

Appeal Statement – Fiscal House ‘removal of condition 3’.

- Site description

1.1 The site occupies an approximately triangular plot in Emsworth on the south side of the main east/west corridor route provided by the A259. The plot on its eastern boundary is occupied by the Waterside United Reformed Church, the boundary aligned on a north-west axis is provided by Warblington Road and an electricity substation. The land immediately to the south is the rear garden of the dwelling whose address is 1 Bath Road. The building on the other side of Warblington Road is occupied by ‘Envisage’ a dental surgery. While opposite, on the other side of the A259, there is a row of terraced houses and, approximately 40 metres to the west, a public house and petrol station.

1.2 The building on the site and the subject of this appeal is mainly on two floors, with single storey rear extensions with a floor area of 298.46 sq ms or, in round terms, 300 sq ms. The total area of the site is 850 sq ms.

1.3 The original building, which was first used as a Public House, the Sawyers Arms, in the early 19th Century, is of solid brickwork construction and rendered with pitched, hipped and pantile covered rooves. The single storey rear extensions constructed more recently, in the 20th Century, are rendered and with flat rooves. Only the original part of the property has any architectural merit or historic interest, and it is on the western edge of the Emsworth Conservation Area.

1.4 There is allocated parking space for each of the office units currently occupying the building and some space for clients or visitors to the rear of the building. Access from the site is directly onto Warblington Road with a constrained junction to allow access and egress from Warblington Road onto the A259.

2. Proposal

2.1 The property was granted permission for Change of Use from Class A2 to B1A in August 2017 (ref APP/17/00634) but with a condition in effect removing the permitted development right normally allowed to B1A uses, to change its usage to certain other uses without express planning permission. Permission was sought to remove that condition by the application APP/18/00827 which was refused and is the subject of this appeal.

3. Issues

- * the reason for refusal
- * other national and local policies not cited in the reason for refusal which are relevant.
- * other relevant matters from the Officer’s report, advocating the recommendation to refuse, and not covered in ‘1’ or ‘2’.

- The reason for refusal

The reason provided for the condition was as follows:

‘To restrict the use of the premises in the interests of local amenity as residential properties are around the application site and to retain the site in employment use, having due regard to Policies CS2, CS16, and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.



The reason given for the refusal of permission to remove the condition is –

‘Without control of the use of the site given by condition 3, the other permitted uses under the Town and Country Planning (Use Classes) Order 1987 and its subsequent amendments would allow uses which are materially and substantially different to B1A Offices. These other uses could comprise B1B, B1C, and B8 (Storage and Distribution). It is considered that given the close proximity of neighbouring residential properties that, without control from the LPA, these changes could have a significant adverse impact on the amenities of neighbouring properties and would not be suitable for this area, particularly with regard to the limited access and junction arrangements adjacent to the site on the corner of Havant Road and Warblington Road. As such it is considered that the proposal could have a significant adverse impact on the amenities of the neighbouring properties and road users. Over all it is considered that the proposal to remove condition 3 would conflict with policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011.

3.2 The principal reason for refusal may be summarised as follows; the property is situated in a residential area and therefore residential or local amenity might be adversely affected by a potential change of use. The retention of the site in employment use which was used as an additional argument to support the reason for the condition is not cited in the refusal which relies solely on the residential amenity argument.

3.3 It is apparent that the property is sited in a predominately residential area but, as described above, its immediate neighbours are a church, and electricity substation, with a dentist opposite on the other side of Warblington Road. There is only one residential curtilage abutting the site, and the dwelling itself is adjacent to the church. Its garden forms the boundary with the appeal site. A public house and petrol station are situated in close proximity, on the opposite side of the A259. The immediate vicinity may therefore accurately be described as ‘mixed’.

3.4 Potential alternative uses allowed by the relevant permitted development would include other uses in ‘B1’ but, by definition, B1 uses are suitable in residential locations. B8 could potentially be allowed, as the building is less than 500 sq ms, but in practice neither the building itself nor the site would lend itself to such a use, the configuration of the land to the rear of the site would not be convenient for the movement or storage of commercial vehicles and the constrained access both into the site itself and onto the A259 would be likely to seriously inhibit the commercial viability of such a use. Any changes to parking arrangements, for example by demolition of the single storey extensions or widening of the entrance, would require express planning permission.

3.5 In practice the most likely use which any owner of the site would seek to implement would be residential, for the obvious reason that the values which would then accrue would be higher than for the other potential uses. It cannot be argued that a residential use in a mixed, but predominately residential, area would compromise residential amenity. Indeed, the Council’s own internal consultees support such a contention. The Conservation Officer’s comments on the original APP/17/00634, seeking change of use from A2 to B1A and to which the condition currently being appealed was attached.

‘The proposal is for the change of use from office use (class A2) to Financial Services (class B1A).

It is understood that the property is currently in B1A use. The change of use is not deemed to harm the setting or character of either the listed building or the Conservation Area.'

3.6 The Conservation Officer made no comment at all on the refused application and therefore it is reasonable to infer that there are no concerns regarding the potential lifting of the restriction imposed by condition 3. It must be acknowledged that the Conservation Officer's remit is principally with regard to appearance and impact on neighbouring listed buildings and the Conservation area but are none the less pertinent.

3.7 There were no neighbour comments on the application to change the use of the building to B1A to which the condition currently at appeal was applied. There were neighbour comments relating to the application to remove the condition, but the officer's report quoting one clearly indicates that it is not relevant. The comment suggested that there might be potential overlooking, referred to potential additional vehicle movement and the presence of bats. The response was clear; 'The proposal does not seek to change the use of the building'. This neighbour's comment therefore does not undermine the fundamental contention that removal of this condition would not impact on residential amenity in any way.

3.8 In this context 'residential amenity' is the potential effect on existing residents of the proposed removal of this condition, not the residential amenity which might be enjoyed by potential future residents of the site. The Conservation Officer's comment on the original application noted above, and his failure to comment on this application to have Condition 3 removed, indicates that the LPA have limited grounds, if any, to sustain an argument that the removal of the condition itself would be detrimental to setting or appearance. It must also be emphasised that if the use of the building was subsequently changed in line with those uses allowed by the Permitted Development Rights defined by the Use Classes Order there would be no detriment to residential amenity either. The definition of **all** B1 uses in the UCO which may be carried out without detriment to residential amenity.

Use for all or any of the following purposes—

- (a) as an office other than a use within class A2 (financial and professional services),
- (b) for research and development of products or processes, or
- (c) for any industrial process,

being a use 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.** (my emphasis)

3.9 Any potential B8 use is restricted by a size limitation but while technically this site falls within that definition, for the reasons noted above, this potential use is very unlikely to be implemented. The argument that neighbouring residents would be adversely affected by the removal of condition '3', and the implementation of a different but permitted use is therefore unsubstantiated. The contention in the officer's report on the application that potential changes allowed through the UCO definitions would be 'materially and substantially' different to B1A offices is therefore at odds with the UCO itself which is clear that it provides a definition of uses whose impacts are sufficiently similar not to be detrimental.

3.10 For similar reasons if the appeal is successful and a residential use was eventually implemented there is no sustainable argument that the amenity of neighbouring residents would be adversely affected by possibly 4 or at most 5 flats on the site. Indeed, the reduction in potential traffic movements would be more likely to enhance amenity. In a letter dated 19.2.18 replying to a request for pre-application advice, regarding a potential residential use for the whole site, and following demolition of the current building, the Highway Authority are quoted as advising that 3 residential units would give rise to less traffic than the current office use. While conversion of the existing building might result in more residential units than envisaged in the pre-application enquiry, it is still probable that there would be fewer traffic movements to and from the site over the course of a day. Copy attached.

3.11 Since the LPA acknowledge in the reason for refusal that 'residential properties are around the site' it cannot be argued that the site itself would not provide an appropriate environment for residential use. Although as noted above there is only one residential curtilage adjacent to the site. The 'residential amenity' argument therefore, either in respect of existing and neighbouring residents or potential new residents on the site, cannot be sustained.

3.12 The LPA have also previously expressed a preference for the retention of the site in employment use but acknowledge in the officer's report that providing any alternative uses were within the relevant UCO definitions for B1 or B8 'the removal of condition 3 would still retain an employment use on the site'. (Section ii titled 'Loss of Employment')

The LPA is therefore only concerned that the potential different employment use of the site would be detrimental to the amenity currently enjoyed by neighbouring properties.

3.13 It is also pertinent to note that the Government's intention in providing for this potential change of use was, at least partly, to ease the current shortage of housing – and particularly perhaps small units of more affordable housing.

3.14 It has been shown that there is no amenity argument either in respect of impact on neighbours or potential residents by the implementation of a residential use of the site. Further any permitted employment use of the site, although it seems unlikely that other employment uses would be economically advantageous, would, by definition, be acceptable

in a mixed but predominately residential area. Para 53 of the NPPF states 'Conditions should not be used to restrict national Permitted Development rights unless clear justification exists.' There is no 'clear justification' for the LPA's decision and therefore the condition is not 'necessary' to support the proper planning of the site and its immediate surroundings.

3.15 In the Design and Access statement supporting the application it was argued that the condition was not 'reasonable'. Given that the LPA have accepted that other uses within BI would retain employment and have not shown that there would be detriment to residential amenity, given the definitions in the UCO, from a different employment use or potential residential use of the site, it is still maintained that the imposition of the Condition per se is 'unreasonable'.

4. Other relevant national and local policies not cited in the reason for refusal

4.1 The underlining focus of the current NPPF is its 'presumption in favour of sustainable development' (para 10). The removal of Condition 3, or more accurately the implementation of relevant permitted development following its removal, would enable development which is 'sustainable'. Possible residential use of the site on a bus route, within easy walking distance of Emsworth village centre with its good range of shops and services, and walking distance of Emsworth station is clearly 'sustainable'. Other employment uses could be undertaken without any detriment to residential amenity in the terms of the definition in the UCO.

4.2 This premise is reinforced by reference to paragraphs 38, 53, 55, 85, and 121 of the NPPF which contain the following statements;- (brief relevant extracts)

Para 38 – applications should be 'approved where possible',

Para 53 – conditions should not be used to 'restrict national PD rights unless there is clear justification',

Para 55 – conditions should be kept to a minimum and only 'be imposed where necessary and relevant',

Para 85 – LPAs should encourage 'residential development on appropriate sites',

Para 121 – provides that LPAs should have a 'positive approach to the use of retail and employment land for houses'.

4.3 Taking each in turn the descriptions and narrative provided above suggest that there are no plausible reasons for refusal of the removal of this condition and that therefore the proper planning of the borough should have enabled its approval. Similarly, the LPA have not provided compelling reasons why national PD rights could legitimately be restricted in this case and it follows therefore that this condition is neither necessary or relevant and its removal, in line with Paras 53 and 55, should be allowed.

In the present state of the property market and indeed for the foreseeable future, the most likely viable use of the site as an alternative to its present use would be residential.

Therefore Paras 85 and 121 are at least tangentially relevant in that it is acknowledged that a residential use is most likely to be the preferred option.

5. Local policies

5.1 The policies used to justify its decision in permission APP/17/00634 which included the condition which is now subject to appeal, and the refusal in respect of its removal APP/18/00827 are different. The former cites Policies CS2, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 while the latter only refers to CS 16. The Design and Access statement accompanying the application for the removal of the condition outlines the appellant's case in regard to all those policies, but it is pertinent to refer again to CS 16 as it provides the specific justification for the LPA's position in the appeal case.

5.2 Policy CS 16 will be reproduced in full by the LPA for the Inspector's use. It is most relevant to new development and requires 'high quality design solutions' however it is pertinent that the Conservation Officer has already commented that he could 'look favourably' on the retention of the building and its conversion into a dwelling (letter dated 19.2.18 attached). Therefore a 'design solution' retaining the building would in those terms constitute a 'high quality design'.

5.3 Within the policy itself there is a presumption in favour of 'high quality' solutions but clause 1 (e) states that development 'should not cause unacceptable harm'. The foregoing demonstrates that the removal of condition 3 and subsequent possible implementation (after the Prior Notification process) of residential or other employment development would not cause 'unacceptable harm'. Further clause 5 emphasises the need to increase residential densities in urban areas, self evidently the potential use of the site for residential purposes – particularly if Fiscal House were to be used for 4 or 5 units would be an efficient use of the land in an urban and predominantly, though mixed, residential area. Clause 7 refers to the need for the LPA to adapt to the changing needs of users. In that context the removal of PD rights which at least partly assist in allowing users to be flexible is unjustified.

5.3 It is also noteworthy that Policy CS16 cross refers to The Emsworth Village Design Statement dated 2008. This statement is 'a material consideration for Development Purposes', ('Scope of the Emsworth Design Statement' Background page iii). It provides detail on the expected direction of policy not only for the Conservation Area but also the distinct residential areas of the village, or small town, and its central area. It is appropriate in the context of this appeal to note that on page 12 it produces a photo (2) which is intended to underline and illustrate that – 'Residential accommodation has always been intermixed with traditional core commercial and industrial activities'. Further page 11 describing the built environment says, 'Even today commercial activities form part of the community mix'. 5.4 Similarly, and relevantly, it provides examples of heritage buildings retained with change of use (page 16 photo 4). (The LPA will provide copies with their bundle of documents for the Inspector's use).

5.5 Other policies from the Local Plan which are relevant and not referenced by the LPA are CS9 – Housing; two clauses are of particular relevance; 4 relates to accessibility and transport and 8 which seeks to promote use of PDL sites. The site is clearly ‘accessible’, it is in easy walking distance of the village centre, on a bus route and in walking distance of the station. It is an edge of centre site and if a prior notification process to change to residential use was successful then it would make use of an existing site within the urban edge.

5.6 CS 17 and 20 – Concentration within urban areas and Transport and Access– the comments above in relation to CS 9 clauses 4 and 8 apply.

5.7 The policies in the relevant Local Plan which were used to provide justification for the original imposition of the condition, CS2 and DM10 were considered in the Statement submitted with the application for its removal, and those arguments do not need to be repeated. The Policies referred to above in the Havant Borough Local Plan (Core Strategy) 2011 and the ancillary document Emsworth Village Statement provide support for the proposed removal of Condition 3 attached to App/17/00634 which was refused by APP/18/00827.

5.8 In summary, also, National Policies provided by the NPPF underline the need for the LPA to avoid unnecessary restrictions on sustainable development and specifically that PD rights should not be restricted without clear justification. Such justification has not been provided.

6. Other relevant matters from the Officer’s report relating to APP/18/00827.

6.1 The LPA acknowledge that as the removal of condition 3 would or could still retain employment uses on the site and therefore it relies on the residential amenity argument to support its case. In terms of the potential to change the use under Part O of the GPDO there may be some debate as to its relevance to this issue but that is not part of this application which is only to remove the Condition.

6.2 In its comments ‘Applicant’s position’ (iii) the LPA argues that ‘there is clear potential for the scale and intensity of these other uses (permitted using ‘PD’ rights) ...to appear ...dominant and intrusive ...and are not suitable ...’ Since development other than a change of use to the building itself would require express planning permission any proposed development which increased the ‘dominance’ of the building would be considered when a further application was made and cannot be pertinent to consideration of this appeal which is only for the removal of a condition limiting PD rights.

6.3 In Section 3 (iv) Impact on flooding, the LPA acknowledge that if the appeal is allowed, and therefore there is an opportunity to implement other employment uses, that there would be no greater risk to users of the site than at present. The appellant is aware that, if it is demonstrated that Part O applies to this site then, a flood risk assessment would be required

should the Prior Notification process be invoked.

7. Conclusion

7.1 The LPA rely solely on the Policy provided by CS 16 which relates to design and the impact on neighbouring amenity of a potential change of use. The key issues of this appeal are however; that the Use Classes Order itself defines the possible uses of the site conferred by PD rights as acceptable in a residential area and that Government Policy as defined in the NPPF would encourage the uses so conferred. Similarly, that the weight of Local Plan policies tends to support rather than discourage the uses which might be possible after the removal of the Condition 3 subject to this appeal.

The Inspector is therefore requested to allow this appeal which would permit development compliant with both National and Local policy.