



Appeal Decision

Site visit made on 3 January 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2023

Appeal Ref: APP/D1780/W/22/3303816

20 Howard Road, Southampton SO15 5BN

- 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 Enthuse Care Ltd against the decision of Southampton City Council.
 - The application Ref 21/01578/FUL, dated 21 October 2021, was refused by notice dated 26 January 2022.
 - The application sought planning permission for change of use of premises to Offices (Class E (g)(i)) without complying with a condition attached to planning permission Ref 21/01047/FUL, dated 22 September 2021.
 - The condition in dispute is No 7 which states that: *"the maximum number of staff employed on site at any one time shall not exceed 7 employees."*
 - The reason given for the condition is: *"to protect the amenities of occupiers of existing nearby residential properties and to manage parking behaviour."*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of premises to Offices (Class E (g)(i)) at 20 Howard Road, Southampton, SO15 5BN in accordance with the terms of the application, Ref 21/01578/FUL, dated 21 October 2021, without compliance with condition number 7 previously imposed on planning permission Ref 21/01047/FUL dated 22 September 2021, but subject to the following conditions:
 - 1) Notwithstanding the Town and Country Planning (Use Classes) Order 1987 (as amended) or any Order revoking, amending or re-enacting that Order, the development hereby approved shall only be used as accommodation for the purposes indicated in the submitted details and not for any other purpose, including any other use within Use Class E.
 - 2) The office use hereby approved shall not operate outside the following hours. Additionally, there shall be no deliveries outside these hours:

Monday to Saturday	08:00 – 18:00
Sunday	10:00 – 16:00
Recognised public holidays	09:00 – 13:00
 - 3) The storage for bicycles shall be retained for use in accordance with the plans hereby approved and the details contained in the applicant's correspondence dated 20 August 2021 submitted under application Ref 21/01578/FUL.

- 4) The parking layout provided in accordance with the plans hereby approved shall be retained for the lifetime of the office uses and the non-designated parking areas shall be kept clear at all times.
- 5) The development hereby permitted shall be retained as approved in accordance with the following approved plans, unless otherwise agreed in writing with the local planning authority:
 - E.003.01.LP.01 – Location Plan
 - E.003.02.BP.01 – Block Plan
 - E.003.04.PPL.01 – Proposed Parking Layout
 - CPS/E/003/PLP1 – Proposed Floor Layout Plans.

Preliminary Matters

2. Planning permission has been granted for the change of use of the appeal property from a guest house to offices. Although the appeal application form indicates that the change of use had not commenced at the time of the appeal application submission, the appellant's Statement of Case confirms that the consent has now been implemented. Additionally, during my site visit I observed a number of signs for Enthuse Care Ltd present on the site and cars parked on the forecourt. As a result, my decision is based on the change of use having already been implemented.
3. During the validation of the appeal application, the description of development was amended. An application under section 73 of the Town and Country Planning Act 1990 may not be used to obtain a permission that would require a variation to the description of development for which the original permission was granted¹. Only the conditions can be varied. Therefore, I have used the description of development on the original permission within the banner heading and decision above.
4. The site is located within the catchment of The Solent Special Protection Area (SPA). Although not an issue raised by the Council, it is incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the integrity of the SPA. Comments were sought from the main parties and Natural England, and I have taken them into account in my reasoning. Therefore, neither party would be prejudiced by this matter being dealt with as a main issue.

Background and Main Issues

5. A condition was imposed on the aforementioned planning permission which restricts the total number of employees on the property at any one time. The appellant now wants to remove this condition (no 7) to allow for the growth of the business. However, the Council consider that the removal of this condition would cause unacceptable levels of noise, to the detriment of neighbouring occupiers, and lead to increased parking stress in the area.

¹ Established in *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council & Energiekontor (UK)Limited* [2019] EWCA Civ 1868

6. Therefore, the main issues of the appeal are:

- Whether the condition is reasonable or necessary in the interests of the living conditions of occupiers of 22 Howard Road (No 22), with particular regard to noise;
- whether the condition is reasonable or necessary in the interests of the parking conditions in the area, and consequently highway safety; and
- whether the removal of the condition would be likely to have a significant effect on the integrity of the SPA.

Reasons

Living conditions

7. The appeal site comprises a two storey semi-detached property with a front forecourt and a rear parking area with garage. The Officer's Report confirms that the adjoining property of No 22 has a guest house use. Although occupiers of No 22 would change over time, the standard of living conditions expected would be no different from that of more permanent residents.
8. Interested party representations express concerns that the unrestricted staff numbers would lead to an increase in noise, affecting the living conditions of neighbouring occupiers. However, as the operation of the business is restricted to specific times by a condition, any increased activity, and therefore noise, associated with the use would take place at reasonable times of the day, during normal working hours. Notwithstanding this, the Town and Country Planning (Use Classes) Order 1987 (as amended) (the Use Classes Order) deems offices that have any operational or administrative function (Class E(g)(i)) can be carried out in a residential area without detriment to its amenity.
9. Furthermore, the former guest house on the appeal site was unrestricted in terms of the number of guests or staff in the building at any one time, and this would have been likely to be more than seven people when fully occupied. Additionally, given the nature of the use, the times and patterns of movement and activity to the guest house would be different from that of the office, including during evenings and at weekends.
10. Noise issues during the determination of a planning application are considered in a different way to nuisance noise. Regardless, no further sound proofing was required by the Council via a condition and no objection to the removal of the disputed condition has been received from the Council's Environmental Health Officer.
11. Finally, even if I were to consider the disputed condition necessary, I am not persuaded that it could be easily enforced as it would not be immediately obvious how many staff members were in the building at any one time. Whilst the number of cars parked on the appeal site would give a potential indication of the number of staff members in the building, this would not account for any staff that may travel by public transport, walk or car share.
12. I therefore conclude that the disputed condition is not reasonable or necessary in the interests of protecting the living conditions of occupants of No 22, with particular regard to noise. The development, without the condition, would

therefore accord with Saved Policy SDP1 of the City of Southampton Local Plan Review (March 2015 amended) (the Local Plan) in this respect.

Parking conditions

13. The appeal site is located within the area defined by the Council as having 'standard accessibility' to public transport. However, the boundary of an area of high accessibility² centred on Shirley Road is located just a few properties away, where Atherley Road intersects Howard Road. Additionally, a bus route runs along Howard Road, with bus stops located close to Atherley Road.
14. Although it predates amendments to the Use Classes Order, the Southampton City Council's Parking Standards Supplementary Planning Document (2011) sets out the maximum parking standards for each use. The existing number of parking spaces on the appeal site is less than the maximum standard for office use³, and no further spaces are proposed. In addition, the restricted operating hours would remain, thereby limiting the timing of the vehicle movement.
15. Whilst Howard Road is subject to some parking restrictions, including double yellow lines which restrict daytime parking, it is not located within the Council's Controlled Parking Zone and there are locations further along the road, beyond Atherley Road, where areas of on street parking is permitted. Additionally, the nearby streets of Thornbury Avenue, Atherley Road and Arthur Road that join Howard Road have areas of unrestricted on street parking. Although representative of a snapshot in time, during my site visit, I observed a significant number of these on street spaces available. Moreover, the majority of properties close by have off street parking areas. Regardless of the lack of a parking stress survey, given the public transport routes available nearby and the existing parking conditions in the surrounding area, I am not persuaded that the removal of the disputed condition would unacceptably increase the demand for spaces.
16. My attention has been drawn to the behaviour of drivers using Howard Road, the impact of the expansion of a nearby school on traffic movement and what has been described as a serious accident that occurred outside the children's nursery opposite the appeal site. Although busy at the time of my visit, I have no substantive evidence before me to indicate vehicles entering or exiting the site onto Howard Road could not do so safely. I also have little evidence before me regarding the accident outside the nursery, including the cause of the incident, therefore have no reason to conclude it resulted from the use of the appeal site. Furthermore, no objection to the removal of the disputed condition, in respect of highways safety or traffic generation, was provided by the Local Highway Authority. Should staff or visitors of the office use illegally park, either on the road or private property, this would be a matter for other authorities.
17. I conclude that the condition is not reasonable or necessary in the interests of the parking conditions, and consequently highway safety, in the surrounding area. It would therefore accord with Saved Policy SDP1 of the Local Plan which requires new development ensures the safety of the City's citizens.

² A location within a 4 minute walk (equivalent to a 300 metres straight line distance) of a bus route served by a bus, on average, every 3 minutes or less in each direction (20+ buses per hour per direction) on a weekday daytime.

³ Based on 1 space per 30 square metre of gross floor area.

Integrity of the SPA

18. The special interest of the SPA results from the various wild birds supported by the habitat. One of the main issues preventing the SPA meeting this objective relates to an increase in wastewater being discharged into The Solent which effects the water quality from pollutants or increased nutrients, such as nitrates and phosphates. This process, known as eutrophication, can speed up the growth of certain plants, threatening the aquatic ecosystem by damaging the SPA's plants and wildlife.
19. I have sought the views of Natural England (NE) given the public body's statutory purpose to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations. The removal of the condition restricting the number of staff working at the appeal property at any one time would not result in an increase in overnight accommodation. As a result, NE consider that the development would not cause any likely significant effects to any designated site(s), either alone or in combination with other plans and projects. Therefore, it is not necessary for me to undertake an appropriate assessment and, consequently, I conclude that the development would not result in an adverse effect on the integrity of the SPA, in accordance with the Habitat Regulations.

Other Matters

20. I acknowledge that the Committee are entitled to attribute their own weight in assessing the degree of impact on neighbouring occupiers, including weighing against the socio-economic benefits of the change of use. However, the appellant also has the right to appeal against a condition, regardless of the age of the original planning permission.
21. Comments from third parties regarding the relationship between the appellant and Council are not a matter for me to consider as part of this case. Similarly, the alleged behaviour of the appellant towards local residents does not fall within my remit.

Conditions

22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Therefore, as the change of use has been implemented, I have not imposed a condition requiring commencement of the development within a certain time limit.
23. In the interests of living conditions of neighbouring occupiers, I have imposed a condition limiting the use of the property to Class E (g)(i) and a condition restricting the hours of operation. In order to promote sustainable modes of transport and in the interests of highway safety, I have edited the conditions relating to the cycle and car parking to require these provisions to be retained as approved. Finally, for the avoidance of doubt, a condition listing the approved plans has been imposed.

Conclusion

24. For the reasons given above I conclude that the appeal should be allowed and grant a new planning permission with the removal of the disputed condition. I

have retained those undisputed conditions from the original permission that appear still to be relevant.

Juliet Rogers

INSPECTOR