
Site Address: The Hub, 39 Park Parade, Havant, PO9 5AA
Proposal: Variation of condition 3 of Planning Permission APP/10/00265 to allow for additional use of Class E on the ground floor.
Application Type: Variation/Relief of Condition
Application No: APP/23/00743 Expiry Date: 16/10/2023
Applicant: Ms P Spicer
Agent: Mr P Harcourt Case Officer: Leanne Richardson
 Development Solutions
Ward: Battins

Recommendation: **GRANT PERMISSION**

1 Site Description

The application site relates to a three storey building comprising commercial units at ground floor level with residential accommodation occupying the upper floor units. The site is located on the corner site of Dunsbury Way, Tidworth Road and Park Parade. The development relates to the commercial unit located on the ground floor which is currently occupied by two charities with the main entrance located on Park Parade. There is a covered parking area to the rear of the building which is accessed off Park Parade.

2 Planning History

APP/10/00931

Display of 3No. illuminated fascia, 4No. illuminated continuity panels and 3No. mobile feather flags

APP/10/00265

Change of use from A3 (food and drink) to Part A3 and Part D1 (a Day Centre run by a group of charities) plus alterations to fenestration approved under Planning Permission 06/53366/009.

APP/10/00959

Discharge of Condition No. 5 of Planning Permission APP/10/00265.

08/53366/012

Discharge of Condition No. 12 of Planning Permission 06/53366/009. Permitted - 17/4/08

08/53366/013

Discharge of Condition No 6 of Planning Permission 06/53366/009. 21/1/09

06/53366/009 -

Demolition of the existing building and construction of a four storey building to provide a bar/restaurant (366 square metres) use on the ground floor, 29 residential flats, car parking, bin and cycle storage (resubmission). Permitted 16/10/06.

04/53366/008

Demolition of the existing Public House and erection of new four storey mixed use development with A3 (324 square metres) use on the ground floor, 29 residential flats. Permitted 18/02/05.

3 Proposal

Condition 3 of planning permission APP/10/00265 states:

Notwithstanding the provisions of any Town and Country Planning General Development or Use Classes Order, the ground floor commercial use thereby permitted, shall only be used for purposes falling within the scope of Class A3 and Class D1 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended in 2005, and no ancillary takeaway uses are permitted unless otherwise agreed in writing by the Local Planning Authority.

Reason: To enable the Local Planning Authority to consider the acceptability of alternative use and having due regard to saved policies D1 of the Havant Borough District Wide Local Plan 1996-2011, which forms part of the Havant Borough Local Development Framework.

The community hubs, approved under planning ref: APP/10/00265 would remain in situ as part of this S73 application, however, it is understood that the café (Class A3 use) has since closed as it is no longer commercially viable to continue to operate.

Following the closure of the Café, the application seeks to vary Condition 3 of planning permission APP/10/00265 to allow the existing charities to use the vacant space as an office to carry out administrative functions (Class E(g)(i)) and to allow greater flexibility of Class E uses.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011 .

CS1 (Health and Wellbeing)

CS16 (High Quality Design)

DM2 (Protection of Existing Community Facilities and Shops)

DM10 (Pollution)

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)

Listed Building Grade: Not applicable.

Conservation Area: Not applicable

5 **Statutory and Non Statutory Consultations**

Environmental Protection

Initial comment

The application seeks to vary condition 3 of Planning Permission APP/10/00265 to allow for additional use of class E. Having considered the application, we have insufficient information to fully assess the cumulative impact of the proposal upon the neighbouring residential properties. We are conscious of the varied commercial activities that are permissible under a class E use. We require that the applicant demonstrate with a high degree of certainty the proposed change will not harm the amenity of the neighbouring properties. The applicant may wish to start by stating what other commercial activities that will take place other than the existing use together with the assessment of noise from these uses and associated noise mitigation.

Officer comment: *Following receipt of this consultation response the applicants submitted the following statement:*

"The extant consent was granted in 2006 for bar / restaurant under Class A3 and then revised in 2010 to part A3 and part D1 as defined by the 2005 amendment to the use Classes Order. Although "Day Centre" is mentioned alongside D1 it is clear that the D1 use is unrestricted. The A3 consent allows bars, restaurants, cafes but excludes takeaway food. Class A3 was amended in 2015 to exclude drinking establishments, but I do not believe that this change was retrospective and impacted on extant consents. The A3 use from 2015 has now become Class E, along with A1 shops with a retail area of less than 280 sq. metres, A2 financial and professional services, Class B1 and certain uses in Classes D1 and D2 of which Day Centre is one of those uses. Effectively, therefore, all of the current uses in Class E are permitted, and it is just the old Class B1 that is a grey area, and D2 uses such as gyms, indoor sport and recreation etc. By the nature of their current use, the space that is not used as Day Centre of Café could probably be classed as the former A2 Professional Services since there is a public function to these. We are merely seeking clarification in this application by adding the new Class E. I fail, therefore, to see what your Environmental Health colleague means by his comment / proposed requirement. As far as I am concerned there are no commercial activities planned that are not permitted under the extant consent, but we were simply seeking clarification for the avoidance of doubt. If the Environmental Health officer would care to list those uses that it considers will harm the amenity of the neighbouring properties more than uses that are already permitted (bars, restaurants, cafes but excluding takeaway food, clinics, health centres, day centres, nurseries, nonresidential institutions and professional services, can I request that they list these, and we can consider how they might be excluded or managed. If not I respectfully request that they withdraw any objection."

Final comment:

Thank you for providing further explanation. I can confirm that we do not have any further objections with respect to the above application.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 84

Number of site notices: 1

Number of representations received: 0

7 Planning Considerations

7.1 having regard to the relevant policies of the development plan, it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact on the character and appearance of the area
- (iii) Impact on residential amenity

Principle of development

7.2 This is a Section 73 application and if approved, its granting effectively re-issues the original permission and must repeat the relevant conditions unless they have been discharged. All of the pre-commencement conditions imposed on the original consent have been discharged.

7.3 The Town and Country Planning (Use Classes) Order 1987 (as amended) essentially categorises different types of property and land into classes. A significant reform of the Use Classes Order was updated on 1 September 2022 which revoked former Class A3 (restaurants and cafes) and Use Class D1 (day centres). The overhaul of the Use Class Order places greater emphasis on more flexible uses within a broader Class E (Commercial, Business and Service).

7.4 Former Class A3 has been replaced by Class E(b) and former Class D1 has been replaced with Class E(f).

7.5 The building has been operating as a drop in care and community hub, shared with two charities (MIND and MOTIV8). It is understood that at the end of 2022, the cafe was no longer deemed viable and subsequently closed, although the drop in hub, operated by the two charities has remained and continues to be the primary use. Given the previous permission, the principle of the development in seeking to allow for Class E uses at the site is considered to be acceptable.

Impact on the character and appearance of the area

7.6 There would be no operational development associated with this S73 application and therefore the appearance of the building would not be altered and would remain appropriate to its location.

Impact on residential amenity

- 7.7 The impact of the development upon neighbouring residential occupiers was considered as part of the original consent. In order to protect the amenities of neighbouring residents, a condition was imposed which sought to restrict the hours of opening associated with the former A3 use. No concerns were raised in relation to the community uses. The current proposal makes no changes to the external appearance, merely to allow greater flexibility as to its potential use to fall within Class E.
- 7.8 The variation of Condition 3 of planning permission APP/10/00265 to allow the existing charities to use the vacant space as an office to carry out administrative functions would not be harmful to the amenity of neighbouring properties.
- 7.9 However, the Environmental Health initially requested more information from the applicant regarding the potential noise impacts to neighbouring residential properties as a result of other commercial activities that are permissible under a class E use.
- 7.10 The applicant responded as follows:

The extant consent was granted in 2006 for bar / restaurant under Class A3 and then revised in 2010 to part A3 and part D1 as defined by the 2005 amendment to the use Classes Order. Although "Day Centre" is mentioned alongside D1 it is clear that the D1 use is unrestricted. The A3 consent allows bars, restaurants, cafes but excludes takeaway food. The A3 use from 2015 has now become Class E, along with A1 shops with a retail area of less than 280 sq. metres, A2 financial and professional services, Class B1 and certain uses in Classes D1 and D2 of which Day Centre is one of those uses.

Effectively, therefore, all of the current uses in Class E are permitted, and it is just the old Class B1 that is a grey area, and D2 uses such as gyms, indoor sport and recreation etc. By the nature of their current use, the space that is not used as Day Centre or Café could probably be classed as the former A2 Professional Services since there is a public function to these. We are merely seeking clarification in this application by adding the new Class E.

- 7.11 Following reconsultation, the Environmental Health Officer confirmed they have no objections to the proposal.

8 Conclusion

- 8.1 The variation proposed to the wording of Condition 3 of Planning Permission APP/10/00265 would have an acceptable impact on the character of the area and the amenity of neighbours and is therefore considered to be appropriate and recommended for approval.
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9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT PERMISSION** for application APP/23/00743 subject to the following conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Plan received 25 August 2023

Reason: To ensure provision of a satisfactory development.

- 2 No tables, chairs, or any other furniture shall be placed on any external areas unless otherwise first agreed in writing by the Local Planning Authority

Reason: To protect the amenities of nearby residential properties and having due regard to policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 3 Notwithstanding the provisions of any Town and Country Planning (General Development) (England) Order 2015 (as amended), the Use Class shall be restricted to Class E of Schedule 2 Part A of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order and for no other purpose whatsoever.

Reason: In order to limit significant noise impacts from other potential uses to safeguard the amenities of adjoining residential occupiers and having due regard to Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 4 Any food and drink use operating at the premises shall only be open to the public between the hours of 09:00 to 21:00.

Reason: In the interests of the amenity of occupiers of neighbouring properties and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.