

Appeal Decision

Hearing held on 31 January 2017

Site visits made on 30 and 31 January 2017

by David Cliff BA Hons MSc MRTPI

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

Decision date: 27th April 2017

Appeal Ref: APP/E0345/W/16/3152909

1 Derby Road, Caversham, Reading RG4 5HE

- 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 Ms C Miles against the decision of Reading Borough Council.
 - The application Ref 152208, dated 9 December 2015, was refused by notice dated 24 May 2016.
 - The application sought planning permission for 'change of use from residential to physiotherapy clinic and residential without complying with condition 6 of planning permission 94/00488/FD – to remove named users from operating clinic' without complying with conditions attached to planning permission Ref 10/00992/VARIAT, dated 29 July 2010.
 - The conditions in dispute are No 4 which states that: The D1 physiotherapy clinic use of part of the premises shall not at any time be operated, managed or carried out other than by a person or persons who reside(s) in the residential part of the premises; and No 5 which states that: Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (as amended), the D1 use part of the premises shall only be used for a Class D1 clinic/consulting room use and for no other use that may fall under a Class D1 use (non-residential institution) of the Town and Country Planning (Use Classes) Order 1987 (as amended).
 - The reason given for the conditions are: No 4 - To provide adequate parking, turning and manoeuvring space on the site and No 5 - In order so that the local planning authority may properly consider the merits of such an alternative use and control the intensity of use.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from residential to physiotherapy clinic and residential at 1 Derby Road, Caversham, Reading RG4 5HE in accordance with the application reference 152208, dated 9 December 2015 and subject to the following conditions:
 1. Any windows to a bathroom, or shower room or WC in the development hereby permitted shall be glazed and thereafter maintained in obscure glass.
 2. The ground floor of the premises, including any entrances, toilets, internal/external circulation spaces, shall be designed to be fully accessible by disabled persons (including those confined to wheelchairs), to the written specification of the local planning authority.
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3. The car parking layout shown on Block Plan 1:200 shall be retained and kept available for the uses hereby permitted.

Procedural Matters

4. Whilst the appeal form includes the name of an additional appellant (Mrs S Hicks), she was not named on the planning application form. I have therefore used only the name of the applicant as stated on the planning application form.
5. At the Hearing, it was confirmed by the parties that an educational use has recently commenced at the premises, in association with the adjacent Caversham Preparatory School. The residential use within the premises has remained.
6. In my decision above I have omitted the words *without complying with condition 6 of planning permission 94/00488/FD – to remove named users from operating clinic* as this wording does not amount to an actual description of development.

Application for costs

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

Background and Preliminary Matter

8. The planning application sought to firstly remove condition 4 of the existing planning permission thereby removing the required occupancy link between the use of the physiotherapy clinic part of the premises and the residential part. However, it was clarified at the hearing that if necessary the residential use can remain linked to the commercial use of the site and an appropriate revised condition was subsequently agreed in this respect. Secondly, it sought to remove condition 5, and to impose a new condition that would allow a wider use of the premises to include all medical, health and education uses, along with the residential use.
9. The Council's first reason for refusal relates to whether or not the proposal is able to be considered under Section 73 of the Town and Country Planning Act 1990 (as amended) ('the Act'). The Council considers that the application purports to change and widen the authorised use rather than varying the conditions of the existing permission.
10. I agree with the Council that the authorised use represents a sui-generis mixed-use in this single planning unit. Therefore, notwithstanding the restriction of condition 5, planning permission would be required to make a material change to a different use within Class D1 of the Town and Country Planning (Use Classes) Order 1987 (as amended). Consequently, whilst the appellant seeks to change the use of the non-residential part of the mixed-use of the premises through the s73 application, whether or not planning permission is required for the appellant to use the property in the way she has stated is a separate matter for the Council and is not a matter for further considered as part of this appeal.
11. At the Hearing, representations were made on whether the appeal proposal could proceed as an application for change of use rather than a s73 application. The Council has expressed concern that neighbouring residents might not be fully cognisant of the implications of the application being considered on this

basis. I also note that no neighbours or their representatives were in attendance at the appeal and so were not able to comment orally on this matter. Consequently, I have concerns that changing the terms of the application in such a way could prejudice the interests of third parties. I have therefore proceeded to determine the appeal as it has been submitted as a s73 application rather than as an application for a change of use.

12. I turn to further consider the matter of the necessity of condition 5 of the existing planning permission under the first main issue below.

13. Although the application seeks to remove the occupancy restriction linking the residential use of the premises with the physiotherapy clinic use, both uses would remain intrinsically linked and there is no indication that the proposal would amount to a separation of the planning unit.

Main Issues

14. The main issues are:

- i) Whether condition 5 is necessary.
- ii) Whether condition 4 is necessary in order to ensure adequate parking, turning and manoeuvring space on the site is provided on the site.

Reasons

Condition 5

15. Paragraph 3.4 of the Council's appeal statement notes that the condition restricting the use of the premises was, on reflection, not necessary as the physiotherapy use was part of a mixed use. I agree with this position in that, even if the condition has not been imposed, an application for a change of use would be required for a material change of use of the premises from its lawful use.

16. Therefore, condition 5 does not pass the test of necessity. It does not satisfy the appropriate tests in the Planning Practice Guidance. Consequently, I consider that it can be removed.

17. Given my reasoning above, I do not therefore need to go onto to consider the highway or living conditions implications of the removal of condition 5 as it makes no difference to the uses authorised by the planning permission and therefore the impacts of the use.

18. In conclusion on this issue, condition 5 can be removed as it is unnecessary.

Condition 4

19. Condition 4 was imposed in order to provide adequate parking, turning and manoeuvring space on the site.

20. The appellant has provided an updated parking layout drawing showing there to be 12 spaces available for parking. However, some of these spaces would be located immediately behind other spaces and therefore would not always be accessible. Furthermore, two of the spaces shown on the drawing are located outside of the red edge boundary on the road verge. This leaves five easily accessible spaces within the appeal site.

21. The removal of condition 4 would create the possibility of a small amount of additional car parking on the site given that the occupiers of the residential part of the premises might not necessarily be working in the part of the premises used as a physiotherapy clinic. However, even should this be the case it would only result in a very modest increase in the demand for car parking at the site, of possibly one or two additional cars.
22. From the evidence before me, I do not consider it likely that any increase in parking requirements arising from the removal of condition 4 would be so significant to result in any adverse implications in terms of highway safety or for local highway conditions. For the majority of the time, the five accessible parking spaces are likely to be adequate for staff of and visitors to the clinic as well as the occupiers of the residential apartment. Even on occasions where this would not be so, there appears to be sufficient scope for on-street parking to accommodate any modest need arising. There is no persuasive evidence to demonstrate that a small increase in off-site parking would result in any adverse impacts upon highway safety or the free-flow of traffic.
23. A neighbouring resident has referred to the possibility of the blocking of wheelchair and pedestrian use of the area adjacent to the site due to the two spaces shown by the appellant immediately to the front of the appeal site and within the blue edge. However, as I do not consider that there would be a significant increase in demand for off-site parking arising from the continuation of the authorised use, it is unlikely that such an area would be used for parking on a regular basis. I do not therefore consider that any material harm would result in this respect. Matters of landownership and rights relating to the piece of land adjacent to the front of the site are for resolution, if necessary, outside of this appeal.
24. I am satisfied that the removal of condition 4 would not result in inadequate parking, turning and manoeuvring space on the site. Nor would it result in any significant adverse impacts upon either highway safety or local highway conditions. The development in non-compliance with condition 4 accords with the relevant highway safety and transportation aims of policies CS4, CS20 of the Core Strategy, policy DM12 of the SDPD and the National Planning Policy Framework. Although referred to by the Council in its reason for refusal, I do not consider policy CS9 to be of relevance in this regard as it is concerned with the provision or re-provision of infrastructure, services, resources or amenities.

Other matters

25. The Council's reasons for refusal also state that the application does not provide adequate information as to how the proposal affects the existing residential use. The Council confirmed its view at the hearing that the loss of the residential part of the existing use would be contrary to Policy CS17 of the Reading Borough Local Development Framework Core Strategy January 2008 (with alterations adopted 27th January 2015) ('the Core Strategy') which seeks to generally prevent the loss of existing residential accommodation.
26. However, the appellant has confirmed that the proposal does not seek to remove the existing residential element and, whilst no existing or proposed floor plans have been submitted, there is nothing within the application details to suggest otherwise. At my site visit I noted that the residential part of the building is still in use. I therefore find there to be no conflict with the aims of policy CS17 of the Core Strategy.

27. No external alterations are included in the application, and taking account of the previously authorised mixed use, including a physiotherapy clinic, along with the educational uses in existence on adjacent sites, I not consider that any significant effects result upon the character and appearance of the area, including Derby Road.
28. Concern has been raised that granting planning permission would create a precedent for further similar developments with resulting impacts on Derby Road. Nevertheless, whilst allowing the appeal and removing conditions 4 and 5 of the existing planning permission, I have not authorised a widening of the uses already permitted.
29. As I am not authorising any further uses of the site beyond those in the existing permission, there is no need for any s106 agreement in this case.
30. Notwithstanding my decision to allow the appeal, I appreciate that it may not provide the appellant with the authorisation sought for a widening of use of the premises, including for an education use. As outlined stated earlier, whether or not planning permission is required for other uses is a separate matter for the Council and is not a matter for further considered as part of this appeal. By allowing this appeal under section 73 of the Act I am not authorising a change of use. I note that a separate planning application has been previously submitted to the Council for a change of use of the premises to education, although this was refused due to an incomplete S106 agreement.

Conditions

31. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they already have been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that any have been discharged, that is a matter which can be addressed by the parties. I have amended the parking condition to reflect the updated parking plan provided with this appeal. Conditions 4 and 5 of the previous planning permission have been deleted for the reasons set out above.
32. The Council has suggested several additional conditions in the event that the appeal is allowed. Nevertheless, the additional conditions have been suggested in the event that the appeal decision allows for a widening of the use of the premises beyond the terms of the original planning permission, including for any education use. As I have not considered it appropriate to widen the mixed-use of the premises beyond the original permission, I do not consider that the additional conditions are necessary or reasonable in addition those that are imposed upon the existing planning permission.

Conclusion

33. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

David Cliff

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Boddington
Ms Carol Miles
Mrs Susan Hicks

Boddingtons Planning Ltd
Appellant

FOR THE LOCAL PLANNING AUTHORITY

Richard Eatough BSc DIP TP MRTPI Senior Planning Officer

INTERESTED PARTIES

Ian D Lawson

Caversham Preparatory School

DOCUMENTS SUBMITTED AT THE HEARING

1. Local Planning Authority's list of suggested conditions.
2. Case Officer Recommendation and Committee Report for recent planning application (161168) at the appeal site.
3. Reading Borough Local Development Framework Revised Parking Standards and Design Supplementary Planning Document.

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Copy of Policy CS17 of the Council's Core Strategy 2008.
2. Email from the appellants (dated 31 01 17) confirming comments on Council's suggested conditions.
3. Email from the appellants (dated 24 02 17) regarding suggested condition on residential use and the description of development.
4. Email from the Council (dated 27 02 17) regarding suggested condition on residential use and the description of development.