
Appeal Decision

Site visit made on 11 April 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 2nd May 2017

Appeal Ref: APP/P0240/W/17/3166964

Unit 3, Rear of 5 West Hill, Aspley Guise, MK17 8DP

- 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 Mrs Alexandra Chapman against the decision of Central Bedfordshire Council.
 - The application Ref CB/16/04538/FULL, dated 5 September 2016, was approved on 6 January 2017 and planning permission was granted subject to conditions.
 - The development permitted is a change of use from offices to physiotherapy and wellness clinic (D1).
 - The conditions in dispute are Nos 3 and 4 which state that:
 - (3) *All weekday classes operating between 09.00 and 17.00 hours Monday to Saturday, shall be 1:1 only (one person in the class). Evening usage, which shall operate only between the hours of 17.30 and 21.00 hours Monday to Saturday (and at no time on Sundays or Bank Holidays) shall be limited to a maximum of 5 persons in a class. No classes or 1:1 sessions shall operate between 21.00 hours and 09.00 hours.*
 - (4) *This permission shall be for the sole use of Alexander Chapman (who runs Enliven Health Limited) for D1 purposes only and shall not extend to any other persons, partnership, firm or company without having gained planning permission from the Local Planning Authority.*
 - The reasons given for the conditions are:
 - (3) *To avoid on street parking in the interest of highway safety.*
 - (4) *To ensure the retention of planning control by the Local Planning Authority on the disposal of the present applicant's interest in the land and buildings due to the lack of adequate on site parking provision and use of a substandard access and thereby safeguard highway safety.*
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from offices to physiotherapy and wellness clinic (D1) at Unit 3, Rear of 5 West Hill, Aspley Guise, MK17 8DP in accordance with the application Ref CB/16/04538/FULL dated 5 September 2016, without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref CB/16/04538/FULL dated 5 September 2016 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to the following new condition:
 - 1) All classes operating from the premises shall be limited to a maximum of 6 persons in a class.
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Procedural Matter

2. The description of development given above is taken from the Council's decision notice rather than the planning application form. This is because the appeal seeks to vary the extant permission.

Main Issue

3. The main issue is whether amending or removing these conditions would prejudice highway safety.

Reasons

4. The appeal site is located within a courtyard of small commercial units, in the centre of Aspley Guise. It is accessed via West Hill, and has 2 dedicated parking spaces allocated to it. The surrounding area is served primarily by on-street parking, and there are double yellow lines along West Hill close to the entrance of the appeal site.
5. Condition 3 seeks to restrict the number of people that attend classes at the premises, and the time these classes take place. The Council state that this is necessary in order to limit additional on-street parking. However, the description of development provided in the application form is clear that the appellant wishes to run classes during the day, with up to 6-8 attendees. In this regard, the Planning Practice Guidance ('PPG') states that "*a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used*" (Ref 21a-012-20140306). In seeking to alter what has been applied for, condition 3 does not comply with this guidance. In its current form, it is therefore unreasonable.
6. The centre of Aspley Guise is served by a limited number of on-street parking spaces. The Council has expressed concern about parking stress in the area, and this has not been disputed by the appellant. On my site visit I noted that the vast majority of the spaces in the village were occupied. There are also very few parking spaces on the narrow surrounding streets. In these circumstances, I accept that a condition to restrict the number of attendees per class is necessary in order to assist in the management of parking stress in the area. However, this must be consistent with what has been applied for. Furthermore, there is no evidence before me that would justify restricting the opening hours of the business to between 9:00 and 21:00.
7. With regards to the point of access, this is an existing access that is already used by a number of businesses. Whilst visibility may not be ideal, I do not consider that the traffic generated by the development, over and above that associated with the previous office use, would be significant. Whilst the Council refers to local parking guidance, this has not been provided, and in any case the proposal appears to have a lower parking requirement than these standards would imply.
8. Separately, whilst I note that the appellant has an informal agreement with the nearby hotel regarding the use of its car park, there is no mechanism to enforce this agreement, which could be ended at any time. Accordingly, I cannot attach any weight to this.
9. Condition 4 makes the permission personal to the applicant. However, PPG advises that it is rarely appropriate to limit the benefits of a planning

permission to a particular person (Ref 21a-015-20140306). Moreover, it has not been demonstrated that this case represents an exceptional occasion that would justify such an approach. Whilst the appellant suggests that the condition could be attached to their company, PPG states that this is not appropriate because shares can be transferred to other persons without affecting the legal personality of the company. Accordingly, I consider that this condition is not reasonable and that it merits deletion.

10. For the above reasons, I conclude that amending condition 3, and deleting condition 4, would not prejudice highway safety.

Conclusion

11. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without one of the disputed conditions but substituting another and retaining the relevant non-disputed conditions from the previous permission.

Thomas Hatfield

INSPECTOR