



Appeal Decision

Site visit made on 19 May 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 June 2020

Appeal Ref: APP/W1715/W/19/3241190

Fairport House, Lands End Road, Bursledon SO31 8DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended)(the Act) 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 Mark Keeling against the decision of Eastleigh Borough Council.
 - The application Ref X/19/85436, dated 12 April 2019, was refused by notice dated 11 October 2019.
 - The application sought planning permission for partial change of use of ground floor of existing outbuilding to B1(a) office use (retrospective) without complying with conditions attached to planning permission Ref C/16/78768, dated 11 October 2016.
 - The conditions in dispute are Nos 2 and 7 which state that: (2) The use hereby permitted shall be limited to the business Vivid Water in a Box and no other companies. The use of the building as a commercial office space can only be undertaken so long as Mr Keeling resides at Fairport House, Lands End Road, Bursledon. Should the office no longer be occupied by the business Vivid Water in a Box, the approved development shall cease and within one month all materials and equipment brought onto the site in connection with the development shall be removed and the building revert back to an ancillary domestic use; and (7) The office accommodation hereby permitted shall not be occupied by more than one member of staff in connection with the business Vivid Water in a Box unless first agreed in writing by the Local Planning Authority.
 - The reasons given for the conditions is: (2) This permission is only given due to the particular circumstances of the case; and (7) In the interest of highway safety and local amenity.
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Decision

1. I dismiss the appeal.

Procedural Matters

2. Condition 2 of planning permission C/16/78768 (the original permission) limited the approved Class B1(a) use to a named company, Vivid Water in a Box. I note that the Planning Practice Guidance states that conditions of this type are inappropriate. The appeal has not however been made directly against the imposition of this condition, and due to the passage of time, could not in any case be considered on that basis.
3. As outlined above, Condition 2 states that: 'Should the office no longer be occupied by the business Vivid Water in a Box, the approved development shall cease and within one month all materials and equipment brought onto the site in connection with the development shall be removed and the building revert back to an ancillary domestic use' (hereafter the 'cessation clause'). Occupation

of the office and cessation of the planning permission are thus explicitly linked within the condition, and the wording utilised is typical of that employed to limit the duration and benefit of a planning permission.

4. As the appellant confirms that Vivid Water in a Box quit the site in January 2018, the cessation clause within Condition 2 was triggered at that time.
5. I have sought the views of the main parties on this matter. Both note that the application would not materially alter the description of the development for which consent had been granted. However, this has no obvious bearing on interpretation of Condition 2. Both parties also note that Mr Keeling still occupies the property, and therefore that this element of Condition 2 remains complied with. Be that as it may, whilst reference to the occupant of Fairport House acted as a limiting factor within Condition 2, it does not affect the simple operation of the cessation clause contained within it.
6. The appellant claims that the second part of the cessation clause has been breached because the site remains set up as an office. However, the planning statement attached to application C/16/78768 indicates that the office was originally set up for domestic use. This is reiterated in the Planning Statement attached to the application subject of this appeal. In this context the original permission was for a change of use only, allowing occupancy by a commercial tenant of part of the building already set up as an office. The Council has not indicated that any breach has occurred, and has further confirmed that Vivid Water in a Box vacated the site. As such, I see no reason to find other than that the required actions have taken place, and that the site has, in effect, reverted back to an ancillary domestic use.
7. For the reasons outlined above I conclude that the original planning permission has ceased to exist, and that there is no scope for me to consider the appeal with reference to either Sections 73 or 73A of the Act. A full consideration of planning merits of the proposed development is required, and no power exists for me to do this in the context of the current appeal. Consequently, there is no need for me to consider the matters raised by the parties in relation to the appeal proposal, as the appeal must be dismissed.

Conclusion

8. For the reasons set out above I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR