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# Appeal Decision

Site visit made on 17 July 2024

**by Alison Fish BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 August 2024**

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**Appeal Ref: APP/E3335/W/23/3335050**

**Martock Workspace, Stoke Road, Martock, Somerset TA12 6RR**

- The appeal is made by Mr D Paull of Paull and Co Ltd against the decision of Somerset Council.
  - The application Ref 23/01218/S73 was approved on 19 September 2023 and planning permission was granted subject to conditions.
  - The development permitted is 'S73 application to vary condition 11(Use Class) to allow any use falling within Use Class E in relation to planning approval 21/03666/FUL for Full planning application for the installation of three commercial units (E use class) with associated landscaping, parking and works'.
  - The condition in dispute is No 15 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, the buildings shall be used for purposes falling within Use Class E(b)(c) and E(g) only and for no other purpose (including any other purpose in Class E 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 and re-enacting that Order with or without modification).
  - The reason given for the condition is: In the interest of residential amenity, ensuring the use of the building is appropriate for the location and in the interest of assuring adequate parking remains available for any alternative use to accord with the South Somerset Local Plan (2006-2028) and the provisions the core planning principles of the National Planning Policy Framework.
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## Decision

1. The appeal is allowed and the planning permission Ref 23/01218/S73 to vary condition 11 (Use Class) to allow any use falling within Use Class E in relation to planning approval 21/03666/FUL for the installation of three commercial units (Use Class E) with associated landscaping, parking and works at Martock Workspace, Martock, Somerset, TA12 6RR granted on 19 September 2023 by Somerset Council, is varied by deleting condition 15 and substituting it with the following condition:
  - 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, the buildings shall not be used for any purpose other than purposes within Class E 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 and re-enacting that Order with or without modification).

## Preliminary Matter

2. The Council have not submitted an appeal statement in accordance with the timetable. Therefore, I have taken it that their case is based on the Officer Report and decision notice.

## Background and Main Issues

3. Planning permission was granted for the erection of three commercial units<sup>1</sup> at the appeal site. The permission was subject to conditions including No 11 which restricted the use of the buildings to Use Class E(g)(i)<sup>2</sup> only. This limited the use of the buildings to offices to carry out any operational or administrative functions and for no other purpose.
4. The application the subject of this appeal, sought to vary that condition (No 11) to permit the use of the building for any purpose falling within Use Class E which relates to commercial, business and service uses.
5. The Council granted planning permission<sup>3</sup> ('the planning permission') subject to conditions including No 15 which restricted the permitted uses to those falling within Use Class E(b) (c) and (g) only. In summary, these relate to: (b) the sale of food and drink on the premises; (c) the provision of financial professional and other services to visiting members of the public; and (g) for an office, research and development, or any industrial process which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. The reason given for the condition is set out in the banner heading above.
6. This appeal seeks to vary that condition (No 15). In addition to those uses set out in Paragraph 5 above, the appeal seeks to enable the premises to be used for (a) retail sales; (d) indoor sport, recreation or fitness; (e) medical or health services; and (f) creche, day nursery or day centre.
7. Therefore, taking the above background into the account, the main issue in this appeal is whether condition 15 is reasonable and necessary having regard to the appeal site's location and the effect that varying the condition would have on the living conditions of nearby occupiers and highway safety with particular regard to the adequacy of parking provision.

## Reasons

### *Living Conditions*

8. The appeal proposal relates to three proposed buildings with a combined floorspace of 154.8 sqm. They would be constructed close to the northern boundary of the Martock Workspace site, adjacent to the neighbouring property of 'Sunnylands'. I saw on my site visit that the boundary of the appeal site with Sunnylands consists of timber fencing and established trees.
9. There are conditions in place on the planning permission to protect the living conditions of neighbouring occupiers. Delivery hours are controlled by condition 14 of the planning permission and condition 3 of the planning permission relates to the proposed north facing windows in each of the buildings.
10. Turning to the proposed uses, the appellant advises that intended occupants are unlikely to be purely retail. Rather, they are likely to have an element of retail to support the main use. Even if the buildings were occupied on a purely

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<sup>1</sup> LPA Ref: 21/03666/FUL - Full planning application for the installation of three commercial units (E use class) with associated landscaping, parking and works.

<sup>2</sup> Of the Town and Country Planning (Use Classes) Order 1987

<sup>3</sup> LPA Ref: 23/01218/S73

retail basis, the limited floorspace area and controls over deliveries would be sufficient in my view to prevent an undesirable level of noise.

11. With regards to medical and health services, the appellant advises that one of the units elsewhere on the Martock Workspace site is already occupied by a dental business and I saw this on my site visit. There is no evidence before me to indicate that further medical or health service uses would not be at odds with this nor that they would generate an unacceptable level of noise or disturbance.
12. However, indoor sport, recreation, fitness and creche uses are all uses capable of generating noise. A creche, day nursery or day centre may generate noise given that it would result in a number of visitors being on site at the same time. However, such activities would take place within the building, and there is no evidence before me to indicate that this would result in excessive noise or disturbance to neighbouring occupiers. Whilst I note that the appellant has indicated a willingness to accept a condition to prevent the use of the units for purposes falling within Use Class E (f) such a restriction would not be necessary or reasonable.
13. An interested party has expressed concern about noise associated with an indoor sport and fitness use particularly from loud music and heavy weights being dropped. The appellant has supplied a copy of 'Facilities guidance for weight training areas/gyms'<sup>4</sup>. Whilst this has been produced by the Ireland Football Rugby Union, in the absence of evidence to the contrary, I see no reason why the advice it contains should not be universal in respect of weight training facilities.
14. This sets out the need for facilities to have a ceiling height in excess of 3.4m and a strong resilient floor structure. The appellant advises that the three units have a ceiling height of 2.69m and they would require further works to create a sprung or padded floor. This indicates that the units are not suitable for use as a gym for weightlifting. Notwithstanding this, even if they were to be used in this manner, the approved plans indicate a very limited number of openings on the rear elevation of the units, and this together with the provision of landscaping and the 2.1m high fence along the boundary with Sunnylands would protect the occupiers of the neighbouring residential property from the adverse effects of loud music and noise from weights being dropped.
15. Taken together, I find that no conflict arises with Policy EQ2 of the South Somerset Local Plan 2006-2028, adopted March 2015 (LP) and Policies Mart23 and Mart 24 of the Martock Neighbourhood Plan 2018-2028, made June 2021 (NP) which requires that development proposals protect the residential amenity of neighbouring properties.

#### *Highway Safety*

16. The Council's officer report indicates that the use of the appeal premises for retail and other purposes within Use Class E may cause slightly elevated trip levels. However, I have nothing before me to indicate what the expected traffic generation would be and what impact that would have on highway safety.

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<sup>4</sup> Guidance Note produced by IRFU

17. The consultation response from the Highway Authority points to its Standing Advice<sup>5</sup> and this requires that parking is provided in accordance with the Somerset County Council Parking Strategy (the Strategy).
18. The Strategy identifies Martock as being located in Zone B but does not set out any non-residential parking standards for Use Class E. However, even if the most rigorous parking requirement in the Strategy of 1 space per 20 sqm was applied, the proposed provision of 13 spaces exceeds that requirement. Accordingly, I am satisfied that there is sufficient parking to accommodate the proposed uses.
19. Interested parties have referred to the appeal site attracting people on foot. However, the units already have planning permission and there is no evidence before me to indicate that the number of persons arriving on foot would increase as a result of the appeal proposal nor that this would be harmful to highway safety. I also have no substantive evidence before me to indicate that the appeal proposal would have a harmful effect on the condition of the highway, increase flood risk on highway, nor require the provision of traffic calming.
20. I therefore find no conflict with Policy TA6 of the LP and Policies Mart23 and Mart24 of the NP which requires that the parking standards set out in the Strategy are applied to new developments and that the residual cumulative impacts on highway safety and parking are not unacceptable.

#### *Location*

21. Martock is identified in Policy SS1 of the LP as a Rural Centre where provision for development shall be made that meets local housing need, extends local services and supports economic activity appropriate to the scale of the settlement. The appeal site itself is located outside but close to the Settlement Area Boundary identified in the NP. Policy Mart6 of the NP therefore applies but the use of the appeal site for employment purposes has been established through the earlier grant of planning permission for three commercial units.
22. The appellant advises that the appeal proposal relates to small scale units aimed at facilitating start up enterprises, charities and small businesses. They anticipate a fairly high turnover rate, requiring flexibility so that new tenants can be accommodated without delay. It is understood that the appellant has received enquiries from potential occupiers who found the existing units on Martock Workspace to be too large or unsuitable to meet their needs.
23. The NP sets out the importance of Martock's retail function to the local economy<sup>6</sup> and states that the availability of local shops and services is appreciated by the local community with many saying they would like to see more shops and better shops.
24. The Council accepts that due to the location of Martock, introducing town centre uses in the application site is unlikely to negatively affect the vitality and viability of Yeovil, Taunton Deane, Crewkerne, and Ilchester Town Centres. In this respect there would be no conflict with Policy EP11 of the South Somerset Local Plan 2006-2028, adopted March 2015 (LP) which seeks a sequential

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<sup>5</sup> Highways Development Control Standing Advice published June 2017

<sup>6</sup> Paragraph 10.7 of the Martock Neighbourhood Plan 2018-2028 made June 2021

approach to the location of main town centre uses in order to sustain and enhance vitality and viability of town centres.

25. My attention has also been drawn to policies EP4 and EP5 of the LP and Mart24 of the NP which support small scale employment opportunities in rural locations and Policy EP15 of the LP which supports the provision of local shops and services. I have also had regard to Paragraphs 85 and 88 of the National Planning Policy Framework (the Framework) which encourages the sustainable growth and expansion of all types of business in rural areas and the creation of conditions in which businesses can invest, expand and adapt. I have given significant weight to the need to support economic growth and productivity, as set out in Paragraph 85 of the Framework.
26. Accordingly, I find that no conflict arises with Policies SS1, EP4, EP5, EP11 and EP15 of the LP and Mart24 of the NP which collectively seek to provide a range of services at an appropriate scale which meets the needs of the local community and supports a viable rural economy whilst respecting residential amenity.

### **Other Matters**

27. The site is identified as being within the Somerset Levels and Moors Ramsar Site Catchment Area. The Council advise that as there would be no net gain in residential or commercial units and no overnight accommodation. As such, the proposal is unlikely to add significantly to nutrient loading on the Somerset Levels and Moors Ramsar site. There is no evidence to the contrary. As such, I am satisfied that an appropriate assessment under Regulation 63 of the Habitats Regulations 2017 in terms of the impact of the proposal on the Ramsar is not required.

### **Conclusion**

28. I conclude that condition 15 of the planning permission restricting the use of the units to Use Class E(b)(c) and E(g) only is not reasonable or necessary having regard to the appeal site's location and the effect that varying the condition would have on the living conditions of nearby occupiers and highway safety with particular regard to the adequacy of parking provision.
29. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and imposing a condition which permits any use falling within Use Class E, as set out in the description of the application in the banner heading and as proposed by the appellant in their Statement of Case.

*Alison Fish*

INSPECTOR