



Appeal Decision

Site visit made on 15 August 2023

by H Lock BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023.

Appeal Ref: APP/X3540/W/22/3313677

Old Engineering Works Unit E, The Street, Pettistree, Suffolk, IP13 0HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Lynda Last against the decision of East Suffolk Council.
 - The application Ref. DC/22/2020/VOC, dated 17 May 2022, was refused by notice dated 11 August 2022.
 - The application sought planning permission for the change of use from class D2 to class B1. Including changes to elevation, without complying with a condition attached to planning permission Ref. DC/19/3826/FUL, dated 18 December 2019.
 - The condition in dispute is No.4 which states that: No activities shall be carried out on the site other than between the hours of 08h00 and 17h00 Monday to Friday, unless otherwise agreed in writing with the local planning authority.
 - The reason given for the condition is: In the interests of amenity and the protection of the local environment.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from class D2 to class B1. Including changes to elevation at Old Engineering Works Unit E, The Street, Pettistree, Suffolk, IP13 0HP, in accordance with the application Ref. DC/22/2020/VOC made on the 13 May 2022 without complying with condition No. 4 set out in planning permission Ref. DC/19/3826/FUL granted on 18 December 2019, but otherwise subject to the following condition:
 - 1) No activities shall be carried out on the site other than between the hours of 0900hrs and 1730hrs Monday to Friday, 0800hrs and 1600hrs on Bank and Public Holidays, and 0800hrs and 1300hrs on Saturdays. No activities shall be carried out on the site on Sundays.

Procedural Matters & Background

2. Section 79(1) of the Town and Country Planning Act 1990 (as amended) allows an Inspector to (a) allow or dismiss the appeal, or (b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to him in the first instance.
3. Although this appeal has been allowed, condition 4 of planning permission DC/19/3826/FUL has been replaced by an alternative condition, which excludes

operations at the site on Sundays, but allows for alternative hours of opening during weekdays, Bank and Public holidays, and opening on Saturday mornings. The views of the parties were sought prior to its imposition, and I have taken into account the appellant's reiteration that Sunday and Bank Holiday trading hours are sought due to the specific trading requirements of the company.

4. The planning application form for the appeal scheme sought to remove the hours of operation condition, or as an alternative to alter the hours of operation to 8.00am to 5.30pm Monday to Friday, and 9.30am to 4.30pm on Saturdays and Sundays. An unspecified time to allow the business owner to have flexibility to work earlier and later on occasion was also sought.
5. Public consultation originally took place on the removal of the condition. A revision was made to vary the hours to **9.00am until 5.30pm Monday to Friday and 8.00am until 4.00pm Saturdays, Sundays and Bank Holidays**. These were the hours of which the public were notified and were listed on the Council's decision notice. No written confirmation has been provided to confirm that these hours were agreed by the appellant, but the appellant could have sought amendments prior to determination if required.
6. On the appeal form, the hours which the appellant seeks are listed as **8.00am** until 5.30pm Monday to Friday and 8.00am until 4.00pm Saturdays, Sundays and Bank Holidays. As the hours on the appeal form differ from the Council's decision notice, after the appeal was lodged the appellant was asked to clarify the hours sought, and confirmed the hours of **8.00am** to 5.30pm Monday to Friday and **9.30am to 4.30pm** on Saturdays, Sundays and Bank Holidays.
7. There are therefore differences between the variation in hours sought listed on the planning application form, in public consultation and the decision notice, the appeal form, and now proposed by the appellant. Given the comments of local residents, I consider that any extension of opening time beyond the hours upon which public consultation took place could be prejudicial, and is a matter upon which third parties may wish to have commented; I cannot assume that a weekday start of 9.00am, as opposed to the existing 8.00am restriction, was not seen by third parties as offsetting the later weekday closure. As such, I have determined the appeal on the basis of the hours specified on the Council's decision notice.

Main Issue

8. The main issue is the effect that changing the opening hours of the premises would have on the living conditions of neighbouring residents.

Reasons

9. The appeal premises is located on a small business complex outside of the central core of Pettistree, a rural village that is primarily residential in character. The appeal building is located towards the entrance to the site, and is divided into office space and storage rooms. It has a longstanding history of commercial use, including a previous gymnasium and permission for use associated with a car business operating from the wider premises. In front of the building there is an area for parking, with a larger car park located to the east of the entrance into the complex.

10. At the time of the late morning, mid-week site visit, activity and noise levels at the premises were low. However, one aspect of the management business operating from the building is the cleaning of holiday units at changeover, with the storage of associated cleaning materials, linen, etc, taking place at Unit E. I can appreciate that some days will be busier than others, depending on property rental start/finish dates. Cleaning staff visiting the premises is also likely to be concentrated during specific periods of the day, to collect materials and equipment to clean between occupancies, and to return goods and laundry upon completion. I think it reasonable to assume that, when space is free, it would be easier for staff to park in front of the building to load and unload their vehicles, rather than in the car park further away. The same would apply to the commercial vehicles collecting and delivery laundry.
11. Although the appeal submission provides detail of the nature of the business, information about the level of activity at the site is less specific. The planning application form refers to a staff "of about 6" working from the offices on Monday to Friday, and a skeleton staff of 2 or 3 people working on Saturdays and Sundays, as the company offers a seven day a week service with phone enquiries and bookings. Although the appellant indicates that staff are recruited locally, little information has been provided about staffing levels relating to the holiday-let cleaning aspect of the business. The appellant's appeal statement advises that, on a Sunday, the average numbers of staff changeover visits to the office are between five and eight in the morning and the same in the afternoon. Activity on a Sunday is stated as being less than compared with the rest of the week, but the ability to operate from the premises on a Sunday is given as a core element of the business needs.
12. The appellant advises that the existing hours restriction does not meet the needs of the business. However, the premises are located in a rural village where ambient noise levels would appear to be reasonably low. The premises is close to residential properties, including one next to the western fenced boundary of the site and another on the opposite side of the road.
13. The National Planning Policy Framework advises that planning policies and decisions should enable the sustainable growth and expansion of all types of business in rural areas, and should also support sustainable rural tourism. This is reflected in Policy SCLP4.3 of the East Suffolk Council Suffolk Coastal Local Plan 2020 (LP), which supports the expansion and productivity enhancements to existing employment premises. However, amongst other criteria, this is subject to causing no unacceptable adverse effect on the living conditions of local residents and businesses through matters such as noise. This is reinforced in LP Policy SCLP11.2, which requires consideration of the impact of development on residential amenity, including matters of noise and disturbance.
14. Representations submitted to the application and appeal indicate that the business has operated beyond the existing authorised hours, and residents report increased levels of noise and disturbance as a result. The Council's Environmental Health Officer confirms that the activities at the site are unlikely to cause a statutory nuisance. However, the threshold for this is considerably higher than the level of noise and disturbance which can nevertheless be intrusive and detrimental to the amenities enjoyed by residents.

15. In this context, given the nature of this village location, the suggested inclusion of working on Sundays is likely to cause unacceptable nuisance to local residents at a time when they can reasonably expect some respite from business activities at the Old Engineering Works. This would be to the detriment of their living conditions. I am not persuaded by the appellant's view that there is sufficient distance between the premises and neighbouring properties to avoid nuisance, as business activities are not confined to inside of the building. In this regard, I consider that the dwellings may be as sensitive to disturbance as their rear gardens.
16. In addition, there is no control available over the use by staff of the greenspace between the building and the dwelling to the west, and with low ambient noise levels it is likely that sound would travel beyond the site boundaries.
17. The Council's delegated report sets out the range of hours restrictions that have been applied to other businesses at The Old Engineering Works. I share the Council's view that an increase to 5.30pm during the week would not be unreasonable, and would not unduly impact upon the living conditions of nearby residents. Existing planning conditions for the premises do not restrict operation on Bank Holidays. However, the revised proposal applied for included a restriction on Bank Holiday opening (closure at 4.00pm), and I consider this a reasonable control in light of the introduction of Saturday working.
18. According to the Council's report, much of the site is permitted to operate between the hours of 8.00am until 1.00pm on Saturdays. I appreciate that the Council does not oppose the business operating until 4.00pm, but as the activities of the business are not confined to office use inside the building, I am not persuaded on the evidence supplied that there would be justification to operate beyond the 1pm limit that seems to apply to other businesses at the site.
19. I am mindful of the contribution that this type of company makes to tourism and the local economy, but this must be balanced against the effects of the activity on the living conditions of nearby residents. I therefore conclude that some form of hours of operation restriction should remain in place. I have changed the terms of condition 4 which the appellant sought to vary, albeit not to the extent that was sought. With some modification to wording to reflect published model conditions, the replacement condition would meet the tests of necessity, relevance, enforceability, precision and reasonableness in all other respects. Subject to this condition, I find no conflict with LP Policies SCLP4.3 and SCLP11.2.
20. The Council has not requested that the additional conditions attached to planning permission DC/19/3826/FUL be imposed, as the building alteration works appear to have taken place. As the use has commenced, no further conditions are necessary.
21. I therefore conclude that the appeal is allowed and planning permission is granted.

H Lock

INSPECTOR