



Appeal Decision

Site visit made on 25 March 2024

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/X1545/W/23/3331223

Hyside Motorcycles Ltd, Unit 9 Wycke Hill Business Park, Maldon CM9 6UZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Howton against the decision of Maldon District Council.
 - The application Ref is FUL/MAL/23/00237.
 - The development proposed is described as 'Retrospective part change of use for Class E(b) – sale of food and drink for consumption (mostly) on the premises in addition to existing use classes A1, B1, B2, B8 and sui generis.'
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Decision

1. The appeal is allowed and planning permission is granted for the part change of use for Class E(b) – sale of food and drink for consumption (mostly) on the premises in addition to existing use classes A1, B1, B2, B8 and sui generis at Hyside Motorcycles Ltd, Unit 9 Wycke Hill Business Park, Maldon CM9 6UZ in accordance with the terms of the application, Ref FUL/MAL/23/00237, subject to the attached Schedule of Conditions.

Preliminary Matters

2. The address of the appeal site given on the application form is 'Unit 9 Wyke Hill Business Park, Maldon CM9 6UZ.' The appeal form and the decision notice cite the address as 'Hyside Motorcycles Ltd, Unit 9 Wycke Hill Business Park, Maldon CM9 6UZ' which I have used in the banner and paragraph 1 above as this is a more accurate description of the address.
3. I note that this is a retrospective application, and the development has already been carried out. The development appears to have been implemented as shown on the plans before me. The Council's second reason for refusal refers to advertisements/signage but it is a matter for the parties to consider whether the installed signs need consent under the Advertisements Regulations¹. As these are not part of the current proposal, it is not appropriate for me to consider them. For the avoidance of doubt, I have determined the appeal based on the submitted plans.

Main Issues

4. The main issues in this appeal are the effect of the proposed development on:
 - the employment use of Wycke Hill Business Park;
 - the character and appearance of the area; and

¹ Town and Country Planning (Control of Advertisements) (England) Regulations 2007

- the living conditions of the occupiers of nearby dwellings, with particular regard to noise.

Reasons

Employment use

5. The appeal site is located within Wycke Hill Business Park, a thriving employment area where most units are occupied. It comprises a motorcycle showroom, MOT centre and workshop with associated offices and storage, and a parking area. The proposed café occupies part of the upper floor of the building, with an outdoor seating area sited on hardstanding next to the footway and road.
6. Policy S1 of the Maldon District Local Development Plan 2014 – 2029 (LDP) sets out several key principles. This includes ensuring a healthy and competitive local economy by providing sufficient space for existing and potential businesses in line with the needs and aspirations of the District.
7. Wycke Hill Business Park is an area reserved for employment development in terms of LDP Policy E1. In this employment area, the policy outlines that planning applications will only be permitted for employment purposes if they are within use classes B1, B2 and B8. It further states that designated employment areas will be retained and protected for class B uses as specified and sui generis uses of an employment nature unless it can be demonstrated that there is no reasonable prospect for the site to be used for these purposes.
8. Policy E1 also indicates that complementary and supporting uses may be considered acceptable where they serve an essential ancillary function to the employment area and will not result in a material change of the area's class B character and function. It sets out the need to meet several criteria where proposals would cause loss of existing employment uses. This includes a requirement to demonstrate that the continuous use of the site for employment purposes is no longer viable, taking into account the site's existing and potential long-term market demand for an employment use.
9. The café's class E(b) use means that it does not fall within the uses outlined for this business park in Policy E1. There is no evidence that this employment area needs diversification nor any information on the viability or prospect of using the premises for class B or sui generis employment uses.
10. However, the café occupies only a small part of the building originally proposed as an office and landing when planning permission for the motorcycle premises was approved in 2019² and a modest part of the external hardstanding. The motorcycle showroom and workshop, other offices, a large parking area and ancillary facilities remain. Based on my site observations and the evidence before me, there is no indication that the café hinders the operation of the motorcycle business which occupies most of the building and site. As such, sufficient space for the existing business continues to be provided in accordance with Policy S1.
11. The evidence indicates that the cafe operates as a separate business and is open to all customers, not just those visiting the motorcycle premises. Similar

² Application Ref FUL/MAL/19/00768 'the original permission'

to the Inspector's findings in an appeal at 112 The Causeway Maldon³, there is limited information before me to show that the cafe is essential to the operation of the existing business or the function of the employment area. However, The Causeway case related to a takeaway hut which the Inspector found was not contributing directly to employment generation in the area. In contrast, the proposed café employs one full time and two part time members of staff on the site which, though small, contributes towards employment generation on the business park. Therefore, the two cases are not comparable, and I give limited weight to the findings in The Causeway case.

12. There are other facilities, including a supermarket, within walking distance, but the proposed café provides a supporting use as it is available for use by employees and visitors to the Wycke Hill Business Park. It is not ancillary to the motorcycle business, and it fails to meet the criteria for the loss of existing employment uses in Policy E1. However, due to its small scale and absence of impact on the operation of the motorcycle business, the proposal does not harm the class B character and function of the site or the employment area. Therefore, although there is some conflict with Policy E1, this is limited.
13. For these reasons, I conclude that the proposal does not harm the employment use of Wycke Hill Business Park.

Character and appearance

14. The employment area is dominated by sizeable buildings, with the hardstanding on the appeal site sandwiched between two large structures. Brick pillars and a low brick wall with black metal railings bound the roadside frontage. The side boundary comprises a blue metal fence. Screens have been placed along the boundary railings and fences alongside the outdoor seating area. At the time of my visit, there were a variety of cars, vans and motorcycles parked on the hardstanding area behind.
15. There is a small number of tables and chairs comprising the outdoor area of the proposed café. I observed that part of the area is visible when travelling eastbound along the road with the entrance gates open though it is largely screened by the boundary treatments in other views from the street. Given its location towards the rear of the business park between large scale buildings alongside parked vehicles, the limited amount of furniture and the boundary screening, the outdoor seating area is not incongruous or unduly conspicuous in the street scene.
16. The Council is concerned about the commercial paraphernalia associated with events held on the site. However, the appellant confirms that the events are organised by the motorcycle business as a marketing exercise to attract people to the showroom and therefore this matter does not relate to the current application for the café.
17. Consequently, I conclude that the proposal does not harm the character and appearance of the area. It complies with Policy D1 of the LDP where it requires development to respect the character and local context. The proposal also accords with the Framework which requires development to be sympathetic to local character.

³ Appeal Ref APP/X1545/W/22/3305388

Living conditions

18. The appeal site lies in the northern part of the business park, with employment premises on each side. There is a parking area for use by customers and employees beside the showroom and workshop building, beyond which is a landscaped bank and dwelling.
19. The potential for noise from the café would arise from customers' vehicles accessing and egressing the site, patrons using the outdoor seating area and the ventilation equipment needed to operate the premises. The submitted noise survey and assessment (the noise survey) includes a baseline noise assessment at the house to the north which is the closest noise sensitive receptor. It then makes a quantitative and qualitative assessment of operational sounds associated with normal café use.
20. The noise survey indicates that those using the café mostly arrive by car and on motorbike so there is potential for noise from additional vehicle movements. There is already noise generated from the vehicles of employees and customers accessing the motorcycle business when entering and leaving the site. Although the café is open to everyone and the Council considers that it is used as a leisure destination, the three site visits undertaken for the noise survey found that most patrons also use the motorcycle shop or service centre. Thus, the additional noise from vehicle movements of customers solely using the café is minimal.
21. The proposed outside seating area lies adjacent to the footway, with the large parking area and vegetated strip separating it from the house. There is the potential for noise from people talking whilst using this area, particularly at times of good weather. Using empirical internal level data from a 'busy but relaxed restaurant' scenario for the external seating area, the noise survey finds that this would typically have a negligible impact during the operation of the café. Due to the relatively small size of the outdoor area, its distance from the house, and the noise already generated from vehicles coming and going, the café does not harm the living conditions of the occupiers of the house. Conditions restricting the hours of operation and deliveries would ensure that it does not operate outside the times of the existing motorcycle business.
22. There is an external condenser unit and kitchen extractor on the side of the building, adjacent to the showroom entrance. The noise survey finds that noise impacts from these are negligible, and the Council does not disagree.
23. The Council raises concerns about large events held at the premises which generate noise from loud music and the number of motorcycles and people attending which were not approved as part of the original permission. However, the appellant confirms that the live events are to promote the motorcycle business and not to generate extra business for the café. These are not directly related to the proposed café and do not form part of the current application. Therefore, it is not appropriate to consider the noise impacts from large events in the context of the appeal proposal and the noise report is not insufficient in this regard.
24. There are concerns that the mitigation set out in the noise survey does not prevent intermittent noise disturbance on a regular basis from leisure motorcyclists arriving and leaving the car park, and that this is at variance from the original permission. However, I have found that the proposed café

does not cause unacceptable noise and any noise issues arising from the operation of the existing motorcycle business would need to be addressed by the Council separately in the first instance.

25. Therefore, I conclude that the proposed development does not harm the living conditions of the occupiers of nearby dwellings, with particular regard to noise. It accords with Policy D1 of the LDP which requires development to protect the amenity of surrounding areas taking into account noise, amongst other things. It also complies with the Framework which requires decisions to provide a high standard of amenity for existing users.

Conditions

26. I have had regard to the Council's suggested conditions and considered them against the statutory tests outlined in the Framework and the advice in the Planning Practice Guidance. I have made minor amendments, where necessary, to ensure that the conditions comply with these documents.
27. I have imposed a condition limiting the use of the premises to a café within Class E(b) of the Use Classes Order⁴. This is necessary to ensure that the premises retains a use which supports the employment area.
28. The Council suggests conditions restricting the hours of opening to customers, which reflects those on the application form, and for hours of deliveries. I agree that such conditions are necessary to protect the living conditions of the occupiers of the nearby house. However, I have altered the hours for deliveries to align with those on the original permission and the days of opening for the proposed café.
29. Conditions relating to external illumination and refuse storage are necessary to protect the character and appearance of the area.
30. A condition requiring outdoor furniture to not obstruct the vehicular access is necessary to ensure no prejudice to highway safety.
31. I have not included the Council's suggested conditions on the timescale for implementing the development and carrying it out in accordance with the plans as the development has already been implemented. Further, the Council's suggested condition that the café remains ancillary to the primary use of the site would fetter the appellant's ability to operate the development applied for and therefore it would not be reasonable for me to impose it.

Planning Balance and Conclusion

32. The proposal does not harm the character and appearance of the area or the living conditions of nearby occupiers, in compliance with Policy D1. Sufficient space remains for the operation of the existing motorcycle business and therefore it also accords with Policy S1.
33. The café is not ancillary to the motorcycle business and the proposal does not meet the criteria for the loss of existing employment uses in Policy E1. However, it provides a supporting use and does not harm the class B character and function of the site or the employment area as required by this policy.

⁴ The Town and Country Planning (Use Classes) Order 1987 (as amended)

34. Therefore, the proposal adheres to the development plan taken as a whole and there are no material considerations that outweigh this finding. Accordingly, the appeal is allowed.

A Wright

INSPECTOR

Schedule of Conditions

- 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), the premises shall only be used as a café falling within Use Class E(b) of 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) and for no other purpose.
- 2) The café hereby permitted shall only be open to customers between the following hours:
09:00 – 17:00 Mondays to Fridays
09:00 – 16:00 Saturdays
The premises shall be closed to the public on Sundays and Bank Holidays and at all other times.
- 3) Deliveries to the café hereby permitted shall only be undertaken between the hours of 07:00 – 18:00 Mondays to Saturdays and not at any time on Sundays and Public Holidays.
- 4) No means of external illumination of the site shall be installed unless otherwise agreed in writing by the Local Planning Authority. The external illumination shall be retained as such thereafter.
- 5) Within three months of the date of this permission, details of the means of refuse storage shall be submitted to and approved in writing by the Local Planning Authority. The refuse storage shall be provided in accordance with the approved details within one month of the Local Planning Authority's approval and retained for such purposes at all times thereafter.
- 6) No tables, chairs or similar items for use by customers of the café hereby permitted shall at any time obstruct the vehicular access to the motorcycle showroom, MOT centre and workshop.