The Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2013

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 January 2014

Appeal Ref: APP/Y3805/A/13/2202779
Unit 2, 23 Dolphin Road, Shoreham-by-Sea, West Sussex, BN43 6PB.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Hargreaves Management against the decision of Adur District Council.
- The application Ref AWDM/0616/13, dated 8 May 2013, was refused by notice dated 12 July 2013.
- The application sought planning permission for the erection of a building for the service and repair of motor vehicles, without complying with a condition attached to planning permission Ref SU/159/90/TP/XX, dated 25 September 1990.
- The condition in dispute is No.2 which states that: Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, the premises shall be used solely for servicing of vacuum pumps with a technical laboratory and ancillary offices and for no other purpose without the prior written permission of the Local planning Authority.
- The reason given for the condition is: To safeguard the residential amenities of the adjacent houses to the west.

Application for Costs

1. An application for costs was made by Hargreaves Management against Adur District Council. That application is the subject of a separate decision.

Procedural matters

2. The description for the 1990 planning permission Ref. Ref SU/159/90/TP/XX is lacking in that it does not state the full nature of the proposal, which was the erection of a building for the service and repair of motor vehicles, without complying with a condition attached to planning permission Ref. SU/180/71 (restricting use of industrial building to vehicle repairs and servicing). In the interests of precision and to avoid any future confusion I have described the Appeal proposal as "the erection of a building for the service and repair of motor vehicles, without complying with a condition attached to planning permission Ref SU/159/90/TP/XX, dated 25 September 1990."

3. Planning permission was originally granted for the Appeal premises in 1971. The description for the development was *erection of a building for the service and repair of motor vehicles* and condition No.6 restricted the use of the premises to motor vehicle repairs and servicing and for no other purpose. The

reason for this condition was to comply with the terms of the Industrial Development Certificate. In 1990 application SU/159/90/TP/XX sought to remove this restrictive condition. In allowing that application and granting a new planning permission the Council imposed the occupancy condition the subject of this Appeal.

Decision

4. The appeal is allowed and planning permission is granted for the erection of a building for the service and repair of motor vehicles, without complying with Condition 2 attached to planning permission Ref SU/159/90/TP/XX at Unit 2, 23 Dolphin Road, Shoreham-by-Sea, West Sussex, BN43 6PB in accordance with the application Ref AWDM/0616/13 dated 8 May 2013 without compliance with condition No. 2 previously imposed on planning permission Ref SU/159/90/TP/XX, dated 25 September 1990 and subject to the conditions set out in the schedule attached to this statement.

Main Issues

5. The first main issue is whether the removal of condition 2 would represent a fundamental alteration to the use of the premises. The second main issue is the effect of the proposal on the living conditions of the occupiers of the adjacent dwellings to the west, with particular to regard to noise, disturbance and fumes.

Reasons

The approved use

6. The Council has referred to paragraph P72.06 of the Encyclopedia of Planning Law and Practice, which relates to conditions imposed under Section 72 of the Act. It advises that conditions should not be imposed where they would fundamentally alter a proposal. Hence none of the conditions attached to the 1971 and 1990 approvals should have fundamentally changed the nature of the 1971 proposal.

7. The Appeal application was made under Section 73 of the Town and Country Planning Act 1990 which deals with proposals for the development of land without complying with a condition previously imposed. The consideration of such applications is restricted to the conditions the subject of the S.73 application. New conditions can be attached which take a different approach to overcoming the problem, which the condition the subject of the application sought to address. However, any decision reached on the S73 application leaves the original permission intact and un-amended. In effect a new permission is created and the Appellant can choose whether or not to implement the new permission.

8. In relation to the Appeal scheme this would mean that the premises could be used for the use set out in the description of the 1971 proposal. As such the Appeal proposal would not constitute a fundamental alteration to the original proposal. It should be noted that condition No.6 of the 1971 approval and condition No.2 of the 1990 approval were not part of the original proposal, they purely imposed restrictions on it.

9. For these reasons I conclude on this main issue that the Appeal proposal would not constitute a fundamental change to the original proposal.

Living conditions

10. The reason for imposing the original occupancy condition in 1971 was to comply with the terms of the Industrial Development Certificate, the contents of which are not stated. However the reason for imposing the occupancy condition in 1990 was clearly to protect the living conditions of the occupiers of the dwellings to the west. These dwellings still exist and planning policies at all levels continue to seek to ensure that the living conditions of residents are not subject to significant adverse impacts such as noise.

11. At the same time the National Planning Policy Framework (NPPF) states that the Government is committed to securing economic growth and that the planning system does everything it can to support sustainable economic growth.

12. The industrial land at Dolphin Road is identified in the Adur Local Plan as suitable for Class B2 industrial uses, subject to local environmental considerations. However policy AE2 of the Local Plan states that in relation to proposed developments in close proximity to residential areas, their use will be restricted to Class B1 uses.

13. The Appeal premises back onto a row of dwellings to the west of the site. However, the Appeal premises have planning permission and were constructed for general industrial use in the early 1970s and they have been used for general industrial purposes since then. From the evidence submitted both the original and present uses of the premises fall within Use Class B2. Thus the proposal is not seeking to introduce a new use class activity on the site. Notwithstanding this, it is important that the living conditions of local residents are protected from significant adverse effects.

14. Paragraph 87 of Circular 11/95 advises that conditions which remove permitted development rights or the future change of use which the Use Classes Order would otherwise allow, should only be allowed in exceptional circumstances. Such conditions would be considered unreasonable unless the uses excluded would have serious adverse effects on amenity or the environment, that there were no other forms of control and that the condition would serve a clear planning purpose.

15. Paragraph 89 of Circular 11/95 goes on to advise that where it is necessary to restrict noise emitted from an industrial site, condition(s) which address the problem can be used, rather than one restricting permitted uses.

16. The condition the subject of this Appeal restricts the use of the premises to a single business activity. Whilst the purpose of the condition is to safeguard the living conditions of the occupants of the dwellings to the west, the condition does not restrict the noise, activity, hours of operation, fumes, odour, or traffic generated by that business activity in any way.

17. The Appellant has suggest the imposition of a condition which would ensure that the noise generated by any future occupants of the premises did not exceed the noise levels currently generated by the existing occupants, when

measured from the boundary with the adjacent residential properties during the daytime. At night the maximum permitted noise level would be 10 dB below the existing noise levels. The Appellant has also suggested conditions which restrict commercial deliveries and collections; the filling and collection of waste skips and refuse; and external working.

18. Not only are these conditions specific and comply with the tests and advice in Circular 11/95, they would afford the occupants of the dwellings to the west more protection than the current condition and greater certainty regarding the impact of any future use of the premises. At the same time these alternative conditions would enable the Appellant to attract a variety of new potential occupants for the premises, which would potentially benefit the local economy and provide local employment. The conditions would be readily understood by any potential occupants of the site and they would be precise and enforceable.

19. The Council has suggested a number of conditions, some of which duplicate those suggested by the Appellant and are addressed above. The suggested condition regarding outside storage is necessary to protect local residents from disturbance caused by excessive activity outside the building and visual harm resulting from external storage. A condition which controls the introduction of new extraction plant fixed to the exterior of the building is also necessary. This is to prevent fumes, smell and unsightly structures which could harm the living conditions of local residents. Finally, subject to the noise level condition suggested by the Appellant there would be no need for all external doors to remain shut during the operating hours of the occupants.

20. The Appellant has suggested the imposition of a condition to secure an increase in height of the boundary fence between the yard area and the dwellings to the west to restrict noise levels. However provided the site was subject to the suggested maximum noise level condition I consider that this condition would not be necessary. In addition, due to the potential visual impact of any new and taller fence it is something that would need to be made the subject of a planning application.

21. Finally, bearing in mind the authorised use of the premises falls within Use Class B2, to restrict the occupation of the premises to Class B1 uses only would be unreasonable and would change the nature of the original proposal. Subject to the above conditions it would also be unnecessary.

22. For these reasons I conclude on this main issue that the proposal would not harm the living conditions of the occupants of the dwellings to the west provided conditions are imposed as set out above. The scheme would therefore comply with the NPPF and the objectives of policies AG1 and AE2 of the Local Plan, which seek to provide satisfactory living conditions for local residents.

Other matters

23. Concern has been expressed by a local resident that the proposal would involve the demolition of a wall. The proposal does not include the demolition of any walls.

24. The Council's consideration of and decision made in relation to the Appeal application is inconsistent with that taken in relation to a comparable proposal

at Unit 1, 23 Dolphin Road. Whilst I have come to a different view on the merits of the Appeal proposal, the Council has explained the reason for this inconsistency. At the same time it is noted that Unit 1 is adjacent to just two dwellings and thus the use of the two industrial buildings are not directly comparable in relation to the potential impact on the living conditions of local residents.

Conclusion

25. Having regard to the conclusions on both main issues, the Appeal is allowed.

Elizabeth Lawrence

INSPECTOR

Conditions schedule

1) The rating level of all fixed plant and machinery installed at the site shall not exceed 62 dB LAeq1hr between 0700 and 2300 daily and 52dB LAeq5min between 2300 and 0700 hours when measured or calculated at the boundary of the site with the residential properties in Corbyn Close. The measurements and assessment shall be made according to BS 4142:1997.

2) There shall be no deliveries or collections of goods to and from the site between 18.00 hours and 07.30 hours.

3) No external working shall take place anywhere on the premises to which this permission relates, except the unloading and loading of vehicles, and all working shall be confined to the buildings.

4) Waste skips and other refuse receptacles within the outside curtilage of the building shall not be filled between 18.00 hours and 08.00 hours. Waste skips or other refuse collections shall only occur between 08.00 hours and 18.00 hours.

5) No raw materials, finished or unfinished products or parts, crates, packing materials or waste shall be stacked or stored on the site except within the building or storage areas, details of which shall be approved in writing by the local planning authority.

6) No mechanical extraction plant or external plant shall be installed except in accordance with details of equipment, type of machinery that it will serve, location, type of extraction, means of ventilation, location of ducting, which shall be submitted to and approved in writing by the local planning authority. These details shall include an acoustic assessment and sound insulation measures found to be necessary by the local planning authority.