
Appeal Decision

Site visit made on 8 December 2023

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/Y0435/W/23/3319661

Units F and G, 349 South Row, Central Milton Keynes, Milton Keynes MK9 2FY

- 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 Avon Group Ltd against the decision of Milton Keynes Council.
 - The application Ref 22/02036/FULM, dated 11 August 2022, was refused by notice dated 30 December 2022.
 - The application sought planning permission for the additional use as health/fitness/leisure unit within Use Class D2(E) in addition to approved uses for units without complying with a condition attached to planning permission Ref 11/02285/FUL, dated 15 December 2011.
 - The condition in dispute is No 5 which states that: The premises shall be used for a gymnasium and for no other purpose whatsoever, including any other purpose in class D2 of the schedule to the Town and Country Planning (Use Classes) Order 2010 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: Other D2 uses may not be appropriate in this location and would need to be assessed in light of the impact on the character of the area, neighbouring amenity and the highway in the interests of policies D1, D2, T210 and T15 of the Milton Keynes Local Plan 2001-2011.
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Decision

1. The appeal is allowed and planning permission is granted for the additional use as health/fitness/leisure unit within Use Class D2(E) in addition to approved uses for units without complying with a condition attached to planning permission Ref 11/02285/FUL, dated 15 December 2011 at Units F and G, 349 South Row, Central Milton Keynes, Milton Keynes MK9 2FY in accordance with the terms of the application, Ref 22/02036/FULM, dated 11 August 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Q2/951/CP02/A; Q2/951/4/002A; and 01.

Preliminary Matters

2. Notwithstanding the address given on the application form, I have used reference to Units F and G in the site address as set out above. This is to ensure satisfactory correlation with the site address that is stated on the Council's 2011 and 2022 Decision Notices.

3. A revised National Planning Policy Framework (the Framework) was published in December 2023. Whilst this publication is material to my considerations, in view of the nature of the determining issues in this appeal I have not considered it necessary to seek observations from the main parties.

Background

4. Planning permission was granted in 2006 (the 2006 permission) for a comprehensive mixed-use scheme, of which the appeal property comprises a part. The scheme involved the development of, amongst other things, several hundred houses and apartments, shops including a superstore, financial and professional services, food and drink, nursery, and a pavilion. The 2006 permission allowed for the flexible use of various commercial units (including the appeal property) for any purpose falling within Uses in Classes A1, A2, A3, A4, A5 and B1 of the Use Classes Order that applied.
5. The approved scheme (the 2011 permission) relates to the introduction of an additional Class D(E) use to the uses already approved on a flexible basis under the 2006 permission and restricts the appeal property's use to a gymnasium. Indeed, disputed Condition 5 sets out that it shall be used for no other purpose whatsoever, including any other purpose in Class D2 of the version of the Use Classes Order that was in place at that time.
6. The Use Classes Order has, in 2020, been amended by regulations to create a new broad commercial, business and service use class (Class E), which incorporates many of the uses that were covered by the 2006 permission as well as a gymnasium use (the property's most recent use).

Main Issue

7. The main issue is whether the retention of disputed condition 5 is necessary having regard to highway safety.

Reasons

8. The appeal property forms part of a comprehensive mixed-use development located in central Milton Keynes. Other uses in the vicinity include dental practices, medical centres, an educational establishment, estate agents, offices, a large supermarket and residential dwellings.
9. Amongst other things, Policy CT10 of Plan: MK 2016-2031 adopted March 2019 (P:MK) highlights that all development should meet the Council's full parking standards, unless mitigating circumstances dictate otherwise and that parking areas should be well designed in terms of safety, circulation and appearance. The latest Parking Standards Supplementary Planning Document (PS SPD) was adopted in January 2023 and identifies the appeal site as being located within Zone 1 – Central Milton Keynes, which is the high accessibility city centre zone which has the highest level of access to facilities and consequently the lowest parking requirements.
10. The parking standards for the approved use of the appeal property as a gymnasium is 1 space per 20 m². This is higher than most of the possible uses of the appeal property that fall within Class E. Depending on the number of consulting rooms, a change of use to allow the provision of medical or health services could potentially result in an increase in demand for parking as the standard is 3 spaces per 1 consulting room. Similarly, a creche, day

nursery or day centre which requires one space per 3 FTE staff together with one drop off space, could also result in a greater demand for parking depending on the number of staff employed.

11. However, there is a significant and extensive parking area. Although some of this is reserved for permit holders and I am unaware of private spaces specifically allocated to users/occupiers of the appeal premises, the majority of spaces are not restricted, and parking is possible in the vicinity of the property by paying an hourly parking fee. At the time of my site visit, there was no parking pressure, and a substantial number of parking spaces were publicly available. I appreciate that this is only a snapshot at a particular time of the week. However, my observations support the appellant's evidence that there are many spaces available. Moreover, the Council has not provided any detailed or compelling evidence to demonstrate that there is parking pressure within the vicinity of the appeal property that could be unacceptably exacerbated as a result of the removal of the disputed condition.
12. Further, the appeal property is located some distance away from Saxon Gate and Avebury Boulevard which are the roads that provide vehicular access to the area. The extensive parking areas serving the appeal site and the wider area are accessed off these roads. Given the distances and the significant number of parking spaces in the vicinity of the appeal site, I am satisfied there would not be any harmful impact on the local highway network and that a Class E use of the appeal property, whatever that might ultimately entail, would not prejudice highway safety.
13. It follows that even if a future use would generate more parking demand than the previous gymnasium use, the large number of parking spaces available would provide convenient and suitable parking within close proximity to the appeal site.
14. At the time the 2011 permission was granted, the Officer's report highlighted that although the proposed gymnasium could be accommodated taking account of current parking levels, other D2 uses, such as a swimming pool or a cinema could have different highway impacts and may not be acceptable, which formed the basis of the Council imposing the relevant condition. However, neither of these specific uses now fall within Class E and therefore any previous concerns about these particular uses would no longer apply.
15. Overall, although a full assessment of the parking implications of all potential uses within Class E has not been undertaken, I am satisfied that adequate parking provision within the vicinity of the site would be available to serve any potential use. It follows that that proposal would not have an unacceptable impact on highway safety.
16. Accordingly, the proposal would not conflict with the objectives of Policy CT10 of P:MK as adequate parking provision would be available to serve the appeal property with suitable circulation space where vehicles could park safely. Further, the proposal would also satisfactorily accord with the aspirations of Policy CMKAP T4 of The CMK Alliance Plan and comply with the Framework which sets out that development should only be prevented 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, which would not be the case here.

17. It thus follows that the disputed condition is not necessary to make the development acceptable having regard to highway safety.

Other Matters

18. Concerns have been raised by an interested party that the proposal would allow all kinds of alternative uses that could operate with much longer opening hours. However, having considered the full suite of future uses that could avail under Class E, which would not include a cinema or drinking establishments, and having noted the mixed-use nature of the area, there is no clear reason for me to consider that the amenities of neighbouring residential occupiers would be adversely affected as a result of the proposal. Further, there is no clear reason to suggest that the proposal would either exacerbate fire safety risk or have a detrimental impact upon the character of the area.

Conditions

19. In considering whether I should impose conditions I have had regard to the advice in the Framework and the Planning Practice Guidance (PPG). By allowing this appeal a new planning permission is created. The guidance in the PPG 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. I have also considered the conditions suggested by the Council.
20. As I am satisfied that the 2011 permission has been implemented, it is unnecessary to impose a commencement condition. In the interests of certainty, a condition is needed to secure compliance with the relevant plans approved in 2011. It is not necessary for this list to extend to subsequent submitted documents.
21. I am satisfied that Conditions 3 and 4 attached to the 2011 permission in relation to sound transmission paths and the design of the internal entrance lobby have been discharged in full and consequently it is not necessary to re-impose conditions in relation to these matters.
22. In relation to a condition that deals with the use of the appeal property, given my various findings above and in accordance with guidance in the PPG which highlights that conditions restricting future changes of use may not pass the test of reasonableness or necessity, it is not necessary or reasonable to prevent uses that fall within parts (e), (f) or (g)(ii) and (iii) of Class E of the Use Classes Order. Moreover, as outlined above, the property's most recent use as a gym now falls within Class E and therefore it is not necessary or reasonable to impose a condition that further restricts the use of the appeal property.

Conclusion

23. For the reasons given above I conclude that the appeal should be allowed.

S Rawle

INSPECTOR