



Appeal Decision

Site visit made on 20 September 2024

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2024

Appeal Ref: APP/V2004/W/24/3343399

458-462 Holderness Road, Kingston Upon Hull HU9 3DS

- 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 S Hakim of Maze Hull Ltd against the decision of Kingston-Upon-Hull City Council.
- The application Ref 24/00165/S73, dated 27 February 2024, was refused by notice dated 24 April 2024.
- The application sought planning permission to vary condition No. 14 for planning approval No. 22/01242/S73 To permit the use of one of the approved retail units to also be used as a Gym without complying with a condition attached to planning permission Ref 23/02830/S73, dated 2 November 2023.
- The condition in dispute is No. 10 which states that: The Newcomen Street entrance/exit shall be used only for emergency purposes, maintenance purposes and access to the electricity substation.
- The reason given for the condition is: in the interests of public safety and to comply with policy 26 of the Local Plan.

Decision

1. The appeal is allowed and planning permission is granted to vary condition No. 14 for planning approval No. 22/01242/S73 To permit the use of one of the approved retail units to also be used as a Gym at 458-462 Holderness Road, Kingston Upon Hull HU9 3DS in accordance with the application Ref 24/00165/S73, without compliance with condition number 10 previously imposed on planning permission Ref 23/02830/S73 dated 2 November 2023 and subject to the conditions below:
 - 1) The development shall be carried out fully in accordance with planning permission reference 23/02830/S73 and the requirements of conditions 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16 and 17; granted on 2 November 2023.
 - 2) The Newcomen Street entrance/exit shall be used only for emergency purposes, maintenance purposes, domestic refuse collection, and access to the electricity substation.
 - 3) Refuse storage and collection arrangements shall be in accordance with the submitted plans (space shown as Residential Refuse Store on drawings No. 20.2895-13 Rev I).

Applications for costs

2. An application for costs was made by Mr S Hakim of Maze Hull Ltd against Kingston-Upon-Hull City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The planning history relating to the appeal site is as set out and includes several variations to a planning permission granted in April 2022¹. This appeal relates to an application to vary a condition imposed on a varied consent. The wording of the condition is set out in the banner heading above. The appellant seeks to vary the wording as follows 'The Newcomen Street entrance/exit shall be used only for emergency purposes, maintenance purposes, domestic refuse collection, and access to the electricity substation.'

Main Issue

4. The main issue is the effect of varying the condition on the living conditions of occupants of residential properties on Newcomen Street in terms of noise, disturbance and congestion.

Reasons

5. The appeal site is located on Holderness Road which is a busy distributor road with high levels of traffic and several commercial properties, with residential properties behind. The site includes a two-storey building with commercial/retail units to the ground floor with residential properties above. To the rear of the site is Newcomen Street which runs parallel with Holderness Road. Newcomen Street is a residential street which is notably quieter than Holderness Road in terms of traffic movements and general activity.
6. There is an existing gated access to the site from Newcomen Street which sits between nos. 85 and 93. The access has a dropped kerb onto the carriageway.
7. The proposed variation would allow the existing access to be used for domestic refuse collection. The evidence outlines how, on collection day, containers would be presented by staff of the appeal site to the service yard who would open the gates for collection. Containers would be collected and emptied by refuse collection staff and returned to the service yard, where staff of the appeal site would then return containers to the storage area. The refuse vehicle would not enter the site and would remain on Newcomen Street during collection and emptying. Only domestic waste would be collected. It is suggested by the Council that the utilisation of the access for domestic waste collection would add an additional 2 to 4 minutes to collection times.
8. Although Newcomen Street is wide enough to allow for two-way traffic, this is largely prohibited due to the on-street parking of vehicles. There is, as I observed on my late morning site visit, some gaps in the parking, that allow for vehicles to pull-in and for traffic to pass. I do however acknowledge that my visit was a snapshot in time and may not be reflective of all other times.
9. Domestic refuse collection presently occurs on Newcomen Street. By its very nature of collecting containers, emptying them and from the vehicle itself, the activity will be noticeable to residents and will generate a degree of noise and

¹ Planning Permission 21/01050/FULL

disturbance. For the majority of residents on Newcomen Street any increase in noise from the proposed variation is not likely to be noticeable. For those closest to the access, particularly the occupants of nos. 85 and 93, the use of the access and the transporting of containers will likely bring some additional noise above that which already occurs.

10. However, given that refuse collection currently occurs, and that this is on a weekly basis for a limited time, I consider that the increase in noise levels would be minor and for a short timeframe. Therefore, whilst it may be noticeable above that which currently occurs, I do not consider that it would be to an unacceptable level.
11. In a similar manner, the existing refuse collection arrangement is likely to cause some inconvenience on the highway for residents when the vehicle may prohibit the free movement of traffic. The evidence shows that it is expected that an additional 2 to 4 minutes would be added to existing collection times. Given that there is likely to be a degree of inconvenience which currently occurs on collection day, and that there would only be one collection per week, I do not consider that the small increase in collection time would cause an unacceptable inconvenience to residents or road users.
12. I note concern expressed in relation to the size of the storage containers to be used. Whilst these are larger than those containers which typically serve a single household, the collection plan shows that they would not be left on the highway and would be returned to the collection point within the site.
13. I therefore conclude that the proposed variation to the condition would not have an unacceptable impact on the living conditions of occupants of Newcomen Street in terms of noise, disturbance and congestion. It would comply with Policies 14 and 26 of the Hull Local Plan (2017). These policies require, amongst other things, that developments deliver a high-quality environment.

Conditions

14. As the effect of a successful s73 application will be to create a new planning permission, I have imposed a condition retaining the remaining undisputed conditions from the previous permission. This is in addition to the variation to condition 10. It is also necessary that condition 13 is varied to reflect the amendment to the refuse collection arrangements. Both conditions 10 and 13 are in the interests of the living conditions of occupants of residential properties on Newcomen Street, and public safety.

Conclusion

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions and impose new conditions and a condition retaining the undisputed conditions.

A M Nilsson

INSPECTOR