



Appeal Decisions

Site visit made on 19 February 2008

by Sean Slack BA LLB DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquires@pins.gsi.
gov.uk

Decision date:
10th March 2008

Appeal Ref: APP/J1915/C/07/2058087

**Unit 2 Haslemere Industrial Estate, Pig lane, Bishops Stortford, Herts
CM23 4GB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr N C Johns against an enforcement notice issued by East Hertfordshire District Council.
- The Council's reference is E/07/0312/A.
- The notice was issued on 5th October 2007.
- The breach of planning control as alleged in the notice is the change of use of land from class B1/B8 to Class B2 (vehicle servicing and repairs), without planning permission.
- The requirement of the notice is to cease the Class B2 use of the land.
- The period for compliance with the requirement is 28 days.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal on ground (a) succeeds and the enforcement notice is quashed. Planning permission is granted on the deemed application subject to conditions as set out in the formal decision

Appeal Ref: APP/J1915/A/07/2060747

**Unit 2 Haslemere Industrial Estate, Pig lane, Bishops Stortford, Herts
CM23 4GB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr N C Johns against the decision of East Hertfordshire District Council.
- The application Ref 3/07/1214/FP, dated 6th June 2007, was refused by notice dated 22nd August 2007.
- The development proposed is Change of use from Class B8 (storage and distribution) to Class B2 (vehicle servicing, repairs and MOT testing).

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions as set out in the formal decision

Procedural matters

1. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Appeal on ground (a), the deemed application and section 78 appeal

2. Under a ground (a) appeal it is claimed that planning permission ought to be granted for the development to which the notice relates. The application
-

deemed to have been made under section 177(5) is to permit use of the building at Unit 2 for vehicle servicing and repairs (Class B2 General Industry).

3. Having regard to the statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 the appeals turn on whether the building is suitably located for car repairs and servicing having regard to its location close to dwellings on Proctors Way where possible problems could arise through noise and disturbance.
4. The appeal concerns the use of Unit 2 within the Haslemere Industrial Estate for a use within Class B2 of the schedule to the Town and Country Planning (Use Classes) Order 1987. The Industrial Estate is identified as an employment site in policy BIS9 of the adopted East Hertfordshire Local Plan. Policy EDE1 permits Class B1 and B2 uses on employment sites and Class B8 use where the site is well related to the transport network. Policy ENV24 requires noise generating development to be designed and operated so as to minimise possible nuisance to neighbouring occupiers. The policy lists such matters as the proximity of existing or proposed noise sensitive developments (such as housing) and the duration and character of the noise, as considerations in assessing proposals. Policy ENV25 states that noise sensitive development should not be exposed to noise nuisance from existing noise generating sources.
5. National policy guidance in PPG4, Industrial and Commercial Development and Small Firms, is also relevant. The guidance states that planning permission should normally be granted for small scale business development unless there are specific and significant objections, such as a relevant development plan policy, unacceptable noise, smell, safety and health impacts or excessive traffic generation. Where there are planning objections, attempts should be made to overcome them by imposing conditions on the grant of planning permission or by seeking a planning obligation, rather than refusing permission.
6. The use of the appeal site for a general industrial use would appear to be in accordance with the adopted development plan policy EDE1. National policy guidance in PPS1 states that where the development plan contains relevant policies, applications for planning permission should be determined in line with the plan, unless material considerations indicate otherwise. In this case, a material consideration is the possibility of noise nuisance, to residents on Proctors Way, from the appellant's servicing and repair activities.
7. The Council have not submitted any evidence regarding complaints concerning noise from Unit 2 or taken noise level readings to establish background levels in the area and their sources. The Council's Environmental Health Unit were consulted on the planning application and referred to a number of historical and current nuisance complaints relating to noise and odours. It is not clear if this refers to the whole industrial estate or this particular unit. On my site inspection, I requested that tools were dropped inside the appeal building (with doors open) to assess impact noise emissions, from Proctors Way. Against fairly constant background noise levels, it was not possible to distinguish any additional noise as a result of that exercise. I also saw that there was considerable activity from other units in the Industrial Estate in particular the use of fork lift trucks loading and unloading outside the buildings. I am

satisfied that this could be heard from the rear gardens of nearby dwellings and could result in some loss of amenity.

8. Although there could be noise and disturbance from the movement of vehicles and testing of engines at Unit 2, I am satisfied that so long as the normal repair and servicing facilities take place inside the building and that working takes place during usual business hours there should be no undue loss of amenity to nearby residents. These restrictions on business activity can be made subject to reasonable conditions as suggested by the Council and the appellant. Having regard to the construction of the building and its siting in relation to the nearest dwellings, I do not consider it necessary to impose a condition requiring insulation of the building as suggested by the Council. Subject to the conditions referred to above, the appeal on ground (a) can succeed. I shall grant planning permission on the deemed application and allow the section 78 appeal.

Representations from residents on Proctors Way

9. I have also had regard to a number of letters from the residents association and individual occupiers who have voiced concerns on various grounds including existing noise and odour levels, increased traffic congestion and the storage and use of gas cylinders and chemicals associated with use of the appeal site. Residents are also concerned that a general industrial B2 use on this site could cover a range of activities that could have an adverse impact on the enjoyment of their dwellings and that granting permission could set a precedent for the change of use of other units on the industrial estate for similar purposes.
10. I appreciate that the concerns of residents about the effect of noise, odours and fire risks are genuinely held. However, taking into account all the circumstances relative to this development, in particular that the appeals involve a unit within an established industrial estate, I conclude that the concerns about noise and other matters do not justify dismissing the appeals. Having regard to the original planning permission granted in 1976, I also consider that the appeal premises had the benefit of a general industrial use when first used for the manufacture of joinery and furniture products.

Formal Decision

11. For the reasons given above, I determine the appeals as follows;

Section 174 Appeal against the Enforcement Notice: APP/J1915/C/07/2058087

I quash the enforcement notice and grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the use of premises for Class B2 (vehicle repairs and servicing), at Unit 2, Haslemere Industrial Estate, Pig Lane, Bishops Stortford, subject to the following conditions;

- 1) No vehicle servicing or repairs nor the use of any power tools shall take place or be operated outside the building at any time and the use shall not operate outside the following hours; 8.00am to 6.00pm on weekdays and 8.00am to 2.00pm on Saturdays.

- 2) The premises shall be used for vehicle servicing and repairs including MOT testing and for no other purpose (including any other purpose in Class B2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

**Section 78 Appeal against the refusal of Planning Permission
APP/Q5300/A/06/2014718**

12. I allow the appeal and grant planning permission for the use of premises for Class B2 (vehicle repairs and servicing including MOT testing), at Unit 2, Haslemere Industrial Estate, Pig Lane, Bishops Stortford, subject to the same conditions as the application deemed to have been made under section 177(5) of the Act.

Sean Slack
Inspector