



Appeal Decision

Site visit made on 4 July 2023

by Ms S Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/V0510/C/22/3294894

Land known as Unit 7 Oak Lane Business Park, 17 Oak Lane, Littleport, Ely, Cambridgeshire, CB6 1RS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Oak Lane Business Park Limited against an enforcement notice issued by East Cambridgeshire District Council.
 - The notice, numbered USE/18/00006ENU7, was issued on 9 February 2022.
 - The breach of planning control as alleged in the notice is: without planning permission, the change of use of the unit known as Unit 7 from class E(g) (formerly B1) or B8 use as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) to Class E(d) (formerly D2 of said Order) use as a gymnasium and in breach of conditions 2 and 10 of the decision notice for 18/01514/FUM.
 - The requirements of the notice are to: Cease the use of Unit 7 as a gymnasium, and permanently all equipment and other items relating to the gymnasium from the unit.
 - The period for compliance with the requirement is: 6 months.
 - The appeal 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.
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Decision

1. It is directed that the enforcement notice is corrected by: removal of the words "and (b)" from paragraph 1 and the removal of "from class E(g) (formerly B1) or B8 use as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended)" and the removal of "(formerly D2 of said Order)" and the removal of "and in breach of conditions 2 and 10 of the decision notice for 18/01514/FUM" from the alleged breach of planning control in paragraph 3.
2. Subject to the corrections, the appeal 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 use as a gymnasium (Class E(d)) at Unit 7 Oak Lane Business Park, 17 Oak Lane, Littleport, Ely, Cambridgeshire, CB6 1RS as shown on the plan attached to the notice and subject to the conditions in the attached schedule.

Preliminary Matters

3. The Notice states there has been a breach of planning control within paragraphs (a) and (b) of Section 171A(1) of the Act. The previous use of the unit is not entirely clear, however, after reverting back to the parties, I understand from the appellant that the last use of the unit was for storage. There is no evidence that the previous use fell within Class E. Therefore, the use of the unit as a gymnasium is materially different to the previous use.

4. Therefore, for the purposes of dealing with the ground (a) appeal, I have dealt with the breach as the carrying out of development without planning permission. I will correct the notice to remove references to a breach of condition. I will also remove references to previous use classes in the allegation as these do not appear to be correct. There is no injustice to either party as I have considered the planning merits of the case under ground (a).
5. I saw at my visit that the unit was no longer being used as a gym.

The appeal on ground (c)

6. Planning permission has been granted under 18/01514/FUM for the change of use of existing agricultural buildings (Units 1,2,3,4,5,6,7,8,9,10, 11 and 12) to B1, B2 and B8. Condition 10 of this permission restricts the use of the unit to "purposes within the B1 and B8 use of the Town and Country Planning (Use Classes) Order 2015 (*sic*), as amended, and for no other purpose or class usually permitted by the Order."
7. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 has taken away Use Class B1 from the 1987 Order. B1 uses now fall within Use Class E(g) which is for—
 - (i) an office to carry out any operational or administrative functions,
 - (ii) the research and development of products or processes, or
 - (iii) 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.
8. A gym is Use Class E (d). Moving between categories within a Use Class does not constitute development. However, the condition restricts the use to "B1 or B8" and the unit is to be used "for no other purpose or class usually permitted by the Order." Therefore, this prevents any changes permitted by the Use Classes Order. Effectively, the condition restricts the use to what was previously B1, (i.e., Class E(g)) and B8. Therefore, the use of the unit as a gym (Class E(d)) constitutes a breach of planning control.
9. The appeal therefore fails on ground (c).

The appeal on ground (a)

10. The main issues are the effect of the gym on highway and pedestrian safety; the effect upon the living conditions of the occupiers of nearby dwellings; and whether the location of the use promotes sustainable travel choices.
11. The unit has planning permission for Class B1 (now E(g)) and Class B8 Use. The approved uses would obviously attract vehicular movements. The Council has expressed concerns in relation to traffic but it does not claim that the gym, when it was in use, resulted in more vehicular activity than the approved uses and there is no evidence that it did. There is no reason for me to believe that such a use would result in a worse traffic situation than the approved uses.
12. There is a shared car park at the front of the site which had multiple unoccupied parking bays at the time of my visit. There is also other hard surfacing around the wider site where cars can park. I could see that there was no shortage of off-street places to park a car near the premises. Moreover,

there is no substantive evidence which leads me to believe that a gym generates a greater parking demand than Class E(g) or B8 Uses.

13. The site is located off a fairly quiet and narrow lane which is unlit and has no footpath. The Council mentions that other uses within Use Class E might need to operate longer hours than the approved use and it is concerned about pedestrian safety in the dark. However, the approved use already allows for use in the dark during the winter months. I find no harmful difference between the proposed and the approved use in terms of highway safety.
14. The Council is also concerned about the impact of the gymnasium on residential amenity. The nearest dwelling, Oak Lodge, is detached from the site by about 90m. There are no dwellings adjoining Unit 7 as it is amongst other commercial uses with fields beyond. Nevertheless, cars would be going past dwellings on the approach to the site. However, I have already found that the use would not attract more traffic than the permitted uses. Therefore, traffic associated with the use would not harm living conditions.
15. The unit is only a very short distance from what appears to be the built edge of the settlement of Littleport. Whilst I acknowledge the lack of footpaths and lighting on the route, the short distance makes it accessible by foot or cycle from the settlement. Furthermore, I have no evidence that it would generate more trips than the approved B8 and B1 (E(g)) Uses. Notably, Condition 8 of Planning Permission 18/01514/FUM required travel packs to encourage employees to travel using sustainable modes of transport or provide a car share scheme. Therefore, the Council must have considered that the site is accessible, to some degree, by sustainable modes of transport. In any event, people would have to travel to the unit even if it changed to its permitted use.
16. For the above reasons, I conclude that the use of the unit as a gymnasium would not harm highway and pedestrian safety; there would be no harm to the living conditions of the occupiers of nearby dwellings and there would be no harm in respect of sustainable travel choices. For these reasons I find no conflict with East Cambridgeshire Local Plan (LP) Policies COM 1, COM 7; COM 8; and EMP 4 which, in combination and amongst other matters, seek to ensure that development provides adequate levels of car parking provision and promotes sustainable travel choices; and that there is no significant adverse impact in terms of the amount or nature of traffic generated. Neither do I find conflict with LP Policy GROWTH 2 which supports the re-use of buildings in the countryside and small-scale employment development.

Conditions

17. The Council has suggested conditions in relation to hours of operation, hours of delivery, the completion of a passing bay, external lighting, site based mobile plant, travel packs, cycle parking details, a flood evacuation plan, and the removal of permitted development rights to restrict the use of the unit to Class E(d) or E(g) of the Use Classes Order.
18. In respect of operational hours, the unit is away from residential properties so activities within it would not harm living conditions. Nevertheless, there could be some traffic disturbance to neighbours from frequent movements of customers at unsociable hours if not controlled. However, I consider that the hours suggested by the Council are too restrictive, especially in relation to a Saturday which is generally not a particularly quiet day. Therefore, I have

allowed longer hours than those suggested by the Council. For the same reasons, I have allowed longer delivery hours.

19. Since the appeal was submitted, the passing bay has been provided and the Council, in its statement says that "the Council would agree that the appellants have installed the passing bay in accordance with drawings agreed by the Local Highway Authority". Therefore, such a condition is not necessary. A condition is necessary to secure details of external lighting to protect ecology. The suggested condition in respect of mobile plant is not necessary as I have no evidence that Class E uses require mobile plant. I have imposed conditions requiring a travel pack and cycle parking in the interests of sustainable travel choices. I have imposed a condition requiring a flood evacuation plan in the interest of safety.
20. In respect of restricting the use of the building, the National Planning Practice Guidance¹ says that conditions restricting changes of use may not pass the test of reasonableness or necessity. I consider that the scope of such conditions needs to be precisely defined. Moving between uses defined within a Use Class does not constitute development. I am unconvinced that restricting the permission Classes E(d) and E(g) is necessary. Nevertheless, whilst not specifically referred to in the notice, I note some general concerns expressed by the Council in respect of the vitality and viability of town centres in their appeal statement, and for this reason, I have prevented the use of the premises being used for the display or retail sale of goods, principally to visiting members of the public (Class E (a)) and for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises. (Class E (b)). This restriction will enable the Council to consider any such proposed uses on their merits, depending upon the information available at the time.

Conclusion

21. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use of the unit for use as a gymnasium as described in the notice, as corrected.
22. The appeals on grounds (f) and (g) do not fall to be considered.

Ms S Watson

INSPECTOR

Schedule of Conditions

- 1) The premises shall only be open for customers between the following hours: 0730 - 1900 Monday – Saturday. It shall not be open to customers on a Sunday or on Bank or Public Holidays.
- 2) Deliveries shall be taken at or despatched from the site only between the following hours: 0700 – 1930 Monday - Saturday and at no time on Sundays or on Bank or Public Holidays.

¹ Paragraph: 017 Reference ID: 21a-017-20190723

- 3) No external lighting shall be installed until details of it (including luminance levels) have been submitted to and approved in writing by the local planning authority. The lighting shall be installed and operated thereafter in accordance with the approved details.
- 4) Within 3 months of the date of this decision, details of Travel Packs to be issued to the employees of the unit shall be submitted to and agreed in writing with the Local Planning Authority. The Packs will include details of how to travel using sustainable modes of transport, including car sharing. The Packs shall be issued in accordance with the agreed details.
- 5) Within 3 months of the date of this decision, details of cycle parking (including the timing of provision) shall be submitted to and agreed in writing with the Local Planning Authority. The cycle parking shall be provided in accordance with the agreed details and retained thereafter.
- 6) Within 3 months of the date of this decision, details of a Flood Evacuation Plan to serve the building shall be submitted to and approved in writing by the Local Planning Authority. The Flood Evacuation Plan shall be implemented in accordance with the approved details.
- 7) The premises shall be used for Use Class E(c), (d), (e), (f), (g) and for no other purpose (including Use Class E(a) and (b) 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).