



Appeal Decision

Site visit made on 7 May 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/X1735/W/19/3220134

Fiscal House, 2 Havant Road, Emsworth PO10 7JE

- 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 & Mrs Paul Alan Munday against the decision of Havant Borough Council.
 - The application Ref APP/18/00827, dated 13 August 2018, was refused by notice dated 10 October 2018.
 - The application sought planning permission for change of use from financial services (Class A2) to offices (Class B1A) without complying with a condition attached to planning permission Ref APP/17/00634, dated 21 August 2017.
 - The condition in dispute is No 3 which states that: The development hereby permitted shall be used only for B1A (Offices), and for no other purpose whatsoever including any other purpose in Class B of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order.
 - The reason given for the condition is: To restrict the use of the premises in the interests of local amenity as residential properties are around the application site, and to retain the site in employment use, having due regard to Policies CS2, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from financial services (Class A2) to offices (Class B1A) at Fiscal House, 2 Havant Road, Emsworth, PO10 7JE, in accordance with the application Ref APP/18/00827 dated 13 August 2018, without compliance with condition number 3 previously imposed on planning permission Ref APP/17/00634 dated 21 August 2017 and subject to the following conditions:
 1. The development must be begun not later than 21 August 2020.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan - 12:1089:L(2-)001 02 01 and Floor plans - 12:1089:L(2-)002 03 A.

Preliminary Matters

2. Whilst the reason for the imposition of Condition No 3 refers to the retention of employment uses, the Council's officer report adequately addresses this aspect, indicating that the condition is no longer necessary in this regard. As such, I shall proceed on this basis.

Main Issue

3. The main issue is whether the condition is necessary and reasonable, with regard to the effects on the living conditions of neighbouring occupiers and highway safety.

Reasons

4. Condition No 3 of the original permission withdrew permitted development rights (PD rights) ordinarily conferred by the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) (as amended) for the change of use from B1(a) to other Use Classes of the Town and Country Planning (Use Classes Order) 1987 (as amended). In refusing permission to remove the condition, the Council refers to Policy CS16 of the Core Strategy¹. Policy CS16 requires that development should not, amongst other things, cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking. The reason for refusal also refers to potential impacts on highway users, although the cited Policy only makes limited reference to safe and convenient access for all. Core Strategy Policies CS2 relates to employment and is no longer relevant. Core Strategy Policy DM10 relates to pollution as is also no longer relevant.
5. The Council suggests that without the condition, there would be limited control and that other potential uses could be materially and substantially different to Use Class B1(a) in terms of the impacts on neighbouring occupiers. The stated reason for the condition supports this view. The Council considers that the condition passes the six tests outlined in the National Planning Policy Framework ('the Framework') and properly defines the limitations of the permission in the manner that the description is incapable of doing, as established in the case of *I'm Your Man vs SSE*².
6. The Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
7. Whilst the area includes a mix of commercial uses, there is a high proportion of residential dwellings in the area, including one which has a garden adjoining the parking area serving the appeal building. This neighbouring dwelling is not physically attached to the appeal building and other directly adjoining uses include a church and electricity substation.
8. The appellant highlights that B1 uses are typically acceptable in residential areas which is borne out by the definition of Use Class B1 in the Use Classes Order which is limited to (a) an office use, (b) for research and development of products and processes, or (c) any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area. The other subsections of use class B1 are therefore not so materially or substantially different to Use Class B1(a) so as to amount to the exceptional circumstances necessary to justify the condition.
9. In terms of alternative uses, the floorspace of the building is less than 500 square metres which means that a change from B1(a) to Use Class B8 (storage and distribution) would normally be permitted development under the

¹ Havant Borough Core Strategy: adopted 2011

² *I'm your Man v Secretary of State* [1999] 77 P. & C.R. 251

GPDO. However, given the physical limitations and layout of the building itself, and the nature of its car parking and turning area, I do not consider that its potential use for B8 purposes would be a commercially practical or attractive prospect. Were it feasible, the nature of a storage and distribution use from the appeal building would not be materially harmful to either neighbouring residents or road users in terms of noise, disturbance or unsafe manoeuvring on the highway.

10. There appears to be limited other potential permitted changes of use available under the GPDO, including to a state-funded school or registered nursery, or to a flexible use falling within either Use Classes A1, A2 or A3. These permitted changes are also subject to certain limitations and the uses in themselves do not appear incompatible with the area in terms of the effects on neighbouring occupiers or highway safety.
11. From my observations, the nature of the highways leading to the site and the access to the site itself appear satisfactory and any of the alternative uses considered above would be unlikely to result any prejudicial effects on highway safety.
12. The change from Use Class B1(a) to a dwellinghouse or houses (Use Class C3) under Class O of the GPDO would not appear to be permitted, not least because the building was not in use for B1(a) purposes on the operative date of the 29 May 2013. This is not formally before me as a matter for consideration and as such, it is not for me to determine the suitability of such a proposal in terms of its assimilation with the residential character of the area or the potential effects on neighbours or highway safety.
13. In relation to this main issue, the condition is not necessary or reasonable in respect of effects on the living conditions of neighbouring occupiers or highway safety and its removal does not raise conflict with Core Strategy Policy CS16.

Other Matters

14. The proposal does not physically alter the appeal building and would therefore preserve the character and the appearance of Emsworth Conservation Area.

Conditions

15. The guidance in the PPG 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. The exception to this is the condition relating to the time limit for the commencement of development, which cannot be extended through an application made under section 73. Accordingly, I shall amend this condition to run from the date of the original permission.

Conclusions

16. The disputed condition does not satisfy the relevant tests of the Framework or PPG and should be removed. For the reasons set out above, the appeal is allowed. I have therefore granted a new permission for the development.

Hollie Nicholls

INSPECTOR