



Appeal Decision

Site visit made on 16 November 2023

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2023

Appeal Ref: APP/K0235/W/23/3316321

Land West of Wood Lane, Wood Lane, Willington , Bedford, MK44 3PP.

- 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.
 - The appeal is made by Blakeney Estates Ltd against Bedford Borough Council.
 - The application Ref 22/01471/FUL, is dated 23 June 2022.
 - The development proposed is the change of use of buildings from agricultural use to use classes E(g)(iii) (Industrial Processes) and B8 (Storage and Distribution); associated external refurbishment, formation of car parking, alteration of access and works within the highway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. According to the Council's validation letter the Council should have made a decision on the application by the 19 August 2022 and the appeal against non-determination was made on the 8 February 2023. In the intervening period the appellant submitted amended plans of the proposed access to the site including changes to the carriageway and footway of Wood Lane as well as the junction with the A603. These amendments are referred to in the letter from Rappor (highway consultants) dated 4 November 2022 and the plans were submitted by the appellants' agents PPS on the 10 November 2022.
3. The Council's statement on the appeal includes in Appendix four the 'highway officer's comments on the revised plans', however it is not clear whether the Council also formally notified the local community of the amendments to the original planning application. Nevertheless, it is apparent that some of the people with houses in Wood Lane became aware of the amended plans during the appeal process and submitted representations accordingly.
4. In these circumstances I have applied the principles set out by the High Court in the case of *Holborn Studios Ltd*¹ and find that it would not be unfair to the Council and the local community to consider the amended highway plans – Drawing 225825 22-02 Rev F and Drawing 22-0316 SK02 Rev D, as part of the appeal.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

Main Issues

5. Although the appeal is against non-determination the Council has set out in an officer report the reasons why planning permission should be refused. From these the main issues are:
- Whether the principle of development is acceptable;
 - The effect on the living conditions of the occupiers of neighbouring residential properties;
 - The effect on highway safety;
 - The effect on protected species; and
 - Whether sufficient tree coverage to contribute to the Forest of Marston Vale.

Reasons

Background

6. The appeal site lies on the edge of the village of Willington. It is about 0.34ha in extent and comprises a number of utilitarian buildings previously in agricultural/horticultural use and served off a narrow driveway which leads off Wood Lane a narrow rural lane of single carriageway width. This in turn leads to Bedford Road/Sandy Road (A603) in the village centre and there are a number of houses and bungalows whose rear gardens adjoin the appeal site. The Council has also provided evidence of an area based Tree Preservation Order (TPO) made in 1967 which covers a wide area of land including part of the appeal site. There is also an Order made in 2021.
7. It is proposed to use the buildings for uses within Class E(g)(iii) and B8², where class E(g)(iii) allows an industrial process which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, smells, fumes (etc as specified). Class B8 allows use for storage and distribution.

Policy context

8. The development plan includes the Bedford Borough Local Plan (BBLP) adopted in 2020 and the Willington Neighbourhood Development Plan (NP) made in January 2021. In the BBLP the site lies outside but adjacent to the settlement boundary of Willington as shown on Policies Map Inset 37. As such the appeal site should be regarded as in the countryside where Policy 7S generally restricts new development to that appropriate to the countryside in accordance with other specific policies. The relevant policies here are Policy 65 concerning the re-use of rural buildings in the countryside and Policy 75 regarding new employment development. Other relevant policies will be considered as they arise within the issue.

Principle of employment development - Policy 75

9. Policy 75 relates to new employment development in the countryside and the Council are satisfied that the proposal meets criteria (ii) of the first part of the Policy as the commercial, business, service and storage use proposed would re-

² As defined in the Town and Country Planning (Use Classes) Order 1987 as amended.

use buildings. However, in respect of the second batch of criteria the Council submits that the proposal does not satisfy criterion (vi) as it has not been demonstrated that the business need cannot be located within a settlement; (viii) regarding traffic generation; and (x) regarding biodiversity; (the latter two aspects are considered as separate main issues below).

10. In relation to demonstrating need (criterion (iv)) the appellant says that the scheme will provide for the rural business community of Willington and its hinterland and that existing opportunities for such development are extremely limited as recognised in the NP. Although other evidence is put forward on the sustainability of the site there is no clear assessment of the scale of any need or the lack of facilities in Willington or nearby designated settlements. Therefore, I find that this part of the policy has not been met as it has not been shown that a proven need for business use cannot be located in a settlement.

Principle of development – Policy 65

11. Policy 65 indicates that permission will be granted for the conversion of a building in the countryside provided that eleven criteria are met. In this case the Council's objection relates to criteria (xi) while other criteria are said to be met or are not relevant. However local people also refer to a lack of compliance with other criteria in the policy.

(vi) – whether inherently suitable

12. On the face of it the buildings are suitable for re use and the appellant says that they will only require refurbishment with mostly internal changes. The Council appears to accept this position but local people suggest that the buildings' construction materials include asbestos which would limit any disturbance to that material and the buildings are also in a poor state of repair.
13. At the site visit I noted that the buildings were mainly constructed with walls and roofs of a form of corrugated and plain sheeting although the actual materials involved were not discernible because of the degree of lichen, mosses and creepers present. I am not able to form a judgement on whether asbestos is present but it appeared to me that the buildings are in a dilapidated state and were in part not watertight. I have considerable doubt over whether the buildings can be converted without substantial rebuilding work to make them suitable for proper business use rather than just simple conversion. (If there was asbestos present this would have to be considered under separate legislation.)
14. On the evidence put to me in this case I find that it has not been reasonably demonstrated that the buildings proposed for conversion are suitable for the use proposed without substantial reconstruction.

(xi) effect on bio-diversity

15. Covered separately in paragraphs 25-26 below.

Effect on living conditions

16. There are four houses whose rear gardens back on to the appeal site together with a few houses sited along Wood Lane. This issue is concerned with the effect on the occupiers of these properties. The Council (under the advice of the Environmental Health Officer) says that there is insufficient information

about the end-users and the type of operation envisaged in terms of noise and odours to ensure that the use is compatible with existing residential neighbours.

17. However in a change of use application such as this an applicant is not required to know who the end users of the premises would be. It is sufficient that users would meet the terms of the use applied for. By definition Class E(g)(iii) can be carried out in a residential area without causing detriment, as set out in paragraph 7 above. If an operation does cause such harm then it would not be compatible with this class. The proposal is also for a storage and distribution use and the movement of vehicles and goods may give rise to noise and disturbance but this can usually be controlled by the imposition of conditions restricting outside storage areas and the timing of vehicles entering and leaving a site to avoid unsocial hours.
18. Overall on this issue it has not been demonstrated that the proposal would have a harmful effect on the occupiers of nearby residential properties by causing noise and disturbance and there is no conflict with Policies 32 or 47S.

Effect on highway safety

19. This issue is concerned with the effect on the junction of Wood Lane with the A603; alterations to Wood Lane itself; and internal circulation, turning space and parking provision within the site.
20. In terms of the junction with the A603 although within the 30mph village zone this is a complex junction with Barford Road and Station Road leading off to the north as well as the A603 and Wood Lane. I noted at the site visit that when exiting the cul-de-sac of Wood Lane visibility to the right (east) is reasonably good but visibility to the left (west) is very restricted by a fence around the corner property. The Council says that a visibility splay of 2.4m X 90m is needed and not provided but this appears to be specified in a local version of Manual for Streets and I am not aware of the status of this document within the development plan scheme nor of its consultation and adoption process. The appellant's agents refers to Manual for Streets³ (MfS) and this national guidance must take precedence.
21. Drawing 22-0316-SK02 rev D shows the proposed access alterations and the visibility splays and indicates that splays of 2.4 x 43m can be obtained in both directions and this is in line with the standard stopping distance (SDD) set out in MfS for a road speed of 30mph. However, this drawing measures the splay to the centre of the carriageway to the left but, as the Council points out, it is normal to measure to the nearside kerb edge. MfS indicates (on page 93) that the centre line should only be used where some physical feature prevents vehicles from crossing the centre line and that this is not present on the appeal proposal. Measured in the correct way only 36m visibility is available to the east and I judge this discrepancy to be critical in the complex form of the junction and it means that the proposed access does not meet prescribed standards.
22. In terms of proposed changes to Wood Lane the amended plans show the swept path analysis of vehicles entering and leaving the A603 and gaining access to the site itself and the widening of the lane at the junction and other

³ As produced by the Department of Communities and Local Government and the Dept of Transport in 2007.

access so as to enable two vehicle to pass as well as provide a 2m wide footway. However, the plans show space for a 10m rigid vehicle to pass a private car rather than show how two HGVs would pass side by side and this situation is likely to arise frequently with the uses proposed. There would also be a stretch of lane left as single carriageway and this would be likely to lead to drivers' confusion and not aid road safety. Moreover, the plans are of such a scale and annotation that it is difficult to be certain that the works proposed are all capable of being carried out in the public highway.

23. In relation to internal circulation space, the Council now accepts that adequate car parking is proposed for the extent of floorspace put forward for new commercial and storage uses and the plans show that an HGV up to 12m in length could turn around within the site which would include the Council's refuse vehicle. The Council says that adopted standards require two parking spaces for HGVs which is not met in the proposed scheme, however this parking could be conditioned on other adjoining land within the appellant's control if all other aspects of the development were acceptable.
24. Overall on this issue I find that the proposal would not have satisfactory access arrangements as the visibility to the west at the junction with the A603 would be substandard and it has not been demonstrated that there would be adequate space available in Wood Lane to allow for the safe and efficient passing of HGVs associated with the use. This would have a significant adverse effect on highway safety and would conflict with the provisions of Policies 31 and 75(viii) of the BBLP.

Effect on protected species

25. The Preliminary Ecological Appraisal identified that there was low roosting potential for bats in six of the nine buildings and recommended that an emergence survey should be undertaken. The appellant's agent says that as only minor repair of the buildings is envisaged further bat survey can be left to be conditioned. The agent also stresses that this work could be undertaken to facilitate agricultural use without the need for surveys or planning permission.
26. However I do not share the appellant's view that the building can be brought into modern business use without substantial alteration and modification which may affect any bat habitat. Moreover, the development actually proposed has to be considered rather than a suggestion of retaining some agricultural use. Paragraph 99 of Circular 06/2005 is clear that a precautionary approach should be taken in respect of protected species, and surveys should be undertaken prior to the grant of planning permission, to take full account of the presence of protected species. Without the recommended surveys being carried out, I am unable to determine whether mitigation measures could adequately safeguard or compensate for any harm caused to bats by the proposal.

Forest of Marston Vale

27. Policy 36S of the BBLP indicates that in order to continue to support the creation of the Forest of Marston Vale development proposals will be required to deliver 30% tree cover across their development site. The proposed site layout makes no provision for this, however, the Site Location Plan shows that the appellant also controls a large open swathe of open land adjacent to the site and the access road (as edged blue). This land is capable of

accommodating the 30% tree cover necessary and provision of this can be secured by condition. In this way the requirements of the policy can be met.

Planning balance

28. The National Planning Policy Framework (the Framework) generally supports a prosperous rural economy and the growth of businesses particularly through the conversion of existing buildings. Guidance in paragraph 85 indicates that sites to meet business needs in rural areas may have to be found adjacent to or beyond settlements. However, the guidance goes on to say that such development must be sensitive to its surroundings and not have an unacceptable impact on local roads.
29. On the principles of development in this case I have found that the proposal does not accord with the relevant local plan policies as it has not been shown that any proven need for new business use cannot be located in a settlement. Neither has it been shown that the building can be converted without substantial reconstruction. Moreover, the development proposed would result in more traffic using Wood Lane but the junction with the A603 would have limited visibility to the west. Thus, the proposal would have a significant adverse effect on highway safety. There is also inadequate information to assess the impact on protected species in particular the presence of bats.
30. These aspects constitute significant adverse effects and result in the proposal conflicting with the provision of the development plan (as set out above) when considered as a whole.
31. I have balanced these with the benefits of development, including the general increase in facilities and premises available for rural business, but the factors raised in support do not outweigh the local harm that would arise and the conflict with the development plan. This indicates that the appeal should not be allowed.

Conclusion

32. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR