

PLANNING APPEAL DECISION

Lead Officer – Tony Pomfret, Development Control Manager.

To inform Members of a recent appeal decision on land to the rear of 127 Frizington Road, Frizington.

Recommendation: That the decision be noted in the context of the Council's local plan policies and also in relation to performance monitoring.

Resource Implications: None

1.0 SUPPORTING INFORMATION

- 1.1 Planning permission was granted on this site in 1995 (4/95/0098/OF1 refers) for a joinery workshop and storage building. This approval was granted on the basis that the workshop was to be used for the applicant's hobby and not for any business use.
- 1.2 Following correspondence with the Council's Planning Enforcement Officer, an application was then submitted in July 2010 to rectify a breach of planning consisting of running a joiner's business from the site.
- 1.3 Planning permission for the change of use to a joiner's workshop was granted on 14 October 2010. However at the Planning Panel meeting on 13 October 2010 the decision was reached that the site is not considered suitable for the business currently being undertaken due to the nature and scale of it, in close proximity to residential properties. Therefore to allow the applicant a suitable time period to find alternative premises to continue running the business, the following condition was imposed on the permission: -

"This permission shall expire on 31 October 2011. The use shall cease and all buildings and any associated structures shall be removed from the site on or before this date and the land restored in a manner to be agreed in writing with the Local Planning Authority."

1.4 The reason given for this condition was:-

“The Local Planning Authority does not consider the site to be appropriate for permanent commercial use of the scale and nature as currently exists, which is considered at variance with Policies EMP 5 and DEV 6 of the adopted Copeland Local Plan 2001 – 2016.”

1.5 A subsequent appeal against this decision has been allowed, as the Inspector has determined to vary the condition. This means that the condition on the permission now states as follows:-

“The use hereby permitted shall cease and all materials and equipment brought onto the premises in connection with the use shall be removed on or before 31 October 2011.”

1.6 This varies the condition so that the use is still required to cease operations from the site by the end of October but that the applicant is no longer required to remove the building from the site. The Inspector has reached this decision as she considered that the use has outgrown its location, but as the application is for a change of use it is unreasonable to expect the applicant to remove the buildings.

1.7 A copy of the Inspector's decision letter is attached.

Contact Officer: Simon Blacker, Planning Officer.

Background Papers: Planning application file 4/10/2298/OF1



Appeal Decision

Site visit made on 1 July 2011

by Alison Roland BSc DipTP MRTPI

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

Decision date: 5 August 2011

Appeal Ref: APP/Z0923/A/11/2150889

Stable Yard, to rear of 127 Frizington Road, Frizington, Cumbria, CA26 3QY.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr G Chapman against the decision of Copeland Borough Council.
 - The application Ref: 4/10/2298/0F1, dated 5 May 2010, was approved on 14 October 2010 and planning permission was granted subject to a condition.
 - The development permitted is change of use to joiner's workshop (retrospective).
 - The condition in dispute is No 1 which states that: *"This permission shall expire on 31 October 2011. The use shall cease and all buildings and any associated structures shall be removed from the site on or before this date and the land restored in a manner to be agreed in writing with the Local Planning Authority"*.
 - The reason given for the condition is: *"The Local Planning Authority does not consider the site to be appropriate for permanent commercial use of the scale and nature as currently exists, which is considered at variance with Policies EMP 5 and DEV 6 of the adopted Copeland Local Plan 2001-2016"*.
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Procedural Matters

1. There is a discrepancy in the submitted plans insofar as the 1:2500 site plan has the application site red edge around the joiners workshop building only, with the remainder of the site coloured blue. In contrast, two further site plans indicate the entire site, including the yard and a separate building in the red edge. The parties agreed at the site visit that the application only centred on the joiners workshop and not the separate building to the East, (the use of which is not clear, but it is apparently subject to investigation by the Council). This appears to be the basis on which the application was determined and I shall thus determine the appeal likewise.
2. The yard area is indicated in both the red and blue edges of the plans cited above. However, it was clear from my visit that it is used in association with the joiner's workshop, with stacks of timber products sited thereon. I shall therefore determine the appeal on the basis that the yard is an integral part of the proposed use.

Decision

3. The appeal is allowed and the planning permission Ref: 4/10/2298/0F1 for change of use to joiner's workshop (retrospective) at Stable Yard, to rear of 127 Frizington Road, Frizington, Cumbria, CA26 3QY, granted on 14 October 2010 by Copeland Borough Council is varied by deleting condition 1 and substituting for it the following condition:
 1. The use hereby permitted shall cease and all materials and equipment brought on to the premises in connection with the use shall be removed on or before 31 October 2011.
4. The views of local residents and other interested parties have been taken into account in reaching this decision.

Main Issue

5. The main issue in this appeal is the implications of the proposal for the living conditions of nearby residents.

Reasons

6. The building the subject of this appeal stands to the immediate rear of a terrace of three houses. To the South is a detached House known as Cragg View, to the East is a scrap yard and to the North is a tyre fitting business. Whilst the area is undeniably mixed in character, the fact remains that the site closely abuts the rear of Nos 127 to 129 Frizington Road. The rear of these properties and their gardens stand cheek by jowl with the site and there will be clear views therefrom across the building and associated yard area. The latter is used to store timber and fencing products and whilst these appeared to be neatly stacked at the time of my visit, they would in my view, appear intrusive to the occupants of those properties, especially the materials stored in the narrow strip of land between the building and the gardens.
7. The scale of the use, with a sizeable building and what is described as two staff in addition to the appellant, is likely to generate significant noise and activity, both from vehicles loading up and leaving site, the movement of materials within the yard area and the operation of machinery within the building. This is likely to be especially intrusive in the summer months when gardens may be more frequently used and windows in the houses are more likely to be open. The building appeared to be insulated internally with plasterboard. However, a neighbouring resident has referred to noise from machinery when the door is left open, as well as unsightly storage of materials on top of buildings/containers and unloading of vehicles by fork lift truck on the public footpath.
8. Whilst the appellant claims that customers do not visit the site, the presence of signage advertising the business and advising visitors to "ring the bell" would tend to suggest otherwise and this would add to the intrusion associated with the use. I understand the appellant's mother owns No 127 Frizington Road and that may explain the absence of complaint from that particular property.

9. I understand that the appellant has occupied the site for many years and he secured permission in 1995 for a smaller joinery workshop, but the Council say that that approval was granted on the basis of a hobby use only. Whilst I fully appreciate the mixed character of the locality and what appeared to be a sizeable scrap yard use to the East, I nonetheless consider that the scale of the use and its juxtaposition so close to existing dwellings, mean that it has outgrown its location.
10. The appellant suggests a personal condition would control the nature of the use. However, the advice in Circular 11/95 is that these should only be used exceptionally. I do not consider a personal condition would overcome the harm I have identified. Such a condition would be inappropriate in any event, as there are two members of staff employed at the site in addition to the appellant.
11. The appellant points out that it would be prohibitively expensive to relocate to an alternative site. I have some sympathy with that position, but it was made clear in the original temporary consent that the use was not considered appropriate on a permanent basis.
12. Overall on the main issue, I conclude that the proposal if allowed to continue, would be likely to unacceptably harm the living conditions of nearby residents. This would bring it into conflict with Policy DEV 6 of the Copeland Local Plan which seeks to ensure amongst other things, that development by design and choice of location maintains reasonable standards of general amenity. It would also conflict with Policy EMP 5 which seeks to ensure that employment uses are appropriately scaled relative to their location. Whilst the proposal is not in itself excessively large, it has outgrown its location adjacent to residential property.
13. The original permission granted was on the basis of a change of use. However, the condition in question goes further than the terms of that permission, because it also requires the demolition of buildings and restoration of the site. I consider that is unreasonable and fails to meet the relevant test in Circular 11/95. Both parties were canvassed in relation to this issue and neither had any objection to removing reference to demolishing the buildings and restoration of the site. However, it is appropriate to require that all materials and equipment associated with the use be removed from the site on cessation of the use.

Other Matters

14. The Council claim the proposal fails to provide a safe and convenient access or appropriate and safe provision for car parking as required by Policy DEV 6. Visibility emerging from the site access is restricted by the dwellings to the West, but the access is wide and it would be possible to emerge from it at the northern end where sightlines are better. Moreover, there is no suggestion that the use of the access, which has subsisted for some time, has caused any particular road safety problems. In relation to car parking, this appears to take place on an informal basis on the side street which affords access to the site. It is not clear why this is considered unsafe. However, vehicles manoeuvring thereon would be directly to the side of No 127 Frizington Road which contains several facing windows and a door. This

would be likely to be a cause of disturbance to existing and future occupiers of that property, which adds to my concerns above.

ALISON ROLAND

INSPECTOR