
Appeal Decision

Site visit made on 26 July 2022

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 5 August 2022

Appeal Ref: APP/K3605/W/21/3289310

Queensgate House, South Road, Weybridge, KT13 9JX

- 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 Monkey Puzzle Day Nurseries Ltd., against the decision of Elmbridge Borough Council.
 - The application Ref 2021/1879, dated 24 May 2021, was refused by notice dated 18 October 2021.
 - The application sought planning permission for erection of two-storey building with basement for use as offices together with parking for 14 cars without complying with a condition attached to planning permission Ref 1991/0151, dated 16 April 1991.
 - The condition in dispute is No 3 which states that: *"The premises shall be used for office purposes (B1(a)) and for no other purposes, including any other purpose in Class B1 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 or re-enacting that Order"*.
 - The reason given for the condition is: *"The use of the building for other purposes could injure the amenities of the locality."*
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Monkey Puzzle Day Nurseries Ltd., against Elmbridge Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The appeal form describes the location as Weighbridge but in the banner heading above I have used the address from the application form and Decision Notice.
4. Planning permission was granted for an office building Ref 1991/0151 (the original permission) at the time when the Town and Country Planning (Use Classes) Order 1987 (the 1987 UCO) classified offices as Class B1(a). Condition 3 of the original permission restricts the use of the building to office purposes Class (B1(a) only. The reason given was to protect the amenities of the locality.

5. The 1987 UCO has been amended a number of times including by the 2020 Regulations¹. These introduce a new broad commercial, business and service use class (Class E), that includes office use (former Class B1(a)) and day nurseries (former Class D1) as well as cafes and restaurants (former class A3), and gyms or indoor recreations (former Class D2). The restriction to office purposes under Condition 3 still remains in force because, as well as citing the 1987 UCO, Condition 3 specifically states that the restriction continues to apply in relation to any provision equivalent to that Class in any Statutory Instrument revoking or re-enacting that Order.

Main Issue

6. The main issue is whether the proposed change of use can be permitted by a variation to Condition 3 imposed on planning permission Ref 1991/0151, dated 16 April 1991.

Reasons

7. Section 73 of the Act provides for the determination of applications to develop land without compliance with conditions previously attached to a planning permission. The proposal seeks to amend Condition 3 to allow a children's day nursery use to operate as an alternative to office purposes.
8. The judgement in *Finney*² established that the original description of development cannot be altered under Section 73 or Section 73A of the Act and that conditions cannot be changed in a manner that would create a discrepancy with the original description of development³. I invited the main Parties to comment on the implications of the judgement for this appeal and I have taken the submitted comments into account in reaching my Decision.
9. The original application sought permission for office use. The Council allowed it on that basis, but, knowing that uses can be changed over time, a specific condition was imposed to ensure that the building could only be used for offices. This was because of concerns it had at the time about the potential impact of alternative uses on the amenity of the locality.
10. Whilst the first part of the description, namely the erection of two-storey building, would remain unaltered the next part clearly states the use to which the building is to be put, namely offices, and Condition 3 states that it shall be used for "...no other purposes". A material change of use is just as much development, as defined in Paragraph 55 of the Town and Country Planning Act 1990, as building operations or increasing the number of units⁴. In my view the *Vue* case⁵ is different in that it was held there was nothing in the permission itself which limited the amount of floor space or the number of screens so in that case increasing the capacity of the multi-screen cinema would not conflict with the description of development.
11. Amending Condition 3 to allow a day nursery use would fundamentally alter the development by allowing an entirely different use of the building. Whether or not the use could revert to office purposes in the future, the effect of the

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the 2020 Regulations)

² *John Leslie Finney vs Welsh Ministers & Others* [2019] EWCA Civ 1868

³ the operative part of the planning permission in the terms used by Sullivan J in *Pye v Secretary of State for the Environment* 1997

⁴ *R v Coventry CC ex p Arrowcroft Group plc* [2001] PLCR 7

⁵ *The R (Vue Entertainment Ltd) v City of York Council* [2017]

proposal would be to create a direct conflict with the original description of the development for which planning permission was granted. I therefore conclude that the proposed change of use cannot be permitted by a variation to Condition 3 imposed on planning permission Ref 1991/0151, dated 16 April 1991. The available alternative in seeking a change of use is to submit a planning application.

12. Queensgate House is mainly surrounded by residential properties although it is a relatively short distance from commercial properties in the Queens Road shopping parade. South Road is a narrow cul-de-sac off Queens Road with narrow, partially obstructed, footpaths. Access to Queensgate House is through security gates set at the rear of a small carpark about halfway along South Road.
13. It is therefore entirely reasonable that the Council would wish to retain control over any alternative potential use of the building and assess the impact of such a change on the local environment. In doing so it could consider effects on highway safety and convenience and on the living conditions of occupiers of neighbouring residential properties. The reason given for imposing Condition 3 was therefore reasonable, relevant to planning and the development, enforceable and precise.

Other Matters

14. I have taken into account the supporting technical reports provided by the appellant, as well as other matters including: that the property is vacant; that the proposal would provide employment and a community facility; the other examples cited; the comments of the Environmental Health Officer and the Highway Authority; and the fact that South Area Town Planning Sub-Committee refused the proposal against the advice of Officers. However, I have considered the matter afresh having regard to all the evidence presented and find none of these matters affect my conclusion on the main issue.

Conclusion

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

S Harley

INSPECTOR