

RAPLEYS

**Implications of the Use Class Order Changes
Lidl Great Britain Ltd**

**APPEAL AGAINST REFUSAL OF PLANNING PERMISSION FOR
A NEW DISCOUNT FOODSTORE (FULL) AND NEW AND
RETAINED EMPLOYMENT PROVISION (OUTLINE) AT
WOLF BUSINESS PARK
ROSS-ON-WYE
HR9 5NB**

February 2021

Appeal ref: APP/W1850/W/20/3244253



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QUALITY ASSURANCE

This report has been prepared within the quality system operated at Rapleys LLP according to British Standard ISO 9001:2008.

Created by:	Joshua Ambrus MPLAN MRTPI joshua.ambrus@rapleys.com
Signature:	
Checked by:	Daniel Wheelwright BA (Hons) MA MRTPI daniel.wheelwright@rapleys.com
Signature:	

1 INTRODUCTION

- 1.1 This position statement has been prepared on behalf of Lidl Great Britain Limited ('Lidl') in respect of planning appeal APP/W1850/W/20/3244253 against refusal of Planning Application Ref. P190114/O for:
- Full planning permission for the demolition of two existing buildings and erection of a new Lidl foodstore (Use Class A1) with associated car park and landscaping and a new access to new employment units to the south at Wolf Business Park; and
 - Outline planning permission for the erection of new employment floorspace (under Use Classes B1/B2/B8) and associated works
- 1.2 The purpose of the position statement is to set out the Appellant's view of the implications to this appeal from the changes to the Town and Country Planning (Use Classes) Order 1987 (UCO) via the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.
- 1.3 The amendments to the UCO came into effect on 1st September 2020 and are considered to be of direct relevance to this appeal.
- 1.4 The remaining Sections of this position statement are set out as follows:
- Section 2 - outlines the amendments to the UCO;
 - Section 3 - identifies the planning history and established uses of the Site; and
 - Section 4 - sets out the Appellant's view of the implications of the findings of Sections 2 and 3.

2 AMENDMENTS TO THE USE CLASS ORDER 1987

- 2.1 The Government introduced changes to the Town and Country Planning (Use Classes) Order 1987 (UCO) via the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. The amendments became effective from 1 September 2020.
- 2.2 The key change was the creation of a new Class E - 'Commercial, Business and Service' which has amalgamated the following uses:

Table 2.1: Composition of Use Class E - Commercial, Business and Service

Use (from 1 September 2020)	Previous Use Class	New Use Class
Shops	Class A1	Class E
Financial and Professional Services	Class A2	Class E
Food and drink	Class A3	Class E
Businesses	B1a (Offices), B1b (Research and Development) B1c (Light industrial)	Class E
Non-residential institutions (Clinics, health centres, day nurseries, day centre)	Class D1	Class E
Assembly and Leisure (Gyms and indoor recreation)	Class D2	Class E

- 2.3 As Table 2.1 demonstrates, Class E represents a significant consolidation of formerly separate classes within a single use class. It is considered that the change represents one of the most significant changes to the Use Class Order in a generation combining retail, service, food and drink, business, non-residential institutions and indoor recreation uses within the same class. A summary of the Use Class Order is provided in Appendix 1 for completeness.
- 2.4 Section 55 (2) (f) of the 1990 Planning Act - 'Meaning of Development' is clear that it is not 'development' for existing land or buildings to be used for a purpose within the same Use Class. As such, the new single Class E is intended to offer a high degree of flexibility in adapting to changing market conditions because of the wide variety of uses falling within it. In addition, it should be noted that the UCO amendments have no geographical restriction and have effect across England, whether in-centre or in an out-of-centre location.

OTHER CONSEQUENTIAL EFFECTS

- 2.5 The UCO amendments referred to above also brought into effect transitional arrangements to the referencing of Use Classes within The Town and Country Planning (General Permitted Development) (England) Order 2015 (GDPO). This is because the GDPO - which has not yet been amended - still refers to the pre-September 2020 Use Classes in relation to what constitutes a permitted change between classes. The transitional arrangements therefore seek to cover the period until the 31 July 2021, when it is likely that the GDPO will be updated to reflect the changes to the UCO.
- 2.6 These transitional arrangements are relevant to this appeal in terms of the extant permitted changes and are discussed in Section 4.

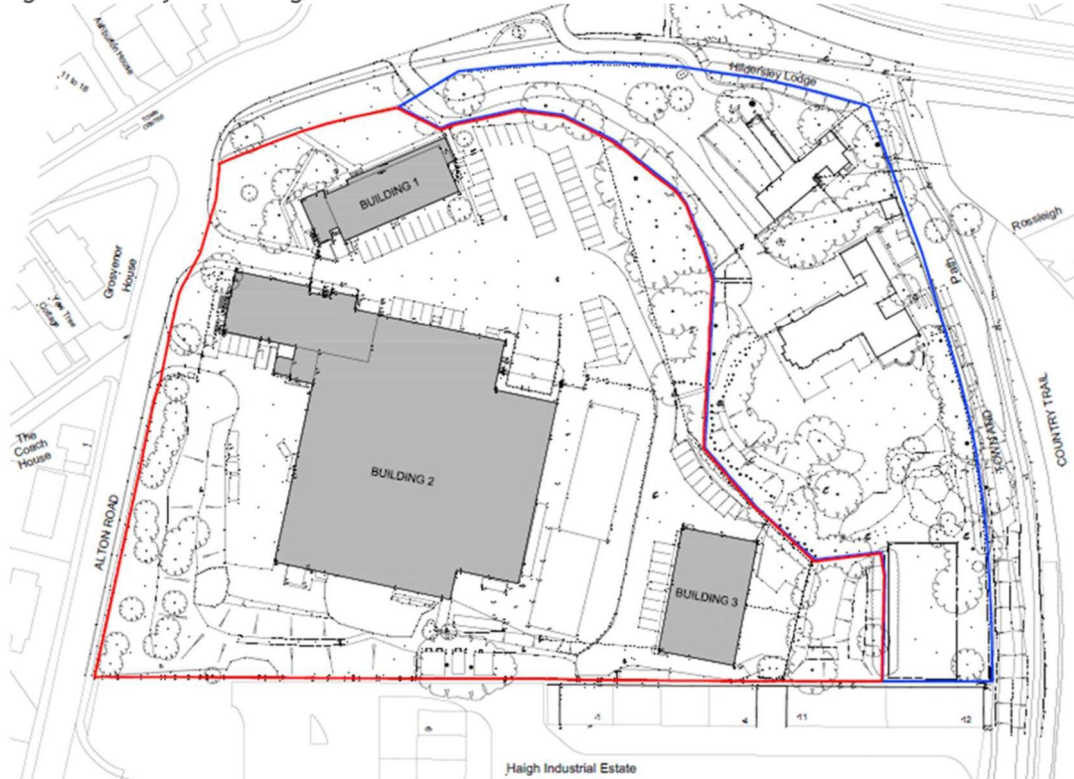
3 PLANNING HISTORY AND CURRENT ESTABLISHED USES ON THE APPEAL SITE

3.1 There are two elements to confirming the established uses on the site:

- The planning history of the site; and
- The current or last occupants of the various units / buildings.

3.2 We accordingly take these in turn. This Section refers to 'Buildings 1, 2 and 3'. To be clear on which building is being referred to figure 3.1 below provides a annotated plan of the existing building arrangements.

Figure 3.1: Key of Building Number and Locations



3.3 As Building 3 is proposed to be retained for employment uses, we therefore focus on Buildings 1 and 2.

PLANNING HISTORY

3.4 Following the introduction of the UCO amendments, the Appellant requested the full planning history of the Appeal site from Herefordshire Council. Given the age of the buildings, this needed to be undertaken via a planning search. The relevant decision notices were sent to the Appellant and a summary table is provided in Appendix 2 in terms of the chronology, description of development and associated reference numbers.

3.5 To that end, we have reviewed the decision notices associated with the implemented planning permissions present on site.

3.6 The first planning permission in 1954 has no description of development or any associated plans. Therefore, it's not possible to know what the approved development actually was (or indeed to confirm the Use Class) in this instance - though it is assumed to be Building 1 (though this was later changed by planning application no.35535 (detailed below)). Building 2 was approved under planning permission no. 18084 (1963) for B2 and B8 Use Classes.

Lastly Building 3 was approved under planning permission S2001/1068/F (2001) for B1 and B2 Uses.

- 3.7 As noted above, whilst the planning history is helpful in understanding the approved uses for Buildings 1 and 2, it is also essential to consider the current or last uses of the Units within Buildings 1 and 2 in relation to the relevant floorspace which falls within Use Class E.

ESTABLISHED USES WITHIN THE BUILDINGS ON SITE

- 3.8 Table 3.1 below provides the schedule of units (including floorspace breakdown) within both Building 1 and 2 in relation to the current or last occupation of the unit, where vacant.
- 3.9 As noted above, we do not provide the schedule for Building 3, as this is proposed to be retained for employment floorspace.
- 3.10 Adding the total floorspace within the new Class E provides the following:
- Building 1 Use Class E floorspace - 6,117 sq. ft (**563 sq.m**)
 - Building 2 Use Class E floorspace - 6,729 sq. ft (**625 sq.m**)
- 3.11 Accordingly, a total of **1,188 sq.m** of (in effect unrestricted) floorspace across Buildings 1 and 2 falls within Use Class E, which includes the sale of retail goods. This compares to the level of retail floorspace proposed under the appeal of 1,325 sq.m net sales area (2,127 sq.m gross internal area).

Table 3.1 - Schedule of Units and Use Classes

BUILDING 1	Size sq.ft	Current Occupier	Original Land Use Class	Use Class (Sept.20 onwards)	Occ. since
A/B (GF)	420	Vacant (Previously architects)	A2	E	N/A
Showroom (GF)	3232	Coppice Old Pine	A1	E	12/2010
Office 1 (FF)	170	Vacant (Previously office)	B1	E	N/A
Office 2 (FF)	199	Paterson Equine	B1	E	08/2016
Office 3 (FF)	223	Vacant (Previously office)	B1	E	N/A
Office 4 (FF)	283	East Recruitment	B1	E	03/2015
Office 5-7 (FF)	585	Caple Security Services	B1	E	04/2009
Office 8 (FF)	306	Vacant (Previously office)	B1	E	N/A
Office 9 (FF)	306	Vacant (Previously office)	B1	E	N/A
Office 10 (FF)	240	Vacant (Previously office)	B1	E	N/A
Office 11 (FF)	153	Vacant (Previously office)	B1	E	N/A
BUILDING 2 (Unit 3)	Size sq.ft	Current Occupier	Use Class	Use Class (Sept.20 onwards)	Occ. since
Storage (GF)	1005	(Vacant) was R.A.G.S (B/F)	B8	B8	
Office 1-7(GF)	2722	New Horizon Centre CIC	B1	E	11/2017
Office 8 (GF)	187	(Vacant) was R.A.G.S (B/F)	B1	E	01/2017
Office 9 (GF)	187	(Vacant) was R.A.G.S (B/F)	B1	E	01/2017
Office1 (FF)	275	Vacant (Previously office)	B1	E	N/A
Office 2 (FF)	275	Vacant (Previously office)	B1	E	N/A
Office 3 (FF)	275	Vacant (Previously office)	B1	E	N/A
Office 4 (FF)	1412	Vacant (Previously office)	B1	E	N/A
Office 5 (FF)	337	Vacant (Previously office)	B1	E	N/A
Office 6A (FF)	160	Vacant (Previously office)	B1	E	N/A
Office 6B (FF)	240	Vacant (Previously office)	B1	E	N/A
Office 7 (FF)	285	Vacant (Previously office)	B1	E	N/A
Office 8A (FF)	187	Vacant (Previously office)	B1	E	N/A
Office 8B (FF)	187	Vacant (Previously office)	B1	E	N/A
Unit 1	14,137	(Vacant) was R.A.G.S. UK (B/F)	B8/B2	B8/B2	12/2014
Unit 2/A	4,678	(Vacant) was R.A.G.S. UK (B/F)	B8	B8	12/2014
Unit 2/B	170	(Vacant) was R.A.G.S. UK (B/F)	B8	B8	12/2014
Unit 2/D	2,600	(Vacant) was R.A.G.S. UK (B/F)	B8	B8	12/2014
Unit 2/D Offices	462	Millennium Glass & Glazing	B2	B2	01/2014
Unit 2/F	1,550	(Vacant) was R.A.G.S. UK (B/F)	B8	B8	12/2014
Unit 2/E	1,550	AMC Plant Machinery	B8/B2	B8/B2	01/2013
Unit 2/C	1,550	Alan Keef	B8	B8	01/2001
Unit 2/E	1,550	AMC Plant Machinery	B8/B2	B8/B2	01/2013

TRANSITIONAL GDPO PERMITTED CHANGES WITHIN USE CLASSES

- 3.12 As described in Section 2, transitional arrangements for permitted development rights (as set out in the 2015 GDPO) remain in place until 31 July 2021. It is also likely that permitted development rights of a similar nature will be in effect after this period as part of any revised GDPO.
- 3.13 Under the existing (transitional) permitted development rights, it is permitted for buildings currently falling within Use Classes B2 and B8 to change use to B1 floorspace up to a maximum of 500 sq.m (per building). As former Use Class B1 now falls within Use Class E, this allows an additional 500 sq.m of existing floorspace to be occupied under Use Class E without requiring planning permission. This is relevant only to Building 2 in this instance where there is at least 500 sq.m Use Class B2/B8 floorspace. The addition of a further 500 sq.m of Use Class E on this basis could combine with the existing Building 2 floorspace within Use Class E identified above (625 sq.m). Therefore, this leads to a combined figure of 1,125 sq.m floorspace within a single building that could be lawfully occupied under Class E without requiring planning permission.

Table 3.2: Summary of Class E Floorspace

Building	Floorspace that can be occupied without planning permission under Use Class E Floorspace (sq.m)
Building 1	563
Building 2 (625 + 500)	1,125
TOTAL	1,688

- 3.14 As can be seen from Table 3.2, a total of 1,688 sq.m of existing floorspace can be occupied across Buildings 1 and 2 under Use Class E, without requiring planning permission. This exceeds the net sales retail floorspace of the proposal (1,325 sq.m) by 363 sq.m. Even if Building 2 is considered on its own, it can accommodate up to 1,125 sq.m of floorspace falling within Use Class E without requiring planning permission.

CONSIDERATION OF ANY RESTRICTIONS OF USE BY CONDITION

- 3.15 In addition to the above, it is necessary to consider whether there are any relevant restrictions by condition to a specific use or any other type of restriction which interferes with the UCO amendments identified in Section 2.
- 3.16 The only land use class restriction in any of the approved planning permissions is the 1973 planning application ref. 35535 (approved in 1973 for 'retail sales from the showroom'). In this case a condition was applied stating that the approved retail sales area (comprising the majority of the ground floor of Building 1) was restricted to a temporary period of 7 years. After the expiry of the 7-year period, the retail use was meant to lapse.
- 3.17 However, it is evident from the occupancy of this floorspace, that the cessation of the retail use did not occur. Indeed, it is clear that a period of well over 10 years has elapsed with this use. Thus the retail use of this floorspace is fully established.

4 IMPLICATION OF USE CLASS E IN RELATION TO THE APPEAL

4.1 Having regard to Sections 2 and 3, we set out the Appellant's position with regard to this appeal. This involves two aspects:

- Impact on the principle of development; and
- The fall-back position.

4.2 We take these in turn.

PRINCIPLE OF DEVELOPMENT

4.3 the Appellant considers that the UCO amendments substantially alter the principle of development on a number of key matters set out in the RFRs. Specifically:

- RFR1 - Principal of retail development in this location (including retail impact and sequential tests;
- RFR6 - Loss of employment land (Policies E2 and E5); and
- RFR 7 - Lack of a satisfactory Section 106 legal agreement securing the development of employment floorspace, prior to occupation of the foodstore.

RFR 1

4.4 Section 3 in Table 3.2 demonstrates that a total of 1,688 sq.m of existing floorspace can be occupied across Buildings 1 and 2 under Use Class E, without requiring planning permission. This exceeds the net sales retail floorspace of the proposal (1,325 sq.m) by 363 sq.m. Furthermore, if Building 2 is considered on its own, it can accommodate 1,125 sq.m of Use Class E floorspace also without requiring planning permission. Therefore, the principle of retail development in this location has already been established and that it is not under the Council's control to limit this. The level of retail floorspace that can be achieved without planning permission can exceed the net sales area of the proposed store by 363 sq.m. This only serves to bolster the Appellant's arguments already articulated in the various appeal documents, that the site is an accessible location, that there are no other sequentially preferable sites and that the proposal will not result in a significant adverse impact of Ross-on-Wye Town Centre.

RFR 6

4.5 Similar to RFR 1, the Council is not able to protect employment land falling within (or able to transfer to) Use Class E, which includes a wide range of non-employment uses. Therefore, the loss of employment land required to accommodate the proposed foodstore cannot be controlled by the Council in any case as it doesn't constitute development. This scale of lost employment floorspace is broadly equivalent to the proposed foodstore.

4.6 Furthermore the outline element of the proposed development provides 2,799 sq.m of new purpose built employment provision. As such, the Appellant considers that the proposal therefore protects employment land provision (including the new build element) and thus is consistent with Policy E2 of the Core Strategy, as far as the Council is able to control it.

4.7 Overall - and indeed as intended by the Government introducing the UCO changes - the proposal will lead to the beneficial redevelopment of a legacy employment site which is necessary to secure its long-term future.

RFR 7

4.8 It follows from RFR6 that as the Council cannot control the loss of employment floorspace outlined in Section 3, it is no longer appropriate to secure the completion of the proposed employment floorspace prior to the occupation of the proposed foodstore. Therefore, it is not possible for a legal obligation to satisfy the Regulation 122 tests of The Community

Infrastructure Levy Regulations 2010 (as amended) which require that obligations must satisfy all three of the following:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

4.9 It is self-evident that the principle of development has fundamentally changed in that it isn't necessary to make the development acceptable - as it relates to an element that is beyond the control of the planning authority.

4.10 It is considered by the Appellant that the principle of development is therefore established (and cannot be controlled) against these key policy areas. As such, it is considered no longer necessary to enter into a legal obligation for the provision of employment floorspace in the terms previously outlined by the Council.

'FALL-BACK' POSITION.

4.11 Following on from Sections 2 and 3, it is clear that a significant proportion of existing floorspace can be utilised as retail floorspace without requiring planning permission at a total of 1,688 sq.m. Indeed, in relation to Building 2 alone up to 1,125 sq.m could be utilised for retail floorspace within a single building which is only 200 sq.m less than the proposed net sales retail floorspace. Indeed, as internal reconfiguration to form a larger unit is not 'development' and does not require planning permission, then it is clear that a sizable amount of floorspace can be occupied for retail floorspace without requiring planning permission. Therefore, it is clear from recent Appeal Decisions that this represents an entirely credible 'fall-back position' and should be afforded significant weight in the decision-making process.

4.12 We attach a recent appeal decision (Appeal Ref: APP/V5570/W/19/3243073) which concludes that a fallback position in relation to the UCO changes is afforded '*considerable weight*' (paragraph 9 of the Appeal Decision)

CONCLUSION.

4.13 On the basis of this position statement, the Appellant therefore considers that the UCO amendments (alongside the GDPO transitional arrangement arrangements) substantially alter the principle of development, particularly in relation to the Council's position around the proposal's policy compliance on protection of employment uses and retail impact. The UCO changes mean that the Council cannot control the loss of unrestricted existing employment sites to non-employment uses (within Use Class E). Therefore, the requirement for an obligation requiring the completion of the employment floorspace prior to the occupation of the foodstore can no longer be substantiated in accordance with the Regulation 122 planning obligation tests.

4.14 Indeed, the UCO changes were specifically brought in by Government to provide the necessary flexibility for vacant and under-utilised sites and buildings to be redeveloped for productive uses. Notwithstanding that, it is important to note that the proposal does include 2,779 sq.m of new purpose-built employment floorspace which is likely to be more attractive to potential occupiers. However, this employment floorspace can only come forward when there is clear demand from potential occupiers, particularly in the current economic climate. Therefore, for this reason and those outlined above it is unreasonable and inconsistent with the planning obligation tests to require that the Appellant enter into a Section 106 agreement for securing employment floorspace.

Use Classes Order Guide (England)
As of 1st September 2020



Use	Up to 31 August 2020	From 01 September 2020	
Shops Retail warehouse Hairdressers Undertakers Travel and Ticket Agencies Post Offices Pet Shops Sandwich Bars Showrooms Domestic Hire Shops Dry Cleaners Funeral Directors Internet Cafes	A1 Shops	Class E – Commercial Business and Service	
Financial services such as banks and building societies Professional services such as estate and employment agencies (excluding Health and medical services)	A2 Professional & Financial Services		
Sale of food and drink for consumption on site Restaurants Cafes Snack Bars	A3 (Restaurants and Cafes)		
Pub or drinking establishment	A4 (Drinking Establishments)		
Takeaway	A5 (Hot Food Takeaways)		
Offices Research and development of products and processes Light industry appropriate in a residential area	B1 Business		
Clinics Health Centres Creches Day Nurseries Day Centres	D1 – Non-residential institutions		
			Sue Generis
			Sue Generis
			Sue Generis

Use	Up to 31 August 2020	From 01 September 2020
Schools	D1 – Non-residential institutions	F1 – Learning and Non-Learning Institutions.
Art Galleries (other than for sale or hire)		
Museums		
Libraries		
Halls		
Places of Worship		
Church Halls		
Law Court		
Cinemas	D2 – Assembly and Leisure	Sue Generis
Music and Concert Halls		
Bingo Halls		
Dance Halls (not nightclubs)		
Gymnasiums	D2 – Assembly and Leisure	Class E – Commercial Business and Service
Indoor sports and recreation (except for motorsports, or where firearms are used)		
Hall or meeting place for principle use of the local community	D2 – Assembly and Leisure	F2 – Local Community Uses
Swimming Pools (indoor or outdoor)		
Skating Rinks		
Outdoor sports and recreation (except for motorsports or where firearms are used)	A1 - Shops	
Shops (not more than 280sqm mostly selling essential goods, including food and at least 1km from another similar shop.		

CONTACT

rapleys.com 0370 777 6292
info@rapleys.com

London

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Use Classes Orders with No Change

Use	From 01 September 2020
Use for industrial process other than one falling within Class B1 (excluding incineration purposes, chemical treatment or landfill or hazardous waste)	B2 – General Industrial
Storage and Distribution Centres (including open air storage)	B8 – Storage and Distribution
Hotels, boarding and guest houses (where no significant element of care is provided)	C1 – Hotels
Residential accommodation and care to people in need of care, residential schools, colleges or training centres, hospitals, nursing homes	C2 – Residential Institutions
Single person, or family houses	C3 – Dwelling houses
Small shared houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom	C4 – Small Houses in Multiple Occupation

Notes:

- This advice note is intended as general guidance to the Use Class regulations in England.
- Reference should be made to the appropriate sections of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 and the Town and Country Planning (Use Classes) Order 1987.
- For the purposes of the Use Classes Order, if a building or other land is being used for the purpose of Use Classes A1, A2, A3 or B1 on 31 August 2020, that building or other land is to be treated, on or after 01 September 2020, as if it is being used for a purpose specified within Class E (Commercial, business and service).
- Changes of use within the same Use Class are not taken to involve development and therefore do not require planning permission.
- Until 31 July 2021, references to Use Classes in the General Permitted Development (England) Order (GPDO) 2015 (as amended) shall be construed as references to the Use Classes which were specified in the Use Class Order on 31 August 2020 (i.e. the previous use classes). Please refer to Rapleys' Use Class Order Guide as of 24 March 2020 for further information relating to permitted development rights.
- Transitional arrangements apply to planning applications submitted on or before 31 August 2020. Contact Rapleys' Town Planning Team for further information and clarification.

CONTACT

rapleys.com 0370 777 6292
info@rapleys.com

London

Birmingham

Bristol

Cambridge

Edinburgh

Huntingdon

Manchester

APPENDIX 2

SUMMARY OF PLANNING HISTORY

Application REF.	Decision	Decision Date	Description of proposal	Proposal Use Class Pre-1st September 2020	Proposal Use Class Post-1st September 2020	Net floorspace restrictions	Land Use Restrictions
4642	Approved	07/10/1954	N/A	N/A	N/A	N/A	N/A
15819	Approved	07/09/1963	The extension of a factory for the storage and assembly of tools.	B2, B8	B8, E(g)(iii)	2,474 sq. m	N/A
18084	Approved	30/09/1964	The erection of a double garage.	Sui Generis	Sui Generis	N/A	N/A
34636	Approved	10/08/1972	The erection of a dwelling house adjacent to Wolf Garden Tools.	C3	C3	N/A	N/A
35535	Approved w/ Con.	07/05/1973	Use of existing showroom and office block to include retail sales at Alton Lane, Ross-on-Wye	B1, A1	E(g), E(a)	N/A	Restricted to B1 and A1 uses as office and retail showroom.
SH870940PF	Approved	18/08/1987	Erection of warehouse for storage of garden tools and lawnmowers adjacent to existing factory for wolf tools.	B8	B8	N/A	N/A
DCSE2003/2333/F	Approved	25/10/2003	Unit 3 change of use to offices.	B1	E	N/A	N/A
SE2001/1068/F	Approved	16/07/2001	Erection of 2 no. light industrial factory units, including offices, toilets and associated external works	B1, B2	E(g), B2	N/A	N/A
SE2002/3667/F	Approved	14/02/2003	Change of use from B1 to B8 storage, warehousing and distribution of plumbing products with ancillary trade counter.	B8	B8	N/A	N/A

Appeal Decision

Site visit made on 14 September 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2020

Appeal Ref: APP/V5570/W/19/3243073

137 Stroud Green Road, Islington, London, N4 3PX

- 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 Yuksel Irfan against the decision of the Council of the London Borough of Islington.
 - The application Ref: P2019/2532/FUL dated 15 August 2019, was refused by notice dated 1 November 2019.
 - The development proposed is change of use of the existing ground floor shop (A1) into a restaurant (A3) with a single storey rear extension.
-

Decision

1. The appeal is allowed, and planning permission is granted for change of use of the existing ground floor shop (A1) into a restaurant (A3) with a single storey rear extension at 137 Stroud Green Road, Islington, London, N4 3PX in accordance with the terms of application Ref: P2019/2532/FUL dated 15 August 2019, subject to the conditions set out in the schedule attached.

Procedural Matter

2. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the Town and Country Planning (Use Classes) Order 1987, amending the system of use classes. The amendments include the creation of a new Commercial, Business and Service use class (Class E). The new Class E incorporates previous use classes A1, A2, A3, B1, some of D1 and D2. The Council and appellant have been provided with an opportunity to comment on this matter.
3. During the determination of the application, the appellant submitted plans to amend the original scheme to (amongst other things) omit a proposed extractor flue on the side of the appeal site building. It is clear from the Council's delegated report and decision notice that they have determined the appeal on the basis of the amended scheme, and so shall I.

Main Issue

4. The main issue is the effect of the proposed development upon the vitality and viability of Finsbury Park Town Centre.

Reasons

5. The appeal site comprises a vacant retail unit together with a rear green space in a secondary frontage in Finsbury Park Town Centre. Policy DM4.4 of the Development Management Policies Local Plan (June 2013) (the DMPLP) explains the Council will seek to maintain and enhance the retail and service function of its town centres. Development is required to contribute positively to the vitality and viability of the centre and provide a variety of retail units. Policy 4.5 of the DMPLP requires within the secondary frontages the general retail (use class A1) character will be retained while permitting a limited number of non-retail units. Proposals to change the use of a retail premises will not be permitted unless all five of the listed policy criteria are satisfied.
6. The Council's most recent survey of this secondary frontage indicates only around 21% of the units are an A1 use and approximately 33% are in A3 use. The appellant's own survey suggests a significantly higher percentage of units are in an A1 use (61%). However, the appellant's classifications suggest other uses such as those in A2 use have been integrated into the 'retail' category. Based upon my visit the Council's survey is more reflective of the frontage and there is a shortfall in requirement to retain approximately 50% of the frontage as A1. Therefore, the proposal would not meet criterion i) of DM4.5.
7. At the time of my visit the unit immediately adjoining the south east of the appeal site was in an A2 use and the unit next to it was a sui generis use. Therefore, the proposal would result in a break of more than 2 non-retail units. Therefore, the proposal would conflict with criterion (ii) of DM4.5. Criterion (iii) requires a continuous vacancy and marketing period of 2 years. The unit has been vacant since June 2019 so it does not meet criterion iii). Therefore, the proposal does not meet the first three criteria of Policy DM4.5.
8. However, new Regulations amend the system of Use Classes to create a new broad 'Commercial, business and service' use class (Class E). This incorporates shops (Class A1), financial and professional services (Class A2), restaurants and cafés (Class A3), offices and other business uses (Class B1), some non-residential institutions e.g. nurseries and health centres (Class D1), and gymnasiums and sports facilities (Class D2) into a single use class. Therefore, the proposed change no longer constitutes a change of use or an act of development, so the retail use could be lost without planning permission.
9. The premises is of an adequate size that it could accommodate a restaurant without the proposed extension. Given this, the previous marketing and the nature of the appeal proposal, I am satisfied that there is a greater than theoretical possibility of the retail premises being replaced, even if this appeal were to fail. I give this fallback position considerable weight as a material consideration that outweighs the conflict with the development plan.
10. Criterion (iv) of DM4.5 requires a proposal does not have a harmful effect on the retail function and character of the Town Centre, and its vitality and viability. The increased floorspace from the proposed development would result in the site being able to accommodate further custom at busier times and create the potential for further employment opportunities. There is no substantive evidence the extension would be detrimental to the retail function. By increasing the amount of overall floorspace by a modest amount the extension may have the effect of increasing footfall, which may have a small

beneficial effect on the retail function and vitality and viability of the town centre.

11. Some A3 uses may have closed down and I note the anecdotal views in respect of competition between businesses. The evidence does not demonstrate that the extension would result in the closure of other businesses. The proposal would provide an active frontage and would be beneficial to the secondary frontage in this regard, complying with criterion v) of DM4.5.
12. For the reasons set out above, the proposal would result in a conflict with some of the criteria set out in Policies DM4.2, DM4.3, DM4.4 and DM4.5 of the DMPLP due to the loss of an A1 use, a concentration of A3 uses in a secondary frontage and their effect upon the vitality and viability of the retail function of Finsbury Park Town Centre. However, the change of use no longer constitutes an act of development so the retail use can be lost without the need for planning permission. The changes to the use classes order outweigh the conflict with the development plan. Having regard to the effects of the proposed increase in floor space, I find the development would not be harmful to the vitality and viability of Finsbury Park Town Centre.

Other Matters

13. The Stroud Green Conservation Area (SGCA) encompasses the appeal site and many buildings and plots on the south western side of Stroud Green Road. Special attention should be given to the desirability of preserving or enhancing the character or appearance of the SGCA under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In this location the SGCA derives its significance from the linear plots with occasional mature trees, occupied by ground floor business spaces below matching pairs of three storey semi-detached buff brick buildings which have retained features such as their decorative corbelling and arched window openings.
14. To the rear many buildings including those the north west and some further to the south east of the appeal site have been extended with more modern ground floor extensions, many close to their plot boundaries. The appeal site retains some enclosed informal green space. Whilst I note the reference to a removed tree there is no substantive evidence that this or development to the rear of nearby plots is unlawful. The visibility of the green space is restricted by surrounding boundary fencing, buildings and nearby trees. It makes no discernible contribution to the significance of the SGCA.
15. The single storey flat roofed extension would be in keeping with and characteristic of a number of the premises to its north west and south east within the SCGA in terms of its height, depth, form, materials and use. It is of a height that an adequate internal height could be accommodated within the structure. The Council has suggested a condition to require the approval of extraction plant. There is no substantive evidence before me that an acceptable solution could not be found. Overall, the development would preserve the elements that make a positive contribution to the significance of the SGCA and it would preserve the character and appearance of the SGCA, and wider area.
16. Third party representations set out concerns in respect of the cumulative effect of noise and odour. The arrangements would require bins to be brought through the premises for collection. This would be the case with the current

premises and there is no evidence this would cause a problem. The conditions set out in respect of the use and storage of bins, noise and odour would ensure the development would not result in harmful living conditions in respect of noise and odour.

17. The extension would be in close proximity to neighbouring garden and premises boundaries. Given the width and depth of the neighbouring gardens and spaces, the limited height of the development, and backdrop of the historic buildings, the development would not result in harmful living conditions from being overbearing or a loss of outlook. The development would increase the amount of impermeable area on the plot. However, the Council did not set out concerns in respect of this matter and there is no substantive evidence to demonstrate that surface water drainage cannot be dealt with adequately by existing infrastructure.

Conditions

18. I have considered the list of suggested conditions provided by the Council in the context of the advice in the National Planning Policy Framework (2019) and Planning Practice Guidance. As well as the standard condition for commencement, for certainty a condition requiring the development to be carried out in accordance with the approved plans is necessary. I have omitted the reference to the Design & Access Statement and the Planning and Retail Statement as these conflict with or duplicate the application form, approved plans, and matters that are the subject of other planning conditions.
19. A condition to require the submission and approval of the extraction route is necessary to preserve the character and appearance of the Stroud Green Conservation Area and in the interests of the living conditions of occupiers of neighbouring properties. I have omitted the reference to a non-side facing extraction system, as the consideration of this is inherent in the condition.
20. In the interests of the living conditions of occupiers of nearby properties it is necessary to impose conditions to require the submission and approval of details of plant and extraction systems, as well as their noise levels and maintenance of their filter systems. For the same reasons it is also necessary to impose conditions to secure a scheme for the storage of refuse and to limit the times at which bottling out takes place.
21. The Council has recommended a planning condition to restrict the use to that of a shop or a restaurant. However, it is not demonstrated that the other uses in use class E would be harmful so as to justify withdrawing the right to use the premises as such. Therefore, the condition is not necessary or justified based upon the evidence before me.

Conclusion

22. For the reasons set out above, and having regard to all the matters raised, the appeal should be allowed, and planning permission is granted.


INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans and drawings: Location Plan, Proposed Block Plan and KL/1225-P1 Rev A.
- 3) Notwithstanding the plans hereby approved, the exact location of the extraction route shall be submitted to and approved in writing by the Local Planning Authority prior to the approved extension being operational. The details provided shall show the extraction route exiting the building. The scheme shall be implemented in accordance with the approved details prior to the approved extension being operational and shall thereafter be retained.
- 4) The design and installation of new items of fixed plant shall be such that when in operation the cumulative noise level LAeq Tr arising from the plant, when predicted and measured at 1m from the facade of the nearest noise sensitive premises, shall be a rating level of at least 5dB(A) below the background noise level LAF90 Tbg. The measurement and prediction of the noise shall be carried out in accordance with the methodology contained within BS 4142: 2014.
- 5) Prior to the extension being brought into use, a report shall have been submitted to and approved in writing by the Local Planning Authority by appropriately experienced and competent person, to assess the noise from proposed mechanical plant to demonstrate compliance with condition 4. The report shall include site measurements of the plant in-situ. Any noise mitigation measures required for compliance with condition 4 shall be installed before commencement of the use of the extension hereby permitted and shall be permanently retained thereafter.
- 6) Notwithstanding the approved plans, any flue or extraction system shall be fitted with fine filtration or Electrostatic Precipitation followed by carbon filtration (carbon filters rated with 0.4-0.8 second resistance time) or alternatively fine filtration followed by carbon filtration and by a counteractant/neutralising system to achieve the same level as above. The filter systems of the approved flue and extraction systems shall be regularly maintained and cleaned.
- 7) The development hereby permitted shall not be brought into use until details of refuse storage facilities and a refuse storage plan have been submitted to and approved in writing by the Local Planning Authority. The details shall include the location and design of the facilities and arrangement for the provision of the bins. The storage arrangements shall be implemented in accordance with the approved details prior to the extension being brought into use and shall thereafter be retained.
- 8) No bottling out at the premises shall occur between the hours of 10pm and 9am on all days of the week.

End of Schedule.