution.

Other Matters

23. The appeal site is located within a national park. The purposes and duty for national parks are identified in the SDLP and derive from statute². Purpose 1 seeks to conserve and enhance the natural beauty, wildlife and cultural heritage of the area. Purpose 2 to seeks to promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public. Additionally, there is a duty to seek to foster the economic and social well-being of the local communities within National Parks. The National Planning Policy Framework (the Framework) advises great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks. Given my findings above, the proposal would conserve the landscape and scenic beauty of the national park and would not conflict with the purposes of its designation.
24. The appellant's case is supported by an acoustics report³. However, as this report has been prepared to address noise outside of the permitted hours of use, I have given it little weight as the appeal before me is seeking to vary the use of the premises only.
25. Interested parties have raised concerns that should the appeal be allowed, this would allow for others to come forward for open B8 uses. However, as I have established above, this scheme relates to a mixed-use. The specific circumstances that apply in this case are unlikely to be repeated elsewhere as the occupier has operated a mixed-use on-site for a number of years. In any case, any future planning applications would be required to be submitted to the Authority which can consider such future proposals in more detail.
26. Whilst raised by interested parties, there is no substantive evidence before me to conclude that the appeal scheme should have been considered through the submission of a fresh planning application.

Conditions

27. The Authority have suggested imposing a number of conditions, many of which the appellant has raised concerns with. As this appeal relates to an application under section 73 of the Town and Country Planning Act 1990, and I am only considering the disputed condition, it is necessary to reimpose those on the previous permission that continue to have effect. However, in granting permission under section 73, I may also impose new conditions, provided they do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier permission.
28. The Authority, in their statement, have suggested a number of conditions to be imposed relating to the use and access of the building, including a condition restricting the use to the appellant. In addition to suggested condition No 4, the Authority has suggested condition No 5, which serves a similar purpose, albeit I do not find that servicing falls within the ambit of either use to take

² National Parks and Access to Countryside Act 1949, as amended by the Environment Act 1995

³ Sharps Acoustics dated 5 November 2020

- place from within Unit G3. Additionally, conditions No 7 and 8 are proposed to restrict the permitted uses and grant personal consent for the appellant.
29. Planning Practice Guidance (PPG)⁴ notes that it is rarely appropriate to use conditions to limit the benefits of the planning permission to a particular person or group of people. There would be the potential for an alternative occupier to accommodate Unit G3 should a restrictive condition limited to the current occupier not be attached. However, I see no reason why, given the modest scale of Unit G3 that an amendment to condition No 7 for a mixed-use would allow for any future occupier to operate a business that generates significantly increased vehicle movements over and above the existing permitted uses. This mixed-use consent is particularly relevant as it would prevent an open B8 storage and distribution use from taking place without further consideration from the Authority on the highway network.
30. There is a disagreement between the Authority and the appellant about what condition restrictions can control. However, it is clear that any activity, such as entering the building for purposes related to the operation of the business or deliveries, would be contrary to a condition which states that Unit G3 should not be used outside of the permitted hours. As such, I find that these suggested conditions can be amalgamated without the need for a condition restricting the appeal scheme to the current occupier.
31. The standard time limit condition is no longer required as the development permitted has commenced. The building has been constructed and a condition on materials is not required. In addition, the Council have confirmed that several conditions previously imposed requiring further details to be agreed have been discharged. I have therefore reimposed all those that I consider to remain relevant and merged previous conditions 4 and 5.
32. I have little information before me about the discharge status of conditions 8 and 9 imposed on the original planning permission but see no reason why these cannot be merged into a single condition. In the event that either of the conditions have in fact been discharged, that is a matter which can be addressed by the parties.
33. In addition to the merged conditions for clarity and precision, and to ensure compliance with the PPG, I have undertaken some minor editing of the conditions where necessary.
34. I have deleted the disputed condition 10 as indicated above and replaced it with an amended one which specifies the new approved mixed-use of Unit G3 and incorporated condition 11, which restricts amalgamation of the units. I have also made slight amendments to condition 6 in relation to the wording of specified times of use and operation.
35. I have reimposed condition 12 (renumbered as condition 1) as it is necessary to specify the approved plans, including the additional plan which identifies Unit G3, as this provides certainty.
36. The Council has suggested an additional condition in respect of bird/bat boxes. This was not a requirement of the original permission and there is no clear justification for the requirement of these boxes to be imposed now, so I have not done so.

⁴ Paragraph: 015 Reference ID: 21a-015-20140306

Conclusion

37. For the reasons given above, considering the development plan as a whole and all relevant material considerations, the appeal is allowed.

A Hickey

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan, Cycle Plan, SK 01 D, location plan and Unit G3 Plan.
2. All surface water drainage works, including surface water drainage of parking and hardstanding areas shall be retained in accordance with the details agreed within the surface water details letter dated 30 October 2012.
3. All landscaping and landscaping/open space management shall be retained in accordance with the details agreed within the landscape and landscape management letters dated 30 October 2012 and 1 November 2012.
4. Machinery shall be operated, processes shall be carried out and deliveries shall be taken at or despatched from the site only between 07:00 and 19:00 on Monday to Friday, 07:00 and 13:00 on Saturday and not at any time on Sundays or on Bank or Public Holidays.
5. Within one month of the date of this decision, details for the provision of turning, loading, unloading and parking of vehicles shall be submitted to the local planning authority for approval in writing. Within 1 month following the date of approval of these details, the agreed works shall be carried out in accordance with the approved details and thereafter retained.
6. Notwithstanding the changes of use permitted within Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), Units G1 and G2 shall be used for purposes within Class E (g) (iii) of the Town and Country (Use Classes) Order 1987 (as amended) only, and for no other purpose. Unit G3 shall be used only for Class E (g) (iii) and for Class B8 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). At no time shall any of the units be amalgamated or combined to create a larger unit.

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