



Appeal Decisions

Site visit 14 January 2025

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Appeal A Ref: APP/N1540/C/23/3328241

7 Potter Street, HARLOW CM17 9AD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Baris Yildiz against an enforcement notice issued by Harlow District Council.
 - The notice was issued on 26 July 2023.
 - The breach of planning control as alleged in the notice is the unauthorised external works consisting of partial demolition and realignment of south elevation with insertion of 2 new windows and new door, new sliding entrance doors and new window west (front) elevation, internal blocking up of some windows, to facilitate the change of use within Use Class E to a supermarket and office spaces. New side access and rear car parking area also created.
 - The requirements of the notice are to:
 1. Cease the use of the land to the rear of the unit for parking.
 2. Cease the use of the unit as an A1 retail use.
 3. Re-instate the unit to its former size and design prior to the unauthorised works taking place.
 - The periods for compliance with the requirements are:
 1. Within 1 month.
 2. Within 4 months.
 3. Within 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/N1540/W/23/3327800

7 Potter Street, HARLOW CM17 9AD

- 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 Baris Yildiz against the decision of Harlow District Council.
 - The application Ref is HW/FUL/23/00015.
 - The development proposed is described as “Retrospective planning application about the set back of the south eastern wall to provide vehicular access for additional car parking at the existing rear hard landscaping for the ground floor retail unit, including the alteration of the elevations and the installation of an externally illuminated fascia sign”.
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Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely external works consisting of partial demolition and realignment of south elevation with insertion of two new windows and new door, new sliding entrance doors and new window to west (front) elevation, internal blocking up of some windows, new site access and rear car parking area on land at 7 Potter

Street, Harlow CM17 9AD referred to in the notice, subject to the following conditions:

- 1) They use hereby permitted shall only take place between the following hours:
0700 - 2200.
- 2) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within three months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) Within two months of the date of this decision, a scheme to show how the parking, cycling and servicing spaces, and the segregated pedestrian walkway from the public highway to the public entrance of the shop, as shown on the layout plan at Appendix B attached to the appellant's Statement of Case, will be marked and laid out on the ground, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 10 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B

2. The appeal is allowed and planning permission is granted for the set back of the south eastern wall to provide vehicular access for additional car parking at the existing rear hard landscaping for the ground floor retail unit, including the alteration of the elevations at 7 Potter Street, Harlow CM17 9AD in accordance with the terms of the application, reference HW/FUL/23/00015, subject to the following conditions:
 - 1) They use hereby permitted shall only take place between the following hours:
0700 - 2200.
 - 2) The building operations hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within three months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- i) Within two months of the date of this decision, a scheme to show how the parking, cycling and servicing spaces, and the segregated pedestrian walkway from the public highway to the public entrance of the shop, as shown on the layout plan at Appendix B attached to the appellant's Statement of Case, will be marked and laid out on the ground, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 10 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

The Notice and Preliminary Matters

- 3. The notice appears to allege a material change of use to Use Class E but states that the breach of planning control took place within the last 4 years instead of 10 years, as set out in section 171B of the 1990 Act. No appeal has been lodged under ground (d) as the appellant accepts the change of use took place within the last four years. There would therefore be no injustice caused to either party if I were to exercise my powers under s176 of the Town and Country Planning Act 1990 (the 1990 Act) to correct the notice in the event that the appeal was dismissed.
- 4. The second requirement of the notice refers to an A1 retail use but this is now incorrect following the introduction of the new Use Class E in 2020. It would appear this is a drafting error as the allegation makes the correct reference to Use Class E and, as such, there would again be no injustice caused if I were to correct this if the appeal was dismissed. The parties were consulted about both matters and have not raised any concerns.
- 5. The description of development in the planning application is as set out in the last bullet point above setting out the details for Appeal B. This was changed by the Council to "External works (part implemented) consisting of partial demolition and realignment of south elevation with insertion of two new windows and new door, new sliding entrance doors and new windows to west (front elevation), internal blocking up of some windows, these works to facilitate change of use within use Class E to a supermarket and office spaces. New side access and rear car parking area created." Whether this was with the appellant's agreement is not known but it

does include a change of use in the description which I am not sure was the appellant's intention looking at the remainder of the information provided on the application form.

6. The Council's description of development was used to frame the allegation and on the basis that the appellant has appealed under ground (c), I shall proceed with the appellant's description of development for Appeal B.
7. One of the reasons for issuing the notice refers to light pollution arising from signage. Following the refusal of advertisement consent, the appellant successfully appealed this decision¹ so this particular point has now been addressed and I shall delete the reference to a new sign from the description of the development.
8. A revised National Planning Policy Framework was published on 12 December 2024 but as the revisions do not materially change the national approach to the appeal development it has not been necessary to seek the views of the parties on this matter.

The ground (c) appeal

9. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the 1990 Act and includes the carrying out of building operations or the making of a material change of use of land. Section 57 says that subject to the provisions of this section, planning permission is required for the carrying out of any development of land.
10. The original building on site is largely single storey with one first floor room and has been extended in the past to the rear and side. It is a period property with timber clad walls in part, a tiled roof and what appear to be some Crittall windows. The Council state that the building was last used by a firm manufacturing scientific equipment and the parties agree that such a use would fall within Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). Use Class E, entitled Commercial, Business and Service, covers a diverse range of uses including any industrial process that can be carried out in any residential area without detriment to the amenity of that area by reason of for example noise, and other effects.
11. Class E also includes use for the display or retail sale of goods and this is the use that is taking place by the appellant, who runs a Nisa Supermarket. To create an open plan retail space the appellant demolished the former double garage extension and erected a new front and side wall to link with the existing rear extension. Access to the new supermarket is through the new front wall. The appellant submits that as the previous use and the new use both fall within Class E, planning permission is not required for the retail use.
12. The matter at the heart of the ground (c) appeal is whether or not the new retail use requires planning permission as part of a permission for the operational development that has taken place on site. The Council have adopted that approach and consider it to be a 'wider view' which they hold can be taken based on their own legal advice. However, there is no dispute that the existing Class E

¹ APP/N1540/Z/23/3321678 allowed 19 October 2023

use rights remain and the operational development did not constitute a new chapter in the planning history of the site. Whilst the Council decided it would take the 'wider view' it is clear from their submissions that a case for the appellant's stance, or the 'narrow view', could also be argued.

13. However, there is nothing before me, such as the legal advice or case law, to corroborate the case that there is an arguable basis for the 'wider view' and that that should be the only approach one should take. Indeed, the Council's own submissions do not discount the 'narrow view' and set out that 'It would be possible for the Council to refuse to grant planning permission on that approach, but the proposed reasons for refusal would require amendment'. In that light and from all that I have seen and read it is clear that Class E Use rights remain and the use of the building for retail and office purposes does not require planning permission and a retail use could subsist on the site in any event.²
14. Having regard to these provisions, I find that the appeal on ground (c) therefore succeeds and it follows that the description of the development in the allegation is corrected by deleting the reference to the change of use.

The ground (a) appeal and the section 78 appeal

Main Issues

15. Following the success of the appeal under ground (c), the alleged harm arising from the operation of the use in terms of whether or not there is harm to the vitality and viability of other retail uses in the area, no longer falls to be considered. The main issues are therefore the effect of the operational development on the living conditions of neighbouring occupiers, having regard to noise/disturbance, light pollution and loss of privacy; and whether or not the parking and servicing provision is satisfactory.

Reasons

Living conditions

16. The appeal site is situated in a residential area with the rear gardens of houses bordering three sides of the site and the access road for Millside, a gated development, running alongside the southern boundary. On the opposite side of Potter Street, there are semi-detached houses with front gardens overlooking the site. Potter Street is an unclassified road which is used as a bus route and has access to the A414, a major arterial route in the area.
17. The appellant has re-configured the building to create a vehicular accessway that runs along the southern side of the building to a newly created hard surfaced area to the rear. The remainder of the grassed space to the rear of the building has been left undeveloped. There is also an existing hard surfaced area to the front of the building which the appellant shows could be laid out as three parking spaces, cycle parking and for servicing. (Appendix B layout plan attached to the Statement of Case)
18. The Council submit that the retail use could generate unacceptable noise and disturbance from vehicles arriving and departing and by groups of people using the

² Section 55(2)(f) of the 1990 Act and Article 3(1A) and Schedules 1 and 2 of the Town and Country Planning (Use Classes) Order 1987 as amended.

shop. They also estimate that the size of the retail unit is greater than a typical chain store local shop and that therefore it would be expected to generate significant traffic movements leading to noise and disturbance. However, no evidence has been submitted by either the Council or third parties that this is the case on the ground and Environmental Health Officers have found no statutory noise nuisance was occurring when visiting the site.

19. Environmental Health Officers also found no statutory nuisance was occurring with regard to light pollution. The Council's concerns in this regard relate to the new window and door opening in the west elevation, which faces the road and which provides the entrance into the shop. The nearest residential property is No 1 Millside which is separated from the site by a high brick wall. This screens the ground floor habitable room windows from the shop entrance but there are two bedroom windows at first floor level that have an oblique view over the site. It is considered that due to the viewing angle and the distance between the windows that harm from any light visible from the development would be limited. Similarly, although some of the windows of the semi-detached properties on Potter Street look directly into the site, the distance between them and the interruption from front garden hedges means that again any harm would be limited.
20. The second aspect of light pollution is that from vehicles entering and leaving the site with third parties being particularly concerned that there is a difference between the previous use of the site, which operated during the daytime and on weekdays compared to the late evening, 7 days a week operation of the retail use. There is no evidence from the Council or third parties that the scale of the use and the light from vehicles causes demonstrable and unacceptable harm to the living conditions of neighbours. The appellant submits that most customers walk to the site as it is local and I find, given the nature of local shops, they are not generally places that customers use for a weekly shop requiring the use of a car.
21. Turning now to privacy, the creation of the rear parking area has opened up the site and enables customers to see residential boundary fencing. However, the height of the fencing and planting both within the gardens and within the remaining open space at the rear of the appeal site means that it is not possible to see into the gardens, thus privacy is preserved here.
22. Most of the houses in Millside are separated from the appeal site by the boundary wall, fencing and adjacent planting that border the access road into the cul-de-sac. In my view this preserves privacy levels. Only No 1 has a garden that directly abuts the appeal site. Whilst there is the potential for loss of privacy due to the proximity of this house to the activities on the appeal site, I have no evidence from the Council that this has occurred and the high boundary wall provides an effective screen. In addition, previously cars parked adjacent to this wall but the proposed layout shows that this will not occur.
23. Overall, the various harms to living conditions have not been substantiated either in terms of statutory nuisance or planning judgement. This aspect of the development therefore accords with Policies PL1 and PL10 of the Harlow Local Development Plan, adopted December 2020 (the LDP), which require a high standard of design that safeguards local amenity.

Parking and servicing provision

24. The Council are concerned that the appellant's proposals for servicing, the layout of the rear parking area and the absence of clearly segregated pedestrian and vehicle traffic are harmful to highway safety and would result in on street parking. This is turn would be detrimental to the free and safe flow of traffic in the area.
25. The appellant submits that it is the staff who tend to park at the rear of the site leaving customers to use the front area. Servicing also takes place from the front. However, although the application plans show parking spaces and a dedicated servicing spot, none of this is marked on the ground, notwithstanding that the retail use has begun. The plans also do not show a segregated pedestrian access to the shop which is especially important for when servicing takes place. The appellant has sought to remedy this by the production of the layout plan at Appendix B.
26. I saw that the open space around the site is generous and that the front area is sufficient for some customer parking without affecting the space needed for a delivery driver to enter or leave the site in forward gear. There is also sufficient space for a pedestrian walkway to the shop entrance and room for at least 6 parking spaces at the rear. Even with a parked delivery vehicle at the front, there is ample room for cars to pass safely alongside from the rear parking area. The Council's concerns focused on the potential for conflict between vehicle movements but given the scale of the business these are largely unsubstantiated.
27. However, in the event I were to allow the appeal a condition needs to be imposed to require the submission of details to show how the layout an Appendix B will be delineating on the ground. In particular, a segregated pedestrian path is needed given the distance between the public pavement and the set back of the entrance to the shop. This is in the interest of highway safety as is also the requirement for the plan to show how the parking, servicing and cycle spaces would be delineated on the ground.
28. With such a condition in place, I find that this aspect of the development accords with Policies IN2 and IN3 of the LDP, which require parking standards to be met and highway safety to be observed.

Interim Conclusion

29. For the reasons given, the appeal under ground (a) succeeds.

Other Matters

30. The Council have raised concerns that the siting of the waste storage area to the rear of the site is not acceptable as the gravel hard surface and the distance to any parked Council refuse vehicle is too great. However, the appellant states that he does not make use of the Council's collection service as he employs private contractors. It appears that collections are taking place as I saw a Greenline Environmental waste receptacle in place and therefore the Council's concerns have been met regarding the safe removal of waste form the site.

Conditions

31. The operational development is now substantially complete but, as I have identified, there is a need for some conditions. The Council have suggested that I impose a condition to control the opening hours to between 0700 and 2200 hours.

These are the hours stated by the appellant that he operates already and I consider these are necessary to maintain in the interests of the living conditions of neighbours. Secondly, as set out above, it is necessary to require the submission, approval and implementation of a parking layout plan to show the marking out of the open space and a segregated pedestrian walkway.

32. This condition is drafted in a particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective granted permission it is not possible to use negatively worded conditions precedent to secure the subsequent approval and the implementation of outstanding detailed matters, as the development has already taken place.
33. These conditions therefore provide for the loss of the effective benefit of the granted planning permission where the detailed matters in question are not submitted for approval during the time set by their condition, approved (either by the local planning authority or by the Secretary of State on appeal) and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the planning permission falls away.

Conclusions

Appeal A

34. For the reasons given above I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice and as corrected. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Appeal B

35. For the reasons given above I conclude that the appeal should be allowed.

D Fleming

INSPECTOR