



Appeal Decision

by Richard James Bsc (Hons) Msc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 24/11/2023

Appeal reference: CAS-02680-D7G6X3

Site address: JCG Building, Milland Road Industrial Estate, Neath, SA11 1NJ

- 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 Hale Construction Ltd against the decision of Neath Port Talbot County Borough Council.
 - The application Ref P2022/0608, dated 13 July 2022, was refused by notice dated 20 December 2022.
 - The development proposed is the change of use of vacant industrial floorspace (use class B2) to provide a gym (use class D2) and a café (use class A3).
 - A site visit was made on 27 October 2023.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposed pedestrian route shown on drawing no. A185 is outside the defined application site and it is not clear therefore whether the appellant has control over this land. Nonetheless, the Council has taken this plan into account in making its decision, and I shall do the same.

Main Issues

3. These are:
 - whether the location of the proposed development would be justified having regard to local and national policies which seek to protect the employment function of existing employment areas, and which seek to direct retail and complementary uses to town centres; and
 - the effect of the proposal upon highway safety.

Reasons

4. The appeal site comprises a two-storey section of vacant B2 floorspace, within a larger employment building and includes a yard and parking area to the north. The appeal site forms part of a wider industrial estate, designated as an existing employment area by Policy EC2 of the Neath Port Talbot County Borough Local Development Plan (LDP). It is accessed via an estate road linking to the A474 to the north. A footbridge over the adjacent railway links the appeal site to the LDP's designated Settlement Limit boundary for Neath. Access is also available from the site to the adjacent canal cycle/walkway.

5. The proposal seeks to convert approximately 151m² of ground floorspace for the café and 702m² of first floorspace for the gym. A 220-space car park is proposed in the yard area, with a proposed new pedestrian walkway linking it to the building.

The location of development

6. LDP Policy EC2 states that in order to protect the employment function of the County Borough's employment areas, uses on them will be restricted in accordance with Policy EC3. Amongst other matters, LDP Policy EC3 states that where appropriate, uses within existing employment areas will be restricted to classes B1, B2 and B8; ancillary facilities or services which support and complement the wider role and function of the primary employment use; and commercial services unrelated to Class B. It requires development to demonstrate that no adverse impacts on the overall function of the employment area would be caused, that it can be sustainably justified in the proposed location and is of an appropriate scale and form to the role and function of the employment area. The supporting text states that in order to stimulate growth in the economy a wider mix of uses will be permitted, which are likely to be commercial services and complementary uses (other than uses best located in a retail centre).
7. I acknowledge the previous appeal decision (ref. APP/Y6930/A/20/3251715), where the Inspector considered the conversion of an industrial unit to a gym to represent a 'commercial service' that complied with the requirements of LDP Policy EC3. However, whilst I agree that a gym and / or café is capable in principle of being a 'commercial service unrelated to Class B', much will depend on the individual circumstances of each case. The proposal would be a large facility occupying some 850 m² of floorspace and with the potential to employ 30 full time staff. Although it is intended to provide a service to the existing employment area, it is also intended to serve the wider general public, including a client base relocated from the gym's former siting in a nearby retail park. The business model of the gym is described as a 'not for profit' organisation with a large focus on creating a community atmosphere that also provides facilities for local groups and charitable organisations free of charge. In my view therefore it would go well beyond providing a complementary role to the employment area or a 'commercial service'. In these circumstances, the proposal would result in the loss of an employment building that would undermine the function of the employment area, contrary to Policy EC3.
8. LDP Policy EC4 states that, amongst other matters, proposals which would result in the loss of employment buildings as defined in Policy EC3 will only be permitted where it complies with one of the following criteria, 1: it is demonstrated that employment uses are no longer viable or appropriate in this location; or 2: continued use for employment purposes would have unacceptable impacts on the environment, local amenity or adjacent uses; or 3: the existing space can be redeveloped for employment uses that achieve an increased level of employment combined with other appropriate uses.
9. The lack of general delivery of allocated employment land elsewhere in the Borough is reflective of a wider strategic lack of employment development. It is, nonetheless, unlikely to provide a fair and reliable comparison on which to indicate the viability of this particular employment building, for which site-specific considerations apply. I acknowledge the submitted Marketing Report, which highlights a number of factors that prevent the letting of the unit for industrial use, including its poor condition, practicality and accessibility amongst other factors. However, limited information is submitted to demonstrate that sufficient attempts have been made to attract such industrial or other suitable uses as defined under LDP Policy EC3 in the first instance.
10. The Marketing Report highlights the general availability of commercial property to lease within a 10-mile radius of the appeal site. Of the eighteen examples provided, only one is located within a similar location and of a similar floorspace to the proposal (Unit 2 Milland

Road). Whilst marketed for over 12 months, I note that some interest and an offer had been received on this unit and may, therefore, indicate demand for such premises. I have not been provided with sufficient details of this marketing exercise to indicate otherwise and given the lack of other similar examples; I place limited weight to this evidence.

11. I also have limited information on those units expected to become available in the near future, the former premises of Hale Construction or those which are vacant but not currently marketed. Whilst other leisure uses along Milland Road may be in operation, similarly, I do not know the full details relating to the particular circumstances and planning history of these examples for comparison.
12. In contrast, the Council has provided a promising outlook for the remaining adjacent Metalbox site. It highlights agreed terms for occupation, expansions of existing businesses and examples of current demand in the wider area for a range of industrial space sizes, including those similar to the appeal site. The supporting text to LDP Policy EC4 refers to the submission of evidence to demonstrate that reasonable efforts have been made to market the site for sale or lease for its existing use, to help demonstrate they would no longer be viable or appropriate. Whilst not a specific requirement in the policy wording, it is legitimate to consider supporting text as an aid to policy interpretation and application. Therefore, the lack of a specific marketing exercise for the appeal site weighs against the proposal. I accept that some of the Council's information relating to shortage of employment space is based across Wales, but on the available information, I find that there is no compelling evidence that employment uses are no longer viable or appropriate in this location.
13. I have seen little evidence to suggest that continuation of the existing employment use is unacceptable for environmental, or amenity reasons as set out in criterion 2. In respect of criterion 3, it is stated that the proposal has potential to provide 30 full time jobs, albeit the source of this data is not supported with any tangible information, nor is there an explanation of how it compares with other uses in the area and their respective floorspaces. Reference is made to the Employment Densities Guide 2010, but this has been withdrawn and does not appear to have any formal status. There is therefore little to demonstrate that the proposal would satisfy criterion 3. In the above circumstances I find that the proposal would fail to comply with LDP Policy EC4.
14. Both parties refer to Future Wales (FW) Policy 6, which has development plan status. It was also published after the appeal decision referred to above was issued. Amongst other things, FW states that significant new commercial, retail and leisure facilities must be located within town and city centres and that a sequential approach must be used to inform the identification of the best location for these developments. The supporting text to Policy 6 broadly defines developments of significant scale as where the facility will serve a town, city or region-wide catchment. Within the published Frequently Asked Questions relating to Future Wales and what is meant by 'significant', reference is also made to the consideration of the potential number of visitors and the likely distances from which visitors will be drawn. PPW also clearly states that the sequential approach applies to retail and all other uses complementary to retail and commercial centres, including for example, food and drink (A3) and leisure (D2).
15. The proposal is not a 'major' planning application, but that is not to say that it is not significant in the context of FW Policy 6. I accept that the Council has not provided any detailed reasons for why it considers the proposal to be significant in catchment terms, or why it is specifically considered to be a use best located in a town centre. Nevertheless, there is an intended wider public use proposed, with the aim of retaining the former gym's client base including charitable organisations that also used the former gym. The appellants refer to a high proportion of users of the gym and café who would be working

at the Hale's factory and adjoining businesses, however there is little substantive evidence to support this assertion. In addition, I consider that the scale of the floorspace combined with the café would result in an attractive facility that would draw customers from beyond the local area. In the absence of any tangible evidence to indicate otherwise, I consider that the proposal would be 'significant' in the terms of FW Policy 6.

16. The proposal is located in a relatively sustainable location on the edge of Neath's developed perimeter, with a good range of transport links available. It is also within the Swansea Bay and Llanelli National Growth Area. However, a sequential approach has not been carried out. Having regard to the planning policy principles of 'town centres first' I do not know therefore if the appeal site is the best location for the development. The proposal therefore conflicts with FW Policy 6, PPW, and LDP Policy SP12, which amongst other matters, seeks to enhance the vitality and viability of Neath Port Talbot's retail centres.
17. I accept that the proposal would contribute to some of the sustainable placemaking outcomes set out in PPW. However, for the reasons set out above it would fall short of the overall objective of achieving the right development in the right place. Taking all of the above into consideration, I conclude that the location of the proposed development would not be justified when taking into account national and local planning policies that seek to deliver the principles of 'town centres first', and which seek to protect the employment function of existing employment areas.

Highway safety

18. Dealing firstly with the number of parking spaces proposed, the submitted Transport Assessment refers to the maximum standards outlined within the Council's Parking Standards Supplementary Planning Guidance (SPG). It identifies an additional requirement of 78 spaces arising from the proposal. When factoring in the results of a parking survey, the appellant states that this leaves an anticipated surplus of 126 spaces at full capacity. During my site visit I saw that the area to the north was largely used as a storage yard. The unsurfaced Council car park area, which is used by Hale Construction employees, was in light use with numerous spaces available. Furthermore, the site's accessible location from a range of transport modes, with good pedestrian and cycle links available, would likely reduce private car use.
19. However, the submitted floorplans show a substantial area of industrial and office floorspace available to the appellant. Limited information has been submitted to confirm the existing parking requirements of the site, for example based on the SPG's floorspace requirements, or why these requirements would be unrealistic. The submitted parking survey provides a limited indication of current parking, which, whilst consistent with my observations on site, provides only a very short snapshot in time. I acknowledge that demand for parking will vary at different times throughout the day and that some customers will comprise on site employees. However, with the absence of baseline evidence, I am unable to confirm that the additional parking requirements of the proposal would be adequately catered for in perpetuity and would not jeopardise the wider operation of the site.
20. To the front of the proposed gym and café, the length of the parallel parking and delivery spaces is disputed between the parties. The Council contends that the operational needs of the café would not be met and that disabled parking provision should be 6% of the total parking, in accordance with the SPG. Notwithstanding the option of a single hatched area for deliveries, given the uncertainty over the existing parking requirements of the site, I am unable to confirm that these spaces could be re-purposed via a planning condition to meet such requirements.

21. Insufficient parking provision could lead to indiscriminate parking elsewhere on site. This would likely impede the free flow of industrial/employee traffic and be harmful to highway safety, for example via obstructed pedestrian walkways or vehicular routes. This could, in turn, jeopardise the future occupation of industrial floorspace by causing undesirable operational difficulties and safety concerns.
22. I found the walk from the northern car park to the building to comprise a relatively short route, that is similar to those currently walked by employees, who would also benefit from a newly designated pedestrian walkway. Furthermore, and whilst the provision of the proposed footway may be dependent on appropriate ownership consents being obtained, I saw that it would represent a logical, legible and accessible route to the car park, away from loading/unloading areas to the west. Whilst inclement weather may form a deterrent for some, this would not be sufficient to prevent the car park's general use. The car park's location to the north would not in itself, therefore, contribute to significant levels of indiscriminate parking, pedestrian deviation in pursuit of shorter routes or cause significant harm to highway safety.
23. Turning to the subsequent width of the industrial highway route and loading area, between the building and the northern car park, the appellant states that once the walkway is in place, at its narrowest point, the carriageway would be 6.3m wide when passing the stairs. The Council has not provided any cogent evidence to demonstrate that this would not meet accepted best practice standards. Whilst the Council notes the presence and number of larger vehicles on site, this in itself does not indicate harm in combination with the expected movements generated by the proposal. I also saw that the highway section into the site from the bridge has good visibility along a relatively straight road, with passing places before and after the narrowest sections. The footway distance along these sections would be short and would link to the available safe pedestrian crossing point. Pedestrians would likely be highly aware of nearby uses and associated traffic. Upon entry to the site, such road markings, newly designated pedestrian walkways and appropriate signage would also raise the awareness of drivers to the potential presence of pedestrians in the area. This element of the proposal would not, therefore, hinder the free flow of traffic or cause significant harm to highway safety.
24. These matters would not, however, outweigh the harm that would be caused by insufficient parking provision overall, which has not been suitably addressed within the submitted evidence. The proposal would therefore be contrary to LDP Policies TR2, SP20 and BE1, which amongst other matters, state that the transport system and infrastructure will be developed in a safe manner and development proposals will only be permitted where appropriate levels of parking are provided, and it would not have a significant adverse impact on highway safety. The proposal would also be contrary to the objectives of the SPG.

Other Matters

25. The proposal lies within an area at risk of flooding (Zone C2) and comprises 'less vulnerable development' as defined within Technical Advice Note 15 Development and Flood Risk (TAN 15). I note that there was no compelling objection from NRW on the basis that the proposal would result in a less vulnerable use being retained. Flood risk was not a reason for refusal and as I am dismissing the appeal on other more substantive grounds I do not seek to address this matter further.
26. The appellant has submitted a Noise Impact Assessment, which concludes that, with suitable mitigation acceptable noise and vibration impacts can be achieved. The Council does not challenge this evidence and I have no reason to disagree with its findings. This is not therefore a determining issue in this appeal.

Conclusion

27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal is dismissed.
28. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

Richard James

INSPECTOR