



Appeal Decision

Site visit made on 18 March 2025

by **David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 April 2025

Appeal Ref: APP/U2750/W/24/3357329

Birchwood Lodge, Market Weighton Road, Barlby, Selby YO8 5LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Condor Engineering Group Ltd against the decision of North Yorkshire Council.
 - The application Ref is ZG2024/0889/S73.
 - The application sought planning permission for erection of two buildings for use as E(g)(iii) industrial workshops following demolition of an existing building used for B8 storage without complying with a condition attached to planning permission Ref 2021/0349/FUL, dated 11 October 2021.
 - The condition in dispute is No 05 which states that: *The development hereby approved shall be used in association with Condor Projects Ltd & Condor Aviation International Ltd only. The building shall only be occupied in connection with the existing business on site hereby approved and not sold off separately.*
 - The reasons given for the condition is: *To avoid the establishment of additional businesses on site outside development limits; to comply with the terms of the application as submitted; and to comply with Policy EMP9 of the Selby District Core Strategy.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of two buildings for use as E(g)(iii) industrial workshops following demolition of an existing building used for B8 storage at Birchwood Lodge, Market Weighton Road, Barlby, Selby YO8 5LE in accordance with the application Ref ZG2024/0889/S73, without compliance with condition number 05 previously imposed on planning permission Ref 2021/0349/FUL dated 11 October 2021 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the plans/drawings listed below:
 - Location Plan - 21-106 S-002 Rev A
 - Existing Site Plan - 21-106 S-001 Rev A
 - Existing Building Plans and Elevations - 21-106 S-003 -
 - Proposed Site Plan - 21-106 P-001 - REV A
 - New Workshop Proposed Plans and Elevations - 21-106 P-002
 - 2) The materials to be used in the construction of the external surfaces of the proposed development hereby permitted shall be as stated on the application form:
 - Walls - Larch cladding
 - Roof - Green roof
 - Doors - Grey aluminium doors/ windows

Only the approved materials shall be utilised and the green roof shall be maintained for the lifetime of the development.

- 3) The development hereby approved shall be used for Use Class E(g)(iii) industrial processes only, and for no other purpose, 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). Which would be restricted to uses which can be carried out in any residential area without detriment to its amenity and not give rise to noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- 4) A scheme of surface water drainage should be submitted to and approved by the local planning authority prior to the development first being first brought into use. This should include details of discharge rates, the existing surface water discharge and details of the Sustainable Drainage System - SUDS (Combined Systems) and any surface water to adjacent watercourse. No building hereby permitted shall be brought into use until the surface water drainage works have been implemented in accordance with the approved details.
- 5) The development hereby approved shall be carried out in accordance with the mitigation measures as set out within the Preliminary Bat Assessment June 2021.
- 6) No building hereby permitted shall be brought into use until details have been submitted to and approved in writing by the local planning authority for the parking of vehicles, for the loading and unloading of vehicles, and for vehicles to turn so that they may enter and leave the site in forward gear. No building hereby permitted shall be brought into use until the parking, loading/unloading and manoeuvring areas have been implemented in accordance with the approved details, and those areas shall thereafter be kept available at all times for those purposes.

Application for Costs

2. An application for costs was made by Condor Engineering Group Ltd against North Yorkshire Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the disputed condition is reasonable and necessary, having regard to development plan policy and highway safety.

Reasons

4. The proposal relates to the demolition and redevelopment of an existing storage building to provide 2 buildings for use as Class E(g)(iii) of the Use Classes Order, which relates to any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area.
5. Although the proposal relates to an existing business use, the appeal site is located outside of the development limits of the development plan, and is considered to be in the countryside for planning policy purposes.

6. The Council considers that the removal of Condition 05 would result in a speculative development more akin to development at an allocated employment site and not a site within the open countryside. Furthermore, it submits that no details of the end occupier have been provided. The reason for refusal refers to Policy EMP9 of the Selby District Core Strategy which relates to proposals for the expansion and/or redevelopment of existing industrial and business uses outside development limits.
7. However, Policy EMP9 refers to the redevelopment of existing industrial and business uses (my emphasis) rather than specific businesses. In that respect, the proposal relates to the redevelopment of a business use and therefore complies with Policy EMP9. As the proposal complies with Policy EMP9 the disputed condition does not meet the tests of necessity and relevance to planning as set out in paragraph 57 of the National Planning Policy Framework (the Framework).
8. In any event, the Planning Practice Guidance (the Guidance) sets out that a condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. The effect of Condition 05 is to limit the use of the proposal to a particular company, and is therefore clearly contrary to the Guidance and would not meet the test of reasonableness of paragraph 57 of the Framework.
9. In respect of the second reason for refusal, Policy EMP9(1) sets out that the proposal should not create conditions prejudicial to highway safety. The appeal site is accessed from the A163 which I saw was well-trafficked with vehicles travelling at high speeds. The access to the site is relatively convoluted, with a vehicular entrance in one location, and a separate vehicular exit via a shared route.
10. The original planning permission was part of the operation of the wider site and would have provided for the parking of vehicles, loading and unloading, and turning space for vehicles so that they may enter and leave the site in forward gear. The appeal proposal would enable a separate business to be introduced onto the site, and given the sensitive nature of the access and the relationship with other uses in the area it would be necessary to ensure that appropriate parking, loading and manoeuvring space is provided. Based on the evidence before me, the appeal site and adjacent land are under the appellant's control. This would enable the provision of parking, loading and manoeuvring space to be addressed by condition.
11. The Council refers to Policies SP2 and SP13 of the Selby District Core Strategy 2013, and questions whether the proposal would contribute towards or improve the local economy and employment opportunities. However, even if the proposal would not contribute to the local economy and employment as a result of this appeal, in granting planning permission the Council has relied on a planning condition which is clearly inappropriate as set out in the Guidance. The retention of this condition cannot therefore be justified even given the provisions of Policies SP2 and SP13.
12. The Council also considers that the proposal cannot be considered to be well designed. However, although of a simple utilitarian appearance, the proposal would represent a visual improvement compared to the existing building. In any event it has not been demonstrated that matters of character and appearance are

relevant to the occupancy of the building in the case of the appeal before me. Reference has been made to a separate Section 73 application relating to variations in the plans and materials. However, this is a separate matter to be addressed by the Council, and does not fall within the remit of this appeal.

13. I conclude that the condition limiting the occupation of the proposal to a particular business is not reasonable or necessary given that development plan policy relates to the use of land rather than a specific business. Furthermore, the Guidance is clear that a condition limiting the benefit of the permission to a company is inappropriate. Concerns in respect of highway safety can be addressed by condition. The proposal would therefore not conflict with Policy EMP9 of the Core Strategy or the Framework in respect of building a strong, competitive economy and highway safety.

Conclusion and Conditions

14. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition, but adding and substituting others as well as restating those undisputed conditions that are still subsisting and capable of taking effect.
15. A condition requiring the development to be carried out in accordance with the approved plans is appropriate in the interests of certainty. A condition in respect of materials is required in the interests of character and appearance. Exceptionally, due to the proximity to residential uses, a condition limiting the use of the proposal is required in the interests of the living conditions of nearby residents. I have amended the wording of this condition to refer to the Use Classes Order. A condition in respect of surface water drainage is necessary in the interests of sustainable drainage and flood risk. A condition requiring compliance with a preliminary bat assessment is required in the interests of nature conservation and protected species.
16. I have amended the wording of the condition in relation to a scheme of surface water drainage to ensure implementation. For the reasons stated previously, I have also added a condition in respect of parking, loading and manoeuvring space for vehicles in the interests of highway safety. The appellant and the Council were given the opportunity to comment on these conditions.
17. For the reasons given above the appeal should be allowed.

David Cross

INSPECTOR