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# Appeal Decision

Site visit made on 18 October 2022

by **G Bayliss BA (Hons) MA MA MRTPI IHBC**

an Inspector appointed by the Secretary of State

**Decision date: 11 November 2022**

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**Appeal Ref: APP/J0540/W/22/3294694**

**17 Crowland Road, Eye, Peterborough, Cambridgeshire PE6 7TP**

- 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 Desmond Jarvis (PSSC Window Film Ltd) against the decision of Peterborough City Council.
  - The application Ref 21/00477/FUL, validated by the Council 12 March 2021, was approved on 18 January 2022 and planning permission was granted subject to conditions.
  - The development permitted is proposed workshop, store and replacement hobbies classic car garage.
  - The condition in dispute is No 10 which states that: *"The space within the building hereby approved labelled 'Workshop', on the approved drawing no.4690/2 shall be used solely for the application of window tint to motor vehicles, and the other spaces within the building hereby approved labelled 'Store' and 'Office' and 'Reception' shall remain ancillary uses for the window tinting use."*
  - The reason given for the condition is: *"In the interest of neighbour amenity, in accordance with Policy LP17 of the Peterborough Local Plan (2019)."*
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

## Preliminary Matters

3. I have made two corrections to the banner heading above, amending the site address post code to PE6 7TP (stated as PE6 7TR on the application form) and amending the company name to PSSC Window Film Ltd, (stated as PSCC Window Film LTD on the application form).
4. Whilst I note that highway safety was not stated as a reason given for Condition 10, the Council has subsequently raised highway concerns during this appeal. I note that a Unilateral Undertaking was also required to prevent the intensification of use in view of the concerns over parking and access on Crowland Road. Given the evidence before me, highway safety will form part of my assessment.

## Background and Main Issue

5. The appellant currently operates his window tint business from a garage at the rear of his residential property at 30 Crowland Road (No.30). The appellant is relocating his business to the rear of 17 Crowland Road (No.17) which will

provide a larger building, more on-site parking and better vehicle access. In view of the proximity of nearby dwellings, Condition No.10 was attached to the planning permission to restrict the commercial use to protect the nearby resident's living conditions. The area labelled 'workshop' on drawing no.4690/2 will be solely for the tinting of motor vehicles, and the parts of the building labelled 'workshop', 'store', 'office' and 'reception' will remain ancillary to the window tinting use.

6. The appellant objects to this condition, considering it to be grossly unfair and unreasonable to limit the use of the building in this way. He contends that should he cease these activities; the site and building would become useless unless a window tinting purchaser could be found. The appellant seeks to remove/have a different wording sought.
7. The main issue, therefore, is whether the existing condition is reasonable and necessary to protect the living conditions of nearby residents, with particular regard to noise and disturbance, and in the interests of highway safety.

### **Reasons**

8. The site has a dwelling fronting Crowland Road (No.17) and a yard and workshop to the rear. To the north of the appeal site are terraced dwellings, the closest is 19 Crowland Road, with its rear, linear garden running alongside the appeal site. To the south are several dwellings fronting Green Road which are set back from the road behind front gardens and sited close to the appeal site boundary, some with facing windows. On the western side is a commercial unit for BSD Engineering. Crowland Road is a busy classified throughfare and vehicle access is to the side of No.17, running to the front and side of the existing outbuilding. The yard area is enclosed by high, close boarded fencing.
9. The approved building is to be sited at the rear of the site, immediately behind the existing outbuilding and close to the northern and western boundary. It will be of brick construction with three large openings to its southern side and four parking spaces in front of these openings. The building will be divided into three main bays with one bay to be used as a hobbies unit for the occupant of No.17 in conjunction with his existing outbuilding, and the remainder will be used by the appellant for his window tinting business.
10. The appellant advises that his business, currently undertaken at No.30 is a quiet trade with most work completed on newer cars and there have been no complaints from neighbours. He advises that some of the window tinting work is also off-site on commercial premises as well as internet trade. Despite the indication that this is a quiet trade, there is the potential for some noise and disturbance to nearby neighbours because of the closeness of their windows and gardens. As a result, the planning permission, along with Condition 10, were carefully tailored to take account of the specific nature of the window tinting business and to control its likely impacts.
11. Use Class E, Schedule 2, Part A, of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, relates to commercial, business and service uses. This can include the sale of goods and professional services, medical or health services, day nurseries and other uses, including industrial processes, which can be carried out in a residential area without detriment to its amenity. The appellant considers that the window tint business would fall under this Use Class and amending Condition 10 to extend to all

Class E uses would allow more flexibility for the site in the future. Whilst the Council has concerns that the approved development would be a mixed-use site, with office and storage potentially falling into other Use Classes, I am satisfied that these uses would be ancillary to the window tinting business and would collectively be regarded as falling within Use Class E.

12. Whilst Condition 10 was solely in relation to neighbour living conditions, the proposed variation to Use Class E would have broader impacts beyond living conditions. In this regard, an assessment of the site for any use under Use Class E was not carried out by the Council or its consultees as part of the planning application. Broadening out Condition 10 to extend to any Class E use (although subject to the other conditions attached to the permission) would allow for numerous other activities to take place on site which could drastically change the use of the site and its impacts compared to what has previously been assessed and regulated. It could not be guaranteed that the building in this location, with limited parking provision, accessed off a busy road, and with such a close relationship to neighbouring properties, would be acceptable for any Class E uses, especially when the current approved use is for a quiet trade.
13. Whilst Class E limits industrial processes to those which can be carried out without detriment to the amenity of a residential area, giving the Council the opportunity to enforce if a use has unacceptable impacts, the Use Class is much broader and would allow other uses without such restrictions. By varying the condition in this way, it would not be possible to appropriately protect residential living conditions and it could give rise to other adverse impacts such as highway safety issues.
14. Condition 10 would not render the site useless or unnecessarily limit other businesses from operating. Instead, it would require a new planning application with details of the new use or uses, to enable the Council to undertake a full assessment of the planning impacts and to assess it against the development plan and take account of any other material considerations.
15. The appellant comments that a next-door industrial building is noisier than his approved use but is not so restricted. However, I have insufficient evidence to identify this site, its planning history, or its use to draw any comparisons. Regardless of this, it is not a reason to outweigh the harm identified nor provide justification for development that conflicts with the development plan.
16. The existing condition is reasonable and necessary to protect the living conditions of nearby residents, with particular regard to noise and disturbance, and in the interests of highway safety. It would conflict with Policies LP13 and LP17 of the Peterborough Local Plan which seek to ensure that new development does not have an unacceptable impact on the amenity of existing occupiers and ensures safe vehicular access. It would also conflict with the National Planning Policy Framework which seeks a good standard of amenity for occupants of buildings, and to ensure safe and suitable access for all users.

## **Conclusion**

17. For the reasons given above I conclude that the appeal is dismissed.

*G Bayliss*

INSPECTOR

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