

Appeal Decision

Site visit made on 14 February 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/X4725/W/16/3162200

Ashley House, Ashley Industrial Estate, Wakefield Road, Ossett, West Yorkshire WF5 9JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mircea Michnea, Private Zone Ltd against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 16/00885/FUL, dated 28 April 2016, was refused by notice dated 11 July 2016.
 - The application sought planning permission for Change of use of office building (B1(a)) to a massage parlour (D1) without complying with a condition attached to planning permission Ref 15/00670/FUL, dated 24 June 2015.
 - The condition in dispute is No 2 which states that: 'The use hereby permitted shall not take place except between the hours of 08:00 and 18:00 Monday to Saturday and shall not take place on Sundays or Bank/Public Holidays'.
 - The reason given for the condition is: 'In the interests of the amenity of the wider area in accordance with policy D9 and D20 of the Local Development Framework Development Policies Document'.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of office building (B1(a)) to a massage parlour (D1) at Ashley House, Ashley Industrial Estate, Wakefield Road, Ossett, West Yorkshire WF5 9JD in accordance with the application Ref 16/00885/FUL dated 28 April 2016, without compliance with condition number 2 previously imposed on planning permission Ref 15/00670/FUL dated 24 June 2015 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Background and Main Issue

2. A massage parlour is currently trading at the appeal site. The appeal proposal seeks permission to continue this use without complying with the currently permitted limits on the hours of use. The Appellant proposes in summary that on each day from Monday to Thursday the use should open from 1400 until 0400 on the following morning, and on each day from Friday to Sunday from 1600 until 0600 on the following morning.
 3. The main issue is the effect that varying the proposed hours of operation would have on security and environmental quality in the area.
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Reasons

4. Under Section 17 of the Crime and Disorder Act 1998, the Council has a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. Paragraph 69 of the National Planning Policy Framework (the 'Framework') states that planning decisions should aim to achieve places which promote safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.
5. The appeal property is located near the head of a cul de sac in a small industrial estate. The objection from the Police to the application appears to be based on fears, informed by evidence including that obtained during a visit in 2015, that the premises could be being used for purposes which are contrary to the Sexual Offences Act 1956. However, whilst I understand that this may be a matter of concern to the Police and others, in determining the appeal I must focus solely on planning issues. The question of whether offences have or have not taken place under other legislation is not a planning matter to which I can give weight.
6. Furthermore, the use which is subject to the appeal, as a massage parlour, is a lawful use in planning terms. The application sought solely to extend the hours of operation of this lawful use, and I have dealt with the appeal on this basis. There is nothing before me which demonstrates that the proposed extended hours of this use would, as a matter of necessity, involve criminal activity.
7. The Council has also raised concerns regarding the likelihood that the proposal would cause a regular flow of visitors to the estate late in the evening and at night-time when the area would otherwise be largely un-visited. Given the secluded location of the appeal site towards the rear of the estate it can be expected that crime reduction and security will be of concern in the area. However, no existing restrictions preventing persons from entering the area at night time have been brought to my attention. Whilst some use appears to be made of private CCTV cameras on nearby property these would be able to continue to operate irrespective of the outcome of the appeal. There is no substantive evidence before me to demonstrate that the proposal would make nearby properties more vulnerable to criminal activity, or make it harder to monitor and identify any persons taking part in such activity.
8. The Council's reason for refusal of the extended hours also refers to the issue of 'amenity'. Although the appeal proposal would lead to the coming and going of visitors during the extended opening hours, any resultant increases for example in traffic levels would be modest in scale. The massage parlour use is a low key commercial use operating within an established employment area. There are no residential properties in the area which would be likely to be affected by the proposed extension to opening hours. There is no substantiated evidence to demonstrate that the proposed extended hours would cause material harm to the operation of any neighbouring land use, or the environment of the area as a whole.
9. I agree that the Appellant's explanation for the extended opening hours requested, based upon the working patterns of clients who work in farming, would not in itself justify why the premises would need to open until 0400 or, on some days, 0600 as proposed. However, given the lack of firm evidence

that the massage parlour use would cause harm in planning terms during these hours, this point does not weigh substantively against allowing the appeal.

10. I acknowledge that no expressions of support for the application appear to have been received during the consultation period on the application. I also consider that only limited weight can be attributed to the petition which has been subsequently submitted by the Appellant, particularly as it does not indicate the position within the relevant companies of its signatories. However, to my knowledge no objections to the proposed extended hours of opening were received from any neighbouring occupier. The presence or otherwise of expressions of support or objections is not in any event determinative concerning the question of whether the proposal would cause material harm.
11. I agree that there is no substantive evidence before me to suggest that the Council's decision or the comments of the Police were linked to the race, culture or background of the Appellant or of persons working at or using the appeal premises. However, this does not mean that the decision is justified in terms of planning policy or legislation.
12. In summary, I consider that whilst there are fears that the premises may be being used for purposes which conflict with other legislation, there is no substantive evidence that the proposed extended hours of operation would cause harm in planning terms. Indeed, there appears to be no reason in planning terms why any restriction on opening hours should apply to the massage parlour use in this location. The disputed condition has not been shown to be necessary to implement the Council's responsibilities under the Crime and Disorder Act 1998, or to ensure compliance with relevant provisions in Policies D9, D15 or D20 of the Wakefield Local Development Framework Development Policies or the Framework. These points all indicate that the appeal should be allowed.
13. Condition 1 on permission 15/00670/FUL is a standard condition setting the time limit within which the massage parlour use had to start. As the use has started this condition has been complied with and is no longer capable of taking effect.
14. Condition 3 on permission 15/00670/FUL, the need for which is not disputed by the parties, is still capable of taking effect and seeks to ensure that the premises is used solely as a massage parlour and for no other purpose within Class D1 of the Town and Country Planning (Use Classes) Order 1987 as amended. Given the wide range of uses which are covered by Class D1, and the need to ensure for example that the use of the premises does not result in unacceptable levels of on street parking outside the premises, condition 3 continues to be necessary.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition, but retaining the relevant non-disputed conditions from the previous permission so far as the same are still subsisting and capable of taking effect.

Jonathan Clarke

INSPECTOR