



# Appeal Decision

Site visit made on 24 September 2007

by **Leslie Coop BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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**Decision date:**  
**15 October 2007**

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## Appeal Ref: APP/B2355/A/07/2046157

### Unit 1, The Courtyard, Grane Road, Haslingden BB4 4PB

- 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 Hurstwood Properties UK Limited against the decision of Rossendale Borough Council.
- The application Ref 2007/197, dated 21 March 2007, was allowed on 24 May 2007 subject to conditions.
- The development permitted is the change of use from B1 (light industry) to B8 (storage and distribution).
- The conditions in dispute are Nos. 04 and 05 which state that:
  - 04 *the use hereby permitted shall at all times operate in a manner which can be carried out in any residential area without causing detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.*
  - 05 *the use hereby permitted shall be restricted to the hours between 8am and 8pm Monday to Friday, between 9am and 1pm on Saturdays and there shall be no operation (including deliveries or collections) on Sundays or Bank Holidays.*
- The reasons given for the conditions are:
  - 04 *to ensure this unit is operated in a manner consistent with the rest of the units within the building and thereby protect the amenities of occupiers of residential properties in the vicinity of the site, in accordance with the PPS1, PPG4, Policy 1 of the adopted Joint Lancashire Structure Plan and the criteria of Policy DC.1 of the adopted Rossendale District Local Plan.*
  - 05 *to protect the amenities of occupiers of residential properties in the vicinity of the site in accordance with the PPS1, PPG4, Policy 1 of the adopted Joint Lancashire Structure Plan and the criteria of Policy DC.1 of the adopted Rossendale District Local Plan*

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## Decision

1. I allow this appeal and vary the planning permission No. 2007/197 for the change of use from B1 (light industry) to B8 (storage and distribution) granted on 24 May 2007 by the Rossendale Borough Council by deleting conditions Nos. 04 and 05.

## Main issue

2. I consider the main issue in this case to be the effect of the proposed change of use on the living conditions of the occupiers of nearby dwellings in terms of noise and disturbance.

## Reasons

3. The appeal property is an end unit within a new development of 15 business units set around a service yard and parking area on the south side of Grane Road. I accept that Class B1 is defined in the Town and Country Planning (Use
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Classes) Order 1987 as being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust and grit. However, I do have concerns relating to the precision and enforceability of the condition in terms of Circular 11/95: *The Use of Conditions in Planning Permissions*.

4. The unit is set down below the level of Grane Road behind a retaining wall and embankment, with the nearest dwellings some distance away on the opposite side of the road. Grane Road is a busy classified highway. In addition, in approving the proposal, the Council imposed a condition restricting all storage of the platform lifts within the building. Given this situation, I am not persuaded that condition 04 is necessary in terms of the Circular or to protect the living conditions of the occupiers of the nearby dwellings. In any event, I am aware that the elements referred to in the condition are capable of being dealt with under other legislation.
5. Again, given the location and situation of the unit, I do not consider it necessary to restrict the hours of operation. In this regard, I note that the approval for the development of the whole site did not contain any conditions restricting these hours. Given that the approved use is for business and distribution, I consider the main level of noise would arise from vehicle movements, particularly those into and out of the site. These could take place at any time from any of the other units and I do not consider the activities likely to be generated by the proposal would add significantly to these movements.
6. I am satisfied, therefore, that the removal of these conditions on this particular unit would not cause any material loss of amenity to the occupiers of nearby dwellings through noise or disturbance. It would not be contrary to Policy 1 of the Joint Lancashire Structure Plan and the criteria of Policy DC.1 of the Rossendale District Local Plan, or Government policy as set out in PPS1 and PPG4.
7. I note that residents concerns have been supported by Ms Janet Anderson MP and Mr Greg Pope MP. Additional concerns relate to the form of the whole development, which is not before me for consideration. Nor is the concern relating to construction taking place outside the permitted hours. This matter is the subject of a separate appeal (Ref. APP/B2355/A/07/2043749). I do not consider the level of traffic likely to be generated by the proposal would cause significant highway safety problems on Grane Road and I note the Highway Authority has no objections from this point of view.

*Leslie Coop*

INSPECTOR