



Appeal Decision

Site visit made on 7 March 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2023

Appeal Ref: APP/X1735/W/22/3302839

11 Clinton Road, Waterlooville PO7 6DT

- 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 Mr A Beasley against the decision of Havant Borough Council.
 - The application Ref APP/21/01247, dated 1 November 2021, was refused by notice dated 19 January 2022.
 - The application sought planning permission for change of use of section of existing rear outbuilding for hair and beauty salon. (Revised Hours of Opening: 09:00-18:00 (Tuesday, Wednesday, Friday) and 09:00-15:30 (alternate Saturdays)) without complying with a condition attached to planning permission Ref APP/20/00840, dated 23 August 2021.
 - The condition in dispute is No 4 which states that: *"The hair and beauty treatment premises shall only be open for trade or business on the following days and hours: Tuesdays 09:00hrs to 18:00hrs; Wednesdays 09:00hrs to 18:00hrs; Fridays 09:00hrs to 18:00hrs; and, alternate Saturdays 09:00hrs to 15:30hrs"*.
 - The reason given for the condition is: *"To protect the amenities of nearby residential 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"*.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A hair and beauty salon is operating from the appeal site. The appellant wishes to extend the hours of operation from those originally imposed. Planning permission was granted (Council reference APP/20/00840) for the change of use of a section of existing rear outbuilding to hair and beauty salon on 23 August 2021. The description of the approved development included the permitted operating times. In addition, the hours of operation set out in the description of development were secured via condition No 4 of the planning permission.
3. Application reference APP/21/01247 was submitted to vary condition No 4 of the earlier approval. This sought to allow the premises to operate between 09:00 and 18:00 Mondays to Fridays and between 09:00 and 15:30 on Saturdays. The application was made under s73 of the Town and Country Planning Act 1990 (as amended) (the Act). The effect of an approval of an application under s73 is to grant a new planning permission, but with the same description of the development as originally permitted.

4. I am conscious of the judgement in *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868, where the Court of Appeal held that an application under s73 of the Town and Country Planning Act 1990 (as amended) may not be used to obtain a permission that would require a variation to the terms of the “operative” part of the planning permission, i.e. the description of the development for which planning permission had originally been granted.
5. The views of the Council and the appellant have been sought regarding the implications of the *Finney* judgement to the present appeal.
6. The Council has responded by explaining that, in summary, the times of operation have been set out in the description of development following revisions to the proposal in order to give some clarification to neighbouring occupiers of those revisions. The Council explains that these times of operation featured within closed brackets, and they were not intended to amend the operative part of the planning permission. The Council also notes that it accepted the submission as a lawful proposal and determined it as a s73 application.
7. I have carefully considered the submissions on this matter. However, as the description of the development specifically references the times of operation, if permission was to be granted to amend these times, the effect of the proposal would be to create a conflict between the description of development and the details of the scheme. The times of operation would not be as described in the description of the original development. To grant such a permission would require the description of the development to be altered which, in accordance with the *Finney* judgement, is beyond the scope of an application under s73. I appreciate that this is frustrating for the appellant who would wish me to examine the substantive merits of the proposal. However, in these circumstances, a fresh planning application would be required.

Conclusion

8. For the reasons explained above I conclude that the appeal should be dismissed.

J White

INSPECTOR