



Appeal Decision

Site visit made on 29 October 2024

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/M9496/W/24/3343917

Newburgh Engineering Works, Netherside, Bradwell S33 9NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Vince Middleton, Hope Valley Industrial Ltd, against the decision of Peak District National Park Authority.
 - The application Ref NP/DDD/1221/1376 was approved on 8 November 2023 and planning permission was granted subject to conditions.
 - The development permitted is S.73 application for the removal or variation of condition 4 on NP/DDD/0918/0870 (Erection of industrial building housing 2 units).
 - The condition in dispute is No 4 which states that:
Notwithstanding the provisions within the Town and Country Planning (General Permitted Development) Order 2015, the use of the industrial units shall be limited solely to uses within Class E(g) of the Town and Country Planning Use Classes Order 2020.
 - The reason given for the condition is:
The National Park Authority wishes to retain control over such development in order to ensure that the amenities of the site and neighbouring properties and the valued characteristics of the area are protected. The restriction to a use within Class E(g) is considered to be reasonable and necessary given the close relationship of the development to adjacent housing.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. For the avoidance of doubt, the site address above is taken from the planning application form.

Background

3. Planning permission was granted in 2019 for the erection of an industrial building housing 2 units at the appeal site¹ (the original permission). Condition 4 of the original permission stated that 'Notwithstanding the provisions within the Town and Country Planning (General Permitted Development Order 2015, the use of the industrial units shall be limited solely to uses within Class B1 of the Town and Country Planning Use Classes Order 1987. There shall be no permitted change to any other use without the prior written consent of the Authority with the exception of the units occupied by Newburgh Engineering Ltd. These shall be restricted to use within Class B1 or B2 throughout their occupation by Newburgh Engineering Ltd and once vacated by Newburgh Engineering Ltd the units shall revert back to be limited solely to uses within Class B1'.

¹ Council ref: NP/DDD/0918/0870

4. The appellant subsequently submitted an application² (the second permission) to remove condition 4 of the original permission. The appellant's reasoning for seeking a removal of the condition was because the legal entity referred to as Newburgh Engineering Ltd had ceased to trade, with operations at the site now being undertaken by Nuclear Energy Components Ltd (NEC). The appellant was concerned that the operations being undertaken by NEC were no longer in compliance with condition 4 of the original permission.
5. Rather than removing condition 4 of the original permission, the Council, in its decision on the second permission, varied it to the wording included in the banner heading above. Through this appeal the appellant is seeking to remove the condition in its entirety. It is stated that this is to ensure that the operations being undertaken by NEC are in compliance with the original permission and thus so NEC can continue to operate from the site.
6. The Town and Country Planning (Use Classes) Order 1987 (as amended) was updated in September 2020. Class B2 remains, whereas former Class B1 is now covered by Class E(g). For the avoidance of doubt, references to the Classes within this decision are in accordance with the updated Use Classes Order.

Main Issue

7. Whilst reference is made to the valued characteristics of the area within the reason for the condition, the Council does not raise concerns with regard to the removal of the condition on the character of the area.
8. The main issue is therefore whether the condition is reasonable and necessary having regard to the living conditions of neighbouring residential occupiers.

Reasons

9. The appeal site is located adjacent to a recent housing development, with residential properties and gardens sited within very close proximity to the shared boundary. The second permission restricted the use of the appeal site to operations falling within Class E(g), which is a use 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.
10. The proposed removal of condition 4 would result in the units at the appeal site having unrestricted industrial use. I note that the Council's environmental health consultee raises no objection to this. Regardless, it is important that I consider the worst-case scenario and I note that the unrestricted use could result in industrial businesses which fall within the heavier industrial Class B2 or B8 from operating from the site. These uses are not encompassed with Class E(g)(iii) indicating that they are not uses which could be carried out in a residential area without resulting in harm to the living conditions of residential occupiers. As such, harmful effects could arise from noise and disturbance from activity in and around the buildings or from vibration, fumes or other reasons from processes being carried out under such uses.

² Council ref: NP/DDD/1221/1376

11. I acknowledge that the original permission allowed for a B2 use to operate from the site however this was specific to a particular operator, whose processes, activities and operations have been carried out at the site for many years and which the Council were satisfied would be compatible with residential uses. However, personal planning permissions should be avoided, as advised in the Planning Practice Guidance, thus the removal of reference to Newburgh Engineering Ltd in the second permission sought to address this.
12. The appellant has referred to an Environmental Statement (the ES) which was prepared in support of the redevelopment of the wider site for residential and industrial purposes. It is noted that part of the ES assessed whether the proposed development of the site, to include the continued operation of a Class B2 use at the industrial units of the appeal site, would lead to any significant harmful effects on existing and proposed residents in terms of the generation of noise and vibration and air quality.
13. Whilst the extracts of the ES which I have been provided with indicate that a B2 use at the appeal site would not be of detriment to the amenity of nearby residents, I do not have a copy of the ES. Based on the information before me I cannot ascertain whether assumptions have been made in respect of the continued operation of the existing B2 use at the appeal site, or whether the operation of a worst-case scenario B2 use was considered. Indeed, in respect of this matter, reference is made in the evidence before me to the continued operation of the existing B2 use within the site.
14. Whilst the particular factors of the existing operations may not have changed from those which informed the ES, it is important that full consideration is given to the possibility of other uses falling within Class B2 and B8 operating from the appeal site, not just the current activities of the existing business. As this information is not before me it would be inappropriate to allow unrestricted industrial use at this site, which could have a significant adverse effect on residents resulting from matters such as noise and pollution, given the very close relationship between the appeal site and residential properties.
15. I acknowledge that Policy DME3 of the Development Management Policies, Part 2 of the Local Plan for the Peak District National Park (May 2019) (the DMP) safeguards the appeal site for Class B1, B2 or B8 industrial and employment uses. The retention of condition 4 and its restriction to uses falling within Class E(g) does not interfere with the retention of this site for employment use falling within former Class B1.
16. Whilst I appreciate the appellant's concerns that the retention of condition 4 could result in the closure of a major employer in the borough, there is no convincing evidence to suggest this would occur or that it would prevent the business from expanding or adapting. Moreover, it seems to me that the appellant considers that the current operation of the business can be carried out in a residential area without detriment to amenity and thus it can fall within the definition of Class E(g). It is not for me within the context of this appeal to reach a finding on this matter, rather the appellant would be open to apply to the Council for a lawful development certificate.
17. Taking all the above into consideration, removing condition 4 would result in harm to the living conditions of neighbouring residential occupiers and thus would conflict with Policy GSP3 of the Peak District National Park Core Strategy (October 2011) and Policy DMC3 of the DMP. Together, these policies

aim to ensure that developments pay attention to and respect the living conditions of residential occupiers. Therefore, condition 4 in its current format is reasonable and necessary.

Conclusion

18. The proposal conflicts with the development plan as a whole and there are no other considerations which indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

H Ellison
INSPECTOR