APPEAL BY HARGREAVES
UNIT 2, 23 DOLPHIN ROAD, SHOREHAM-BY-SEA, WEST SUSSEX, BN43 6PB

GROUNDS OF APPEAL

1) The appeal premises is an industrial building forming part of the extensive Dolphin Road industrial estate in Shoreham. It was initially constructed, by the present appellant, Hargreaves, pursuant to a planning permission granted in 1971 under reference SU/180/71, for:
"*Erection of a building for the service and repair of motor vehicles*".
Condition 6 of that permission stated "
"The building shall be used for motor vehicle repair and servicing purposes and for no other purpose".

2) Planning permission was subsequently granted for "*Removal of Condition 6 of SU/180/71 (restricting use of industrial building to vehicle repairs and servicing*)" under reference SU/159/90 dated 25 September 1990. That permission was in turn subject to a condition (No 2), which provided 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 purposes without the prior written permission of the Local Planning Authority*".

3) The premises have, since the 1990 planning permission, been occupied by Edwards High Vacuum whose business is the development and manufacture of vacuum pumps. The company is in the process of relocating this part of its operation to a new location elsewhere and will be vacating the premises in September 2013.

4) Hargreaves owns a substantial number of buildings within the Dolphin Road Estate, including the appeal premises, and the adjoining unit to the north which shares its access from Dolphin Road with the appeal premises. Hargreaves wishes to let the premises to a new occupier following the departure of Edwards. As it is unlikely that any new industrial occupier would be in the specialized vacuum pump business, so that its occupation would not be consistent Condition 2 of the 1990 planning permission, application was made under section 73 of the 1990 Act for planning permission for the use of the building without compliance with that condition.

5) The appeal application was made under S73 of the Town and Country Planning Act 1990. In dealing with a S73 application, the local planning authority is required to confine its consideration to the conditions attached to the previous planning permission. It is not entitled to completely rewrite the original permission, but new or different conditions may be attached where necessary and justified.

6) In considering the appeal application, the Council initially stated, in an email dated 18 June 2013 from its planning officer, that it had "... *no issue with the removal of this restrictive condition in principle*". However, the Council's final decision was, surprisingly, to refuse to delete Condition 2 of the 1990 permission. By retaining the condition, the Council has effectively prevented the beneficial re-occupation of the building, shortly to be vacated by Edwards, thereby undermining local economic activity.

7) The original planning permissions authorised industrial use of the building. This permitted use is not limited to uses falling within Class B1 of the Use Classes Order and it seems clear that the previous uses (by Edwards and the previous motor

vehicle use), did not fall within that Use Class. The Council initially suggested the attachment of a condition to limit the use to purposes falling within Class B1 of the Use Classes Order, but finally did not proceed on this basis.

8) As a matter of national policy, any condition must accord with the guidance in Circular 11/95 and paragraph 206 of the NPPF. In this way conditions must be necessary, relevant to planning and to the development to be permitted, enforceable and reasonable in all other respects. The reason give for the attachment of condition 2 of the 1990 permission was "*To safeguard the residential amenities of the adjacent houses to the west*". However, it is not clear how limiting the permitted use to "*servicing of vacuum pumps with a technical laboratory and ancillary offices*" would achieve that stated purpose. Nor is it clear that any harm to the living conditions of nearby residences would necessarily be caused by removal of the condition limiting the use to that associated with vacuum pumps (as opposed to some other product line).

9) No physical development is involved in the S73 application, which simply sought to remove the restrictive condition, which is tantamount to a personal user restriction. The effect of retaining the condition is severely to constrain the attractiveness of the industrial building to the market. The beneficial reuse of the existing industrial building is clearly something that would be conducive to fostering economic development and sustainable development. Unnecessarily constraining such reuse, which is the effect of the Council's refusal of the application, is wholly contrary to the objectives of the NPPF, particularly those set out in paragraphs 18 to 21.

10) Paragraph 21 of the NPPF explains that:
"Investment in business should not be overburdened by the combined requirements of planning policy expectations. Planning Policies should recognise and seek to address potential barriers to investment ..."
The Council's decision to refuse the appeal application runs counter to this objective.

11) It is also appropriate for there to be consistency of decision making on planning matters. In this regard, a similar application to that which is the subject of this appeal was made to the Council to delete a personal occupancy condition attached to a planning permission relating to the adjacent building to the north. Edwards had also been in occupation of that building but had previously vacated it. Planning permission was granted on that application (reference AWDM/0952/12 dated 9 October 2012). The Council's inconsistent treatment of the appeal application is both illogical and unjustified.

12) It appears that potential noise disturbance to residential properties to the west may be the underlying reason for the Council's refusal to agree to the deletion of the condition at issue. In its email of 18 June, the Council suggested that a condition should be attached to limit the use of the building to B1 purposes. However, its decision on the application did not follow this initial indication. In any event, in this context, paragraph 89 of Circular 11/95 makes clear that :
"It would not be right to use a condition restricting uses where an alternative, more specific, condition would achieve the same end (for example, where it is necessary to restrict the volume of noise emitted from an industrial site, and a condition addressing the problem expressly can be used, that condition should be imposed, rather than one restricting the permitted uses)".

13) In relation to conditions restricting uses, including changes that would be otherwise allowed by the General Permitted Development Order, paragraph 87 of Circular 11/95 explains that:

"Save in exceptional circumstances, conditions should not be imposed which restrict either permitted development rights granted by development orders or future changes of use which the Use Classes Order would otherwise allow. The Secretaries of State would regard such conditions as unreasonable unless there were clear evidence that 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."

There is no such evidence in this case.

14) The Council's email of 18 June suggests that policy AE2 of the Adur District Local Plan would support the approach of limiting the use of the appeal building to B1. The Local Plan is, however, outdated, having been adopted in 1996. Little weight can be attached to its provisions in the light of the guidance in paragraph 215 to the NPPF. In any event, there is no evidence to suggest that continuation of a use of an industrial character unconnected with vacuum pumps would necessarily be harmful in noise or other terms. Nevertheless, other legislative and common law provisions are available to control any potential noise or other disturbance. In this context, paragraph 22 of Part 1 to the Annex to Circular 11/95 explains that "*A condition which duplicates the effect of other controls will normally be unnecessary*".

15) The retention of the condition attached to the 1990 permission is unnecessary and unreasonable. Retention has the likely effect of preventing the beneficial economic use of the long established industrial building. This is clearly at odds with the objectives of fostering economic growth and sustainable development. The Council's refusal of the appeal application was contrary to established policy, unsupportable and unreasonable.

16) For all these reasons, the appeal should be allowed, and permission should be granted for the development permitted by planning permission reference SU/159/90 dated 25 September 1990, without compliance with condition 2 of that permission.

RJH July 2013