

Appendix 2b

Addendum

East Area Planning Committee

11th January 2017

Application Number: 16/01726/FUL

Proposal: Change of use from Storage and Distribution (Use Class B8) to Assemble and Leisure (Use Class D2) on ground floor and Offices (Use Class B1a) on first floor. Provision of additional car parking, bin and cycle store.

Site Address: Unit 5 Ashville Way Oxford Oxfordshire
(Site Plan – Appendix 1)

Ward: Blackbird Leys Ward

Agent: Mr Michael Crofton-Briggs

Applicant: Mrs Hazel Walsh

Application Called in by Councillors Hollingsworth, Price, Clarkson and Smith. for the following reason: To allow full consideration of the relevant planning issues by Councillors.

Recommendation:

The East Area Planning Committee is recommended to REFUSE planning permission for the following reason:

- 1 The proposed development would result in the loss of a key protected employment site, which would be harmful to the range of job opportunities in the city and contrary to Policy CS28 of the Oxford Core Strategy 2026.

Background

The application site is an industrial warehouse last used for storage and distribution (use Class B8). The unit forms part of a key protected employment site, as described in the Core Strategy. These sites ensure a sustainable distribution of business premises to maintain a range of job opportunities and contribute to Oxford's economy. Permission is sought for a change of use to class D2 on the ground floor and B1a on the first floor to allow the building to be used by Cherwell Gymnastics Club as a gymnastics club, with the upper floor being sub-let for use as offices. A full assessment of the proposal is contained in the original Officer's Report, which is attached.

The application was considered at East Area Planning Committee on the 12th

October 2016. Mr Cameron Thompson of Mayfield Press spoke against the proposal, indicating that Mayfield Press wished to acquire the unit for use as part of their existing printing operation, a use consistent with the Local Development Plan.

Members voted to approve the application, but before the formal decision notice was issued, officers were made aware that a Judicial Review may be sought by a third party (Mayfield Press) to quash any decision to grant planning permission. **The formal letter before action is attached in Appendix 4.** The letter before action sets out 5 grounds for the claim that such a decision would be unlawful. These can be summarised as follows:

Grounds 1 – 3: The proposal amounts to a departure from the Development Plan which could not be justified by Policy CS21, as that policy does not apply in this case.

Ground 4. The condition personally limited to the gymnastics club was unjustified and contrary to the guidance of the National Planning Policy Framework (NPPF).

Ground 5: The proposal amounted to a departure from the Development Plan and this was not advertised in accordance with the Development Management Procedure Order (DMPO).

Officers have considered these grounds and make the following points in relation to them:

Grounds 1 - 3 Officers consider that the arguments in Grounds 1 - 3 have merit so far as they relate to not properly understanding the development plan policies and taking account of an immaterial policy. As the application is for neither replacement sports and leisure facilities lost to development elsewhere, nor facilities being provided under Policy CS17 (infrastructure and development contributions) CS21 is not a relevant policy in this case. The interpretation of planning policy is not a matter of planning judgment. The wording of policy is to be interpreted objectively and in context. Officers' advice remains that this is proposal is contrary to the development plan as explained in the original report to committee **(Appendix 2).**

Members are reminded that they are not bound to determine applications in accordance with the development plan. The development control process is however plan led and members must however properly understand the development plan departing from it only if other material considerations outweigh the plan.

The earlier committee meeting did explain why they had reached the decision by reference to the officers' reasoning then provided.

Ground 4 This ground is not considered to have substance. Members were aware of the relevant guidance. Officers do not however consider that there is a proper basis for imposition of such a condition.

Ground 5 As the application had not been advertised in the local press prior to it being considered at EAPC, this would be a basis for quashing any decision as such publicity is required by the DMPO where the proposed development does not accord

with the provisions of the local development plan, which is the case in this instance. The required notice was placed in the Oxford Times on the 17th November 2016, giving a period of 21 days (to the 8th December) for interested parties to make representations. New site notices, identifying the development as a departure from the development plan were also erected, again giving a period of 21 days to the 8th December for interested parties to make representations.

Representations received

The following representations have been received since this matter was last placed before EAPC:

Comments objecting:

Mr Andrew Smith MP: The local MP has indicated that he is sympathetic to the case made by Mr Thompson of Mayfield Press and requests that the committee give careful consideration to a number of concerns raised by Mr Thompson and summarised in Mr Smith's letter. This letter has been provided to members, but does express the MP's concerns relating to the impact on the business at Mayfield Press and prospective loss of jobs as well as the suitability of the proposed use for the site and the impact on traffic and parking.

Mr Cameron Thomson (Mayfield Press) Mr Thomson states that his company wish to acquire Unit 5 to provide accommodation for their printing operation and that such a use would accord with the local development plan. It is suggested that the extra accommodation is required because of a forthcoming merger of Mayfield Press with another print firm and that 30 Class B jobs would be provided as a result. It is further stated that Unit 5 may be the only opportunity for the company to expand in this way within the Oxford area and that if Unit 5 is not available, they may have to leave the city altogether,

Mr Thomson also raises a number of other issues relating to traffic and parking. He points out that the single yellow lines along part of Ashville Way are often occupied by workers at the BMW plant nearby and that there is considerable congestion of the road in the evenings. He suggests that the level of trips generated by the proposed use could not be accommodated within the road and that it would be disruptive to surrounding businesses. A number of photographs are provided in an attempt to support these comments.

13 Meadow Walk.
3 Hillview Road, Abingdon
22 Coltsfoot Square
8 Marjoram Close
Oxford Road Marston

The above comments can be summarised as objections to the disregard for adopted planning policy, concern over the future of Mayfield Press and its employees, and issues relating to parking pressure and highway safety.

Comments in support:

British Gymnastics Facility Development Manager: The building meets the needs of this developing club and is similar to buildings being used by hundreds of gymnastics clubs around the country.

Ward Councillor Linda Smith: In support – the building is perfect for the club, which provides first class sporting opportunities, and the accommodation is needed to expand and meet the needs of local young people. There may well be no net loss of employment and this well run club will manage transport and parking appropriately.

59 Ferry Road

3 Mark Road

65 Old Road, Marston

190 Pegasus Road

19 Sorrel Road

76 Hailey Road

Address not supplied (x2)

The above comments can be summarised as support for the gymnastics club itself, which has spent several years searching for a suitable venue within the city, and concern over the limited provision of this type of facility within the city.

Officers Assessment

Most of the issues raised in the representations received and since the application was presented to committee have been previously in the original officers' report (Appendix 2). However the following issues are further considered below:

Parking

Ashville Way is a Cul-de-sac with yellow lines controlling parking during the day. Evidence has been supplied that indicates that in the evening and overnight, much of the road is occupied by the cars of workers at the nearby BMW plant. This would restrict the parking available to users of the gym and also constricts access to the units along the road. This may be exacerbated by the vehicles serving Mayfield Press next door and those of users of the gym.

Officers accept that outside the hours of control, there may be issues of parking and access to the units along Ashville Way. However, many of these issues already exist, any occupant of the unit is likely to add to traffic along the road and officers consider that the parking and highway safety issues are not of a magnitude that would justify a refusal of planning permission. If the application were recommended for approval, a condition relating to a travel plan could be imposed to minimise the impact of the proposed use..

Employment

Limited evidence has been supplied to support the contentions of Mayfield Press that granting permission for the change of use would have a highly detrimental effect on its business and its ability to continue operating within the city of Oxford, and any commercial negotiations are beyond the scope of the planning system.

With regard to the relative number of jobs that would be provided by the different uses of the site, officers estimate that a typical Class B use might generate in the region of 7 employees, whilst the proposed split use may provide double this – 7 to the gym and (once occupied) 7 to the offices. It is noted that Mayfield Press have stated that the space is required due to a merger with another print firm and that such a use of Unit 5 would provide 30 jobs. Officers are not able to advise whether or not this is a realistic figure.

Whilst a refusal of planning permission would give no guarantee that the adjoining occupier would occupy it; that any merger would be successful; or that 30 additional employees would occupy the unit, neither is there any guarantee that the use as a gym would provide 7 jobs on a long term basis or that an occupier for the office space would be found.

What is clear is that Policy CS28 seeks to protect the type of jobs provided by Use Class B uses should be recognised as a material consideration to which substantial weight should be given.

As previously stated, officers accept that the change of use may not result in a net loss in the number of jobs provided on the site, but as the Core Strategy makes clear, smaller employment sites such as this one may offer low skilled jobs and skilled manual work which are important to particular sectors of the population. The net number of total jobs should not therefore be the prime consideration in this case, but rather the loss of key protected employment.

Conclusion:

The proposal is considered to be unacceptable in terms of the relevant policies of the Oxford Core Strategy 2026 (in particular CS28) and contrary to the development plan. There are not other material considerations applicable that, in officers' view, outweigh that non compliance. Therefore officer's recommendation to the committee is to refuse the proposed development for the reason stated.

Human Rights Act 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to refuse this application. They consider that the interference with the human rights of the applicant under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998.

In reaching a recommendation to refuse planning permission, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers: 16/01726/FUL

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Date: 15th December 2016