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## Appeal Decision

Site visit made on 4 June 2020

by **S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

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**Appeal Ref: APP/N1730/W/20/3244737**

**8 Kingsley Square, Fleet GU51 1AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Darren Bull against the decision of Hart District Council.
  - The application Ref 19/02312/AMCON, dated 11 October 2019, was refused by notice dated 13 January 2020.
  - The application sought planning permission for erection of 65 residential dwellings, garages, estate roads and associated infrastructure (Area H1) without complying with a condition attached to planning permission Ref 00/01347/REM, dated 13 July 2001.
  - The condition in dispute is No 7 which states that: *"the garage/parking space(s)/parking area hereby approved shall not be used for any purpose other than the parking of cars"*.
  - The reason given for the condition is: *"to ensure adequate on-site car parking provision for the approved dwelling(s)/building(s) and to discourage parking on the adjoining highway in the interests of local amenity and to satisfy policy ENV2 of the Hart District Local Plan"*.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 65 residential dwellings, garages, estate roads and associated infrastructure (Area H1) at 8 Kingsley Square, Fleet GU51 1AH in accordance with application Ref 19/02312/AMCON, without complying with condition number 7 previously imposed on planning permission Ref 00/01347/REM, dated 13 July 2001, but subject to the conditions as set out in the attached schedule.

### Procedural Matters

2. I note that the planning application was submitted retrospectively, and I have dealt with the appeal accordingly.
3. On 30 April 2020, since the refusal of the planning application and the submission of this appeal, the Council adopted *the Hart Local Plan Strategy and Sites 2032 (HLPSS)*. The Council has confirmed that Saved Policy GEN1 of the *Hart District Local Plan (Replacement) 1996-2006 and First Alterations to the Hart District Local Plan (Replacement) 1996-2006 (HDLP)* has been saved and continues to form part of the development plan, and that Saved Policy T14 of HDLP has been superseded by HLPSS Policy INF3. This Policy is consistent with the approach of the replaced HDLP policy. Accordingly, I have determined the appeal having regard to the saved and recently adopted Local Plan policies.

## Background and Main Issue

4. The appeal site is occupied by a detached two storey dwelling and double garage located within a suburban residential estate. Condition 7 of the reserved matters approval for Area H1 of the housing estate prohibits the use of the garage for any purpose other than the parking of cars. The reason for the condition confirms that its purpose is to ensure adequate on-site parking for the dwellings and to discourage parking on the highway "*in the interests of local amenity*".
5. With this in mind, and having regard to the Council's reason for refusal, planning officer report and appeal statement, I find the main issue in this appeal to be whether the development provides for adequate on-site parking provision, having regard to the transport needs of the property, and the effect of any lack of provision on highway safety.

## Reasons

6. The garage has been used as a Pilates studio since December 2018 and the Council has previously refused an application for the change of use in April 2019. The appellant is seeking to continue the Pilates studio use until 1 December 2022, after which date the garage would be used for the parking of cars again. With this in mind, I saw during my site inspection that, the garage doors remain intact.
7. HDLP Policy GEN 1 requires development proposals to have adequate arrangements on site for the parking of vehicles and HLPSS Policy INF3 states that development proposals will be supported that provide appropriate parking provision in terms of amount, design and layout, in accordance with the Council's published parking standards, or as set out in Neighbourhood Plans.
8. The Council has confirmed that the Council's current parking standards are set out in the Hart *Parking Provision Interim Guidance* (2008) (Parking Guidance), which requires the appeal property, comprising a 4+bedroomed dwelling within designated Zone 2, to provide a minimum of 3.5 spaces.
9. The Pilates studio use has resulted in the loss of two on-site parking spaces and the Council's concerns are that the development fails to provide adequate parking for the retained dwelling in addition to the Pilates studio.
10. I am mindful of paragraph 109 of the National Planning Policy Framework (the Framework) which advises that "*Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*".
11. I have noted the Council's and Parish Council's concerns regarding an increase in parking demand and reduction in on-site parking and associated impact on residential on-street parking, which the Council considers to be inadequate. However, I have not been presented with any substantive evidence to demonstrate that there is an existing problem in respect of on-street parking within the vicinity of the site, and the Council has not provided a survey of its own to support its concerns and confirm the extent of any such issue.
12. In addition to the retained parking area in front of the garage, the planning application drawings show two parking spaces in front of the house, and within

the planning application red line boundary. During my site visit, I observed that these spaces have been constructed either side of the pedestrian entrance. This parking area was unoccupied at the time of my visit. However, the appellant has submitted photographs which demonstrate that the spaces are capable of providing on-site parking for two small cars. As such, I find that there is no reduction in the number of on-site parking spaces as a result of the development.

13. The Council has confirmed that it has no specific adopted parking standards in respect of Pilates studios. I observed, during my site visit, that scope for on-street parking in this part of the estate is restricted by narrow and winding estate roads and a large number of existing crossovers associated with forecourt parking. Nonetheless, at the time of my site inspection, which took place during a mid-week lunch time, I saw no evidence that on-street parking is particularly difficult within the vicinity of the appeal site, and I did not witness any localised parking problems, parking congestion or impeded access to the highway network.
14. I also noted the prevalence of on-site garage and forecourt parking within the locality, and the availability of on-street parking in front of the site and within Kingsley Square. As such, I find that it would be possible for additional vehicles associated with the appeal site to park in relatively close proximity without causing an obstruction.
15. I acknowledge that this was only a snapshot during the day, and there may well be more on-street parking at other times. However, I have also had regard to the appellant's parking survey conducted in November 2019, which provides a useful indicator of the proportion of users of the development who travelled by car, indicating that a large number of customers use alternative modes of transport. Whilst the survey does not specifically indicate the locations of the parked cars and available visitor spaces, having regard to my findings in respect the existence of on-street parking close to the appeal site, and in the absence of any compelling evidence from the Council or any third parties to the contrary, I have no reason to question the findings of the appellant's survey.
16. Also, having regard to the intimate and confined nature of Kingsley Square, and the duration of time during which the Pilates studio has been in operation, I find it telling that no objections have been received from neighbours in respect of the planning application. I accord weight to this in my decision.
17. Furthermore, the appellant is willing to accept planning conditions to restrict the use, the amount of classes, the number of class attendees, and the hours of operation. Such conditions would ensure that the operation of the business does not intensify significantly beyond the existing level of use.
18. I also note that Policy INF3 supports development that promotes the use of sustainable transport modes, prioritising walking and cycling, and that improves accessibility to services. In this respect I note that the development provides a community facility which, having regard to its location, is readily accessible to local residents by means of walking or cycling.
19. For the above reasons, given the lack of substantive evidence before me of parking stress within the appeal site locality, the absence of neighbour objections to the development, and the ability to control the intensity of the development by means of appropriate planning conditions, I conclude that the

development provides adequate on-site parking, having regard to the transport needs of the property and highway safety.

20. The development therefore accords with the objectives of HDLP Saved Policy GEN1 and HLPSS Policy INF3, which seek to ensure that development provides adequate arrangements for on-site parking of vehicles and does not have a severe impact on the safety of the local highway network. For similar reasons the development would accord with the aforesaid aims of the Framework.

### **Conditions**

21. In allowing the appeal and granting planning permission, I have considered the conditions imposed on the previous planning permission Ref 00/01347/REM, together with those suggested by both main parties, in the light of advice in Paragraph 55 of the Framework and the National Planning Practice Guidance (PPG).
22. Conditions relating to the commencement of development and the specified plans, including the plans approved under the previous permission, are not required, since the development has already been carried out.
23. A condition restricting the Pilates studio use to a period expiring on 1 December 2022 accords with terms of the planning application. I consider that conditions to restrict the time period over which classes take place, the number of classes per day and the number of customers per class are necessary in the interests of clarity, the convenience of highway users, and ensuring appropriate living conditions of occupants of neighbouring properties. These conditions accord with the details of the planning application and appeal, acknowledging that the appellant has revised the originally proposed number of classes and class attendees in response to the Covid-19 situation which requires social distancing measures to be introduced.
24. I do not consider a condition restricting the permission to benefit the appellant only to be appropriate having regard to advice in the PPG, and given the aforementioned use-controlling conditions.
25. The guidance in the Framework makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect.
26. In this instance, condition no.7 of planning permission Ref 00/01347/REM is still relevant to all other dwellings other than the appeal property, which were the subject of the previous planning permission. I have therefore reworded it accordingly. Condition 10 of the previous permission is very similar to, and has the same objectives as, condition 7. In the absence of details of the approved garaging and parking for the remainder of the development, I have amalgamated the two conditions, taking account of the appeal scheme.
27. The Council has confirmed that, since the previously approved development has already been carried out, conditions 1, 2, 3, 5, 6, 9, 11 and 12, which relate to requirements in respect of the details of the development and construction methods, are no longer required. Accordingly, I have omitted them.
28. Conditions 4, 8, 13 (second condition 13) and 14 of the previous approval restrict permitted development rights. The Council has requested that they are

retained. As I have no compelling evidence before me to suggest that these conditions should not be attached, I have therefore updated/amalgamated them, referring to the latest version of the General Permitted Development Order, noting that condition 4 replicates part of condition 13.

29. The purpose and effect of the conditions are to ensure that the development on the site authorised by the grant of planning permission may only continue if the appellant complies with each of a series of requirements.

### **Conclusion**

30. For the reasons given above I conclude that the appeal should be allowed and that a new planning permission should be granted without the disputed planning condition in so far as it relates to the appeal site only, subject to the conditions as set out in the attached schedule.

*S Leonard*

INSPECTOR

### **Schedule of Conditions**

- 1) The Pilates studio use at 8 Kingsley Square shall cease on or before 1 December 2022 and, thereafter, the garage should revert back to use for the parking of cars only.
- 2) The vehicle garaging, parking, loading and unloading areas approved under planning permission Ref 00/01347/REM, with the exception of the double garage at 8 Kingsley Square, which may be used as a Pilates studio until 1 December 2022, shall not be used for any purpose other than the parking, loading and unloading of vehicles.
- 3) The garage at 8 Kingsley Square shall be used for a Pilates studio and for no other purpose (including any other purpose in Class D2 (Assembly and Leisure) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 4) The Pilates Studio use hereby permitted shall only take place between the following hours:
  - a. 0800-2100 Mondays - Fridays
  - b. 0900-1300 Saturdays.
- 5) There shall be no more than four Pilates classes per day and no more than two classes between 1500-2100.
- 6) The Pilates classes shall be limited to no more than four customers per class.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no vehicular or pedestrian access shall be formed to the site, other than those expressly authorised by permission Ref 00/01347/REM.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no building, structure or other alteration permitted by Classes A, B, C, D, E, F, G and H of Part 1 of Schedule 2 of the Order shall be carried out to Plots 44-65, 24-34, 36 and 37.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the exterior of plots 46 and 55 shall not be painted other than in such colours that have been agreed in writing by the Local Planning Authority.

**\*\*\*End of Conditions\*\*\***