Planning Inspectorate

Appeal Decision

Site visit made on 2 July 2025

by E Catcheside BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2025

Appeal Ref: APP/Z3825/W/24/3357838
Hilland Farm, Hilland Road, Billingshurst, West Sussex RH14 9HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Dunmoore Group against the decision of Horsham District Council.
- The application Ref is DC/24/0726.
- The application sought planning permission for a development described as *"A Hybrid Planning application comprising: Detailed planning permission for up to 4,998sqm of B1c, B2 and B8 use floorspace, roundabout access junction from the A29, access, parking, servicing areas and associated landscaping (phase 1). Outline planning permission for up to 14,075sqm of B1c, B2 B8 use floorspace, petrol filling station with ancillary retail offer and drive through coffee unit, with all matters reserved except for access (phase 2)"* without complying with conditions attached to planning permission reference DC/21/1107, dated 11 March 2022.
- The conditions in dispute are Nos 1 and 65 which state that:
  -Condition 1: *Plans Condition: The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule below* (the schedule is set out full in condition 1 on planning permission reference DC/21/1107, dated 11 March 2022 and is not repeated here for reasons of brevity).
  -Condition 65: *Regulatory Condition: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), no change of use of the units hereby permitted from the uses granted for that unit by this permission shall take place without express planning consent from the Local Planning Authority first being obtained.*
- The reasons given for the conditions are:
  -Condition 1: "*For the avoidance of doubt and in the interests of proper planning."*
  -Condition 65: "*To ensure the development remains in employment use in accordance with Policies 7 & 9 of the Horsham District Planning Framework (2015)."*

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have not been provided with copies of the other appeal decisions that have been referred to in the evidence. Therefore, whilst I have had regard to those other decisions insofar as they have been described in the evidence, I have not referenced them directly in this decision. I have taken a similar approach to the 'case study' involving Lazari Properties 2 Ltd, which is referenced in the evidence. This is because it has not been referenced in a way that provides certainty as to which document it refers.

Background and Main Issues

3. Hybrid planning permission DC/18/2122 was originally granted for the development on 10 June 2019. The development is described as: *"A Hybrid Planning application comprising: Detailed planning permission for up to 4,998sqm of B1c, B2 and B8 use floorspace, roundabout access junction from the A29, access, parking, servicing areas and associated landscaping (phase 1). Outline planning permission for up to 14,075sqm of B1c, B2 B8 use floorspace, petrol filling station with ancillary retail offer and drive through coffee unit, with all matters reserved except for access (phase 2)"* (the development).

4. Since then, numerous other planning permissions have been granted on the site including some for the development that were considered under Section 73 of the Town and Country Planning Act 1990 (as amended) (the TCPA). The appeal relates to one such planning permission, numbered DC/21/1107, which granted the development subject to conditions on 11 March 2022 (the 2022 permission).

5. Condition 65 of the 2022 permission was carried over, unamended, from the original permission. It states:

> *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), no change of use of the units hereby permitted from the uses granted for that unit by this permission shall take place without express planning consent from the Local Planning Authority first being obtained".*

The reason given for the condition on the decision notice is:

> *"To ensure the development remains in employment use in accordance with Policies 7 & 9 of the Horsham District Planning Framework (2015)".*

6. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force (the UCO amendments). Amongst other things, the UCO amendments had the effect of deleting Class B1 from Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 (the UCO) and it created a new Class E under Schedule 2 of the UCO. Industrial processes, which previously fell under Use Class B1(c) now fall under sub-paragraph (g)(iii) of Use Class E. Class E allows for a wide range of commercial, business and service uses within a single use class, including under sub-paragraph (a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public.

7. Section 55(2)(f) of the TCPA states that the change of use of a building which is used for any purpose within a use class to another use within the same use class is not 'development' that requires planning permission. This is echoed in the UCO.

8. Permission is sought to vary condition 65. The wording suggested, as taken from the appellant's final comments document, is as follows:

> *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending or revoking and/or re-enacting that Order), or the Town and Country Planning (Use Classes) Order 1987 (or any statutory instrument revoking and re-enacting that*

Order), no unit granted by this permission shall be in use for any purpose other than for E(g)(iii), B2 or B8 use, and for no other purpose as described within Use Class E; with the exception of Plot 18, (as identified by plan RM8-LP-01) which may additionally be used for E(a) bulky goods retail use; without express planning consent from the Local Planning Authority first being obtained".

9. The appellant states that the proposed variation to condition 65 would serve two purposes. Firstly, it is stated that the condition would provide certainty that the Class E uses permitted across most of the site would be limited to those within sub-category E(g)(iii); and secondly, it would allow for plot 18 to also be used for retail, which falls under sub-category (a) of Class E. Associated amendments to the schedule of approved plans in Condition 1 is also proposed to show the location of plot 18 in the context of the proposed revisions to condition 65.

10. It is common ground that the development has commenced within phases 1 and 2. However, the part of the site that would include plot 18 has not yet been built out.

11. In its evidence, the appellant also states that condition 65, as existing, does not meet the tests for conditions set out in the Planning Practice Guidance (PPG). Accordingly, if I were minded to dismiss the appeal in respect of the proposed variation to condition 65 as set out above, I am instead invited to add a tailpiece to condition 65, which states: *"For the avoidance of doubt, this condition does not require express planning consent for a use which does not involve development under section 55(2)f of the Town and Country Planning Act 1990"*.

12. Taking all of the above into account, the main issues in this appeal are:

- whether condition 65 meets the tests for conditions set out in the National Planning Policy Framework (the Framework), with particular regard to its precision, enforceability, and reasonableness in all other respects; and
- whether the proposed variation to condition 65 falls within the scope of Section 73 of the TCPA.

Reasons

Whether condition 65 meets the tests for conditions

13. The Framework and the PPG state that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

14. In *Freddie Reid v SSLUHC & others [2022] EWHC 3116 (Admin)* (the Freddie Reid judgement), the courts noted that what can be done with the land may not be exhaustively written into the description of the development. It follows that a decision-maker must necessarily impose conditions on a planning permission should it wish to restrict a change of use from occurring that could otherwise be carried out under the provisions of the TCPA and the UCO. The PPG states that the scope of such conditions should be precisely defined, so that it is clear exactly which rights have been limited or withdrawn[1].

15. It is a matter of dispute as to whether or not a use falling within any sub-paragraph of Class E could be undertaken on the site within the parameters of the existing

[1] PPG Paragraph: 017 Reference ID: 21a-017-20190723

planning permission. It is the appellant's position that such a change of use could occur because condition 65 does not explicitly remove the rights granted under Section 55(2)(f) of the TCPA and the UCO. Therefore, it is put to me that condition 65 is not fit for purpose and that it is imprecise, unenforceable, and unreasonable.

16. The Council has previously refused an application for a lawful proposed use or development certificate (CLUD) for an 'open' Class E use on some units within phase 1 of the development, citing condition 42 of the planning permission which has identical wording to condition 65[2]. The CLUD decision was not subject to an appeal, and the merits of that decision are not before me for consideration. Indeed, it is not for me, as part of this Section 78 appeal, to establish whether or not a prospective change of use on the site without express planning permission would be lawful. That would be a matter between the parties should such a change of use occur. I have therefore focused my assessment on the issue before me, which is whether or not condition 65 meets the tests for conditions set out in the Framework and the PPG.

17. Condition 65 must be interpreted based on a natural and ordinary meaning of the words used, and in their context with the wider planning permission. In that regard, condition 65 clearly seeks to ensure there is no change of use of the units *"from the uses granted for that unit by this permission"* without express planning permission being granted. A common-sense interpretation is that the uses granted by the permission are those referenced in the description of the development as falling within Use Classes B1(c) (now E(g)(iii)), B2, and B8. Any other use, whether it would ordinarily require planning permission or not, would still amount to a change of use and I see no reason to conclude that the condition is imprecise or unenforceable, or that it does not effectively serve the purpose of defining the uses that are permitted by the planning permission and those that are not.

18. Furthermore, the reason given for condition 65 states that the condition is necessary to ensure the development remains in employment use. Whilst I have not been referred to any national or locally adopted definition of an 'employment use', I am satisfied that the purpose of the condition is to ensure the units are implemented and retained for the employment uses referred to in the description of the development. Indeed, it is clear from the evidence that the original planning permission was granted because the Council accepted that there was an identified need for the specific uses proposed. Therefore, it is not unreasonable that condition 65 should seek to safeguard the use of the site for those uses.

19. My attention has been drawn to condition 30 of the planning permission which, unlike condition 65, refers explicitly to the UCO. However, condition 30 serves a different purpose from condition 65 in that it seeks to limit the use of units 3-9 beyond those referenced in the description of the development. I am satisfied that this explains the difference in the approach taken to the two conditions which, in and of itself, does not render condition 65 unfit for purpose.

20. Taking all of the above into account, I do not find condition 65 to be vague or lacking in justification. Therefore, it is not necessary to add the suggested tailpiece to improve clarity and precision. Moreover, the suggested tailpiece would undermine the intended purpose of condition 65, which is to prevent a change of use from occurring on units within the site without express planning permission

[2] Decision reference DC/23/1263, dated 8 September 2023

first being granted, even if that change of use would not otherwise require planning permission. The suggested tailpiece would therefore be unreasonable.

21. Overall, the evidence does not persuade me that condition 65 is imprecise, unenforceable, or unreasonable; and it would not fail to meet any of the other tests for conditions set out in the Framework and the PPG.

Whether the proposed condition falls within the scope of Section 73 of the TCPA

22. In the Finney judgement[3], the Courts established that an application under Section 73 of the TCPA may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, which would include the description of the development for which the original permission was granted.

23. The description of the development on the original permission is tightly worded. Other than the ancillary offer to the petrol filling station, it does not refer to retail development but rather permits additional floorspace in Use Classes B1(c), B2, and B8 only. Given the UCO amendments, the principle of limiting Class E uses across most of the site to those falling within sub-paragraph (g)(iii) through a revised condition 65 would not create a conflict with the operative part of the permission. This is because the use of the land for industrial processes formed part of the description of the development on the original permission.

24. However, the proposal also seeks to expressly permit the use of plot 18 for retail in addition to the uses listed in the description of the development. I recognise that the UCO amendments have implications for how any implemented units could be used if it were left unconstrained by a condition on the planning permission, and this was a central finding in the Freddie Reid judgement. However, any change of use within plot 18 as may be permissible under the provisions of the TCPA or the UCO could only take place after the first use of plot 18 has begun. The evidence tells me that this has not yet occurred.

25. Therefore, the proposed variation to condition 65 would be fundamentally inconsistent with the operative part of the permission, because it would expressly permit a first use of plot 18 for retail, which would go beyond the first uses permitted in the description of the development. It would therefore alter the extent and nature of the development that has been permitted. Furthermore, the appeal scheme is different from the case considered in the Freddie Reid judgement, because it seeks a varied condition, rather than the removal of a condition.

26. Overall, and having regard to the Finney judgement, I find that the proposed variation to condition 65 falls beyond the scope of Section 73 of the TCPA. It follows that a fresh planning application would be the appropriate mechanism through which planning permission should be sought for a retail use on plot 18.

Conclusion

27. For the reasons given above, I conclude that the appeal should be dismissed.

E Catcheside
INSPECTOR

[3] *Finney v Welsh Ministers & Others [2019] EWCA Civ 1868*