



Appeal Decision

Site visit made on 31 January 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/U1105/C/23/3320164

The Workshops, Deer Park Farm, Buckerell, Honiton EX14 3EP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Donovan Galling of Martha Mockford Ltd against an enforcement notice issued by East Devon District Council.
 - The notice was issued on 14 March 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, the material change of use of part of the building shown edged red on the enclosed site plan A from workshop to use as a gymnasium [Use class E (d)]
 - The requirements of the notice are to:
 - I. Permanently cease the use of any part of the Building as a Gymnasium;
 - II. Remove any internal or external paraphernalia associated with the use as a Gymnasium from the building.
 - The period for compliance with the requirements is: 3 (three) months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) 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:
 - Inserting "(Unit 1)" after "part of the building" and before "shown" within the matters which appear to constitute the breach of planning control in section 3 of the notice;
 - Deletion of the first requirement in section 5(I) of the notice and its replacement with "Permanently cease the use of Unit 1 of the Building as a Gymnasium; and
 - The deletion of the plan attached to the notice and its substitution with the plan attached at the bottom of this decision.

Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. At the site visit and from some of the communication prior to the visit, it is clear that the gymnasium use has ceased as required by the notice. However, there is no dispute that the use had occurred. Section 181(1) of the Act makes it clear that compliance with a notice does not discharge it. This appeal still

needs to be determined in the absence of either its withdrawal by the appellant or by the notice being withdrawn by the Council.

3. I have a duty, where there are problems with a notice, to ensure that it is in order where that can be done without causing injustice. The whole of the building outlined in red on the plan that accompanied the notice is separated into smaller units. I saw inside the part of the building that had been used as a gymnasium. The wording of the allegation acknowledges that the use has only taken place in part of the building. The appellant provided a plan that clarified more specifically where the unauthorised use had occurred which was within "unit 1". The deemed planning application can only apply to the building where the breach had occurred. Also, given the implications for further legal action if the notice is upheld and if the use were to recommence, it is necessary to specify more clearly which unit the use had occurred within. The first requirement of the notice stating "Permanently cease the use of any part of the Building as a Gymnasium" is ambiguous as it could be interpreted to apply to any of the industrial units and so needs to be made more specific. There is no dispute over which part of the building the breach occurred within, by either of the main parties. I consider that it would not cause injustice therefore to delete the original plan, substituting it with the plan provided by the appellant and refer to 'unit 1' within the allegation as well as requirement '5(I)'. I can undertake these corrections under the provisions of s176(1)(a) of the Act.
4. It is mentioned a number of times within the representations, that the use as alleged may now fall within Schedule 2, Part A, Class E(d) of the Use Classes Order¹ (UCO). If the previous use also fell within the same use class of the UCO, there may not have been a material change of use but the appellant has not challenged the notice on that basis. There is no dispute therefore that the use as alleged required planning permission whether that is by reason of it being a material change of use or a breach of a planning condition attached to the previous planning permission for the building. The period within which enforcement action needed to be taken, due to s171B(3) of the Act, is 10 years from the date that the breach began whether that is a material change of use or a breach of planning condition. There are no implications therefore for other grounds of appeal and I will continue to deal with the matter as a material change of use as alleged by the Council.

The Appeal on ground (a)

5. Under this ground of appeal, I have to consider whether planning permission ought to be granted for the matters stated on the notice as the breach of planning control.

Main issue

6. The first main issue is whether Unit 1 is located in a suitably accessible location with respect to employees and visitors. The second is the effect upon highway safety with respect to vehicle parking. Lastly, the third main issue is the effect of the loss of employment land on vibrancy and viability of the local community.

Reasons - Accessibility

7. The appeal site is in a rural location although it is one unit within a small

¹ The Town and Country Planning (Use Classes) Order 1987, as amended

industrial building complex. Whilst there are a number of residential properties scattered nearby, the main core-part of a small settlement, Buckerrell, is much further to the west. The site is connected to that part of the settlement by a rural lane without street-lighting or footways. The statement from the Devon County Council Highway officer refers to the site being 1km from the village centre. That seems to me to be a reasonable estimation of the distance. Apart from the industrial complex itself where the appeal is located, the surrounding area between it and the settlement is characterised by largely undeveloped countryside.

8. When a planning application was previously considered by the Council, the appellant supplied a Transport Assessment (TA) which refers to the gymnasium as being 220m² floor area. Although at the site visit I was told of some changes internally to the building, the internal area that I saw and which was at that time being used for different purposes, was very similar to that shown on the plans submitted previously. The Council has suggested a planning condition to require compliance with the floor plan previously submitted if I allow the appeal and that also refers to 220m² as the floor area. The TA refers to 'TRICS'² data. Within the TA, it is stated that there are few comparable developments but then goes on to refer to 2 sites that are directly related and "are within edge of town locations." However, this is not an edge of town location. It is an area that is a substantial distance from the nearest rural settlement. The estimates of 2 additional traffic movements being generated in the morning peak time and 6 in the afternoon peak-time were however accepted by the Devon County Council Highway officer in their updated response with respect to the planning application.
9. Policy RC2 of the East Devon Local Plan³ (LP) concerns open space, sports facilities and parks. Although not referred to on the notice, this policy was referred to in the report that led to the refusal of the previous planning application for this use. The policy states that permission will be granted for sports facilities (amongst other things) within or adjoining urban or built-up areas. As such, therefore, the policy appears to be applicable but the use is not supported by it as the site is within a rural area and separated by a significant distance from the nearest built-up area. Given the position of the site within the countryside, LP Strategy 7 only allows for development where it accords with a specific development plan policy and where it would not harm distinctive landscape, amenity and environmental qualities of the area. Additionally, LP Policy TC2 states that new development should be located so as to be accessible by pedestrians cyclists and by public transport.
10. The strategy of the LP overall is therefore to seek to concentrate development within locations that are accessible other than by vehicles. The people who do live locally and who would use a gymnasium may at times of good weather and during daylight walk or cycle to the appeal site but given the nature of the roads would be less likely to do so during poor weather and in the dark. I have not been provided with much detail of public transport routes and regularity. Furthermore, I have no evidence to convince me that customers would or did, when the use was operating, originate only from the nearby settlement or from the other built-up areas nearby. These matters seem likely to be similar for the approved industrial uses which I doubt could rely only on employees and

² Trip Rate Information Computer System

³ East Devon Local Plan 2013-2031 – adopted 28 January 2016

visitors from the local area and the number travelling here without use of private cars would be limited.

11. The TRICS data that has been referred to has not used a set of directly comparable examples and the number of cases is also very limited. Notwithstanding the limitations of this evidence, from this information it seems reasonable in my view that a gym could generate fewer trips than a modestly sized industrial unit, per hour. Some of the permitted industrial uses within the unit could also be more actively used than others. However, longer opening times are assumed for a gymnasium than they are for offices. That also seems a reasonable assumption given that offices or other industrial uses within the unit may be open normally during the day whereas a gymnasium will attract people within the evenings and early mornings before and after normal working hours. These are however general assumptions. Working patterns can vary greatly and gymnasiums are not only used by the working population.
12. The evidence does indicate that overall during the course of a day more traffic movements would occur from the unauthorised use than from the previously approved use. The data cannot identify the length of likely journeys from any of the uses but a gymnasium in a more accessible location, closer to a larger population would be likely to generate shorter journeys even if the number of movements is similar, as well as attracting visitors using different, more environmentally benign modes of transport. In addition, although it is not clear how often larger events have occurred, such as 'Honiton's Strongest Man' as referred to by the Council, they would add to the overall number of traffic movements.
13. In relation to this main issue, the site is not located in a suitably accessible location with respect to employees and visitors. It is the clear strategy of the LP to minimise the need to travel by car and specifically for this type of development to adjoin urban or built up areas including where they are accessible by public transport, bicycle and on foot. That is not achieved by a gymnasium in this location. As such, for these and the above reasons, the use does not comply with LP Policies RC2, TC2 or Strategy 7.

Reasons – parking and highway safety

14. When the previous planning application was submitted, 8 car parking spaces were shown on the submitted plans. Given the above evidence regarding traffic movements resulting from the use, this would seem to at most times, be a reasonable level of parking provision to cater for the number of staff and visitors. Furthermore, the plans show, and I could see at my site visit, that there is the potential for further vehicle-parking within land in the appellant's ownership which could be secured therefore by way of a planning condition. Furthermore, as the TA mentions, the gymnasium is likely to operate outside of the normal working hours of some of the adjoining uses. Consequently, demand for parking could generally be met on site without vehicles parking on the public highway. There may be occasions when specific events take place requiring substantially more parking. However, I do not consider that substantial weight should be given to the consideration of individual events and the appellant does own a substantial amount of nearby land which could be utilised, without impacting upon the highway network.
15. In relation to this main issue, the use does not have a harmful effect upon highway safety with respect to vehicle parking. LP Policy TC9 requires parking

provision for new developments, although doesn't provide any specific number requirement for this kind of development. It does require that all developments should provide charging points but that is something that could be required by way of planning condition had I been allowing the appeal on this ground and granting planning permission. LP Policy TC9 is complied with. The use would not be detrimental to the safe and satisfactory operation of the local or wider highway network complying with LP Policy TC7.

Reasons – vibrancy and viability of the local community

16. The Council estimates that the industrial use of the appeal building would create more jobs than the gymnasium although I have no evidence to demonstrate that. A B8 storage and distribution use as allowed for originally in the building may well generate very little additional employment particularly if used by one of the adjoining businesses. This is confirmed by the appellant's evidence regarding one of the storage buildings nearby.
17. LP Strategy 32 resists the loss of "employment, retail and community uses" in order to ensure that local communities remain vibrant and viable and are able to meet the needs of residents. Gymnasiums provide a community and social function where people meet as well as exercise. Although such a use is not explicitly included within the broad definition of community uses protected by this strategy of the LP, I consider that it would support the retention of the use being enforced against as well as the approved industrial uses.
18. In relation to this main issue, the loss of employment land would not have a harmful effect on the vibrancy and viability of the local community. The loss of the small amount of industrial floorspace would not have a harmful impact upon employment opportunities in the area and would have benefits to the social and community gathering attributes of the area, complying with LP Strategy 32.

Other matters

19. I am given some limited details of planning permission for another gymnasium near Topsham. That decision was made by the Council. Other policies were relevant from a Neighbourhood Development Plan which is not of relevance to the present case. Whilst there may be some similarities to the present case, that decision does not create a precedent that I must follow as each case must be determined on its own merits. I have considered this case on the basis of the evidence submitted and the what I saw for myself.
20. There is no clear advantage to the opportunity afforded to a start-up business within this modest unit whether that is a gymnasium or industrial use within the scope of the existing planning permission. Either of those uses could have advantages without one being more beneficial than the other, in that respect.
21. Even if the previous use of the building and the alleged use were within the same use class at the time the enforcement notice was issued, it is agreed that planning permission would have been required due to the presence of a planning condition preventing such use. There is no fallback position because the use would have required planning permission due to the condition and so this does not add any weight in favour of allowing the appeal.

Conclusion on ground (a)

22. Overall, the lack of harm caused with respect to the second and third main issues does not outweigh my consideration of the first. Whilst there is no conflict with some policies, I consider in conclusion that the development plan as a whole is not complied with. There are no other matters that outweigh the non-compliance with the LP. The development is unacceptable and the appeal on ground(a) fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood

INSPECTOR



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 27 February 2024

by **Andy Harwood CMS MSc MRTPI**

Land at: The Workshops, Deer Park Farm, Buckerell, Honiton EX14 3EP

Reference: APP/U1105/C/23/3320164

Scale: Not to Scale

