

18/02321/VAR

Applicant Mr Keith Howard

Location 30 Long Acre Bingham Nottinghamshire NG13 8AH

Proposal Variation of condition 5 of 18/00962/COU to allow change of weekday opening hours from 09:00 - 17:00 to 09:00 - 20:00.

Ward Bingham East

THE SITE AND SURROUNDINGS

1. The application site comprises a late 18th/early 19th century house fronting the south side of Long Acre and a vehicular access/private drive from Long Acre, which serves a number of residential properties to the south, within the Conservation Area. The building is identified as a key unlisted building in the Conservation Area Townscape Appraisal. There is a dwelling attached to the rear of the property (32 Long Acre) with what appears to be its only outdoor amenity area/garden to the front adjacent to the south elevation of the application property, which has a back door and ground and first floor windows.
2. The site is located on the southern edge of the town centre with a residential area to the south. There are commercial properties along Long Acre, predominantly to the west of the site, including offices immediately adjacent to the west and a retail/training facility opposite, and residential properties to the east.

DETAILS OF THE PROPOSAL

3. Permission was granted for a change of use of the property from residential dwelling (Class C3) to a physiotherapy practice with between 1 and 3 treatment rooms (Class D1) under delegated powers in August 2018. Condition 5 on the permission restricts the opening hours for clients to 0900-1700 on Monday to Friday, 0900-Midday on Saturday, and not at all on Sundays and Bank Holidays.
4. The current application seeks permission to vary condition 5 to allow opening until 2000 hours on weekdays. In support of the application, the applicant has stated that the extended opening hours are intended to cater for patients who are only able to attend outside normal working hours and, as the premises are within around 50m of a number of eating/drinking premises, there is currently a constant movement of people and traffic late into the evening.

SITE HISTORY

5. Application ref: 18/00962/COU for the change of use from residential dwelling (C3) to a physiotherapy practice with between 1 and 3 treatment rooms (D1) was approved in August 2018.

REPRESENTATIONS

Ward Councillor(s)

6. One Ward Councillor (Cllr Hull) agrees with the comments submitted by the immediate neighbour at 32 Long Acre, and shares the concerns regarding the potential impacts of noise generated by the use of the property. Cllr Hull comments that the 2 properties are very closely linked and, if the applicant had not gained planning permission for a change of use, a resident occupier of this property would not cause disturbance in the way that is envisaged by use of a commercial nature. Cllr Hull therefore objects on grounds of increased disturbance to the neighbouring residential property.

Town/Parish Council

7. The Town Council has no objection.

Statutory and Other Consultees

8. The Environmental Health Officer (EHO) originally commented that the adjacent premises are residential in nature and, therefore, there are concerns that the increase in hours could result in noise disturbance especially if the use involves the areas adjacent to the neighbouring residential premises. In order to alleviate these concerns it was recommended that the applicant should consider whether the sound insulation between the properties could be improved in order to reduce the transfer of noise between the commercial use and the residential use.
9. The EHO has subsequently commented that, given the use of the premises and the fact that the proposed additional hours requested are to cover evening treatment appointments up to 2000 on weekdays only, and having reviewed the application and additional information that has come to light since, he does not consider additional sound insulation to be necessary in this instance. Given the objections received from the occupier of the neighbouring residential property, he recommends that, if planning permission is granted, it be for a period of 12 months to gauge any noise impacts from the extended use of the premises once in operation.

Local Residents and the General Public

10. One written representation has been received from a neighbouring property (32 Long Acre, attached to the application property) raising objections which are summarised as follows.
 - a. The neighbour's property is separated from the application property by a single brick party wall, with the neighbour's living room and main bedroom sited on the other side of the staircase to the first floor treatment rooms.
 - b. Noise from increased use of the staircase would seriously reduce the enjoyment of the neighbour's home.

- c. If it was originally felt that it was necessary to restrict the opening hours in order to protect the amenities of nearby residents, why is an extension felt to be reasonable?

PLANNING POLICY

11. The Development Plan for Rushcliffe consists of the 5 saved policies of the Rushcliffe Borough Local Plan (1996) and the Rushcliffe Local Plan Part 1: Core Strategy.
12. Other material considerations include the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG) and the Rushcliffe Borough Non-Statutory Replacement Local Plan (2006).
13. Any decision should therefore be taken in accordance with the Rushcliffe Core Strategy, the NPPF and NPPG and policies contained within the Rushcliffe Borough Non-Statutory Replacement Local Plan where they are consistent with or amplify the aims and objectives of the Core Strategy and Framework, together with other material planning considerations.

Relevant National Planning Policies and Guidance

14. The National Planning Policy Framework (NPPF) includes a presumption in favour of sustainable development.
15. Chapter 16: 'Conserving and enhancing the historic environment' states that, in determining planning applications, local planning authorities should take account of:
 - a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - c) the desirability of new development making a positive contribution to local character and distinctiveness.
16. The National Planning Practice Guidance (NPPG) on the use of planning conditions is also relevant.

Relevant Local Planning Policies and Guidance

17. Policies 11 (Historic Environment) and 12 (Local services and healthy lifestyles) of the Rushcliffe Local Plan Part 1: Core Strategy.
18. Policies GP2 (Design & Amenity criteria), EN2 (Conservation Areas) of the Rushcliffe Borough Non-Statutory Replacement Local Plan (NSRLP). Policy GP2 states, inter alia, that planning permission for new development, including changes of use, will be granted provided that there is no significant adverse effect on amenity, particularly residential amenity, of adjoining properties or the surrounding area, by reason of the type and levels of activity on the site, or traffic generated.

19. Section 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is given to the desirability to preserve or enhance the appearance and character Conservation Areas.

APPRAISAL

20. The site is located on the edge of the town centre commercial area with a residential area, with the building fronting Long Acre, adjacent and close to other commercial properties. There are residential properties to the south and to the east on Long Acre. Whilst the proposal would be a private enterprise, it would provide a health/well-being facility, and non-residential uses such as doctors/medical centres, dentists, and day nurseries are not uncommon in residential areas. Consequently, during consideration of application ref. 18/00962/COU, it was considered that the proposed use would be appropriate in this location.
21. Even with 3 treatment rooms, it was also considered that the use should be a relatively quiet activity, and the reception area and treatment rooms are not immediately adjacent to the attached dwelling at 32 Long Acre. The staircase runs along the party wall with no. 32; however, it is considered that any noise should not be significantly different to use of the building as a 3 bedroom house. Furthermore, with the use not taking place late in the evenings, Saturday afternoons or on Sundays, there could potentially be less noise than from use as a dwelling.
22. The Environmental Health Officer's comments regarding a temporary 12 month permission are noted. The NPPG on the use of planning conditions states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area, or where it is expected that the planning circumstances will change in a particular way at the end of the period.
23. In this case, the principle of the change of use of the property was considered under the earlier application and, as no environmental health concerns were raised with respect to potential noise, it was concluded that a permanent permission would be appropriate. As the current proposal seeks to increase the hours of use by only 3 hours ending at 8pm on weekdays only, it is considered that it would be unreasonable to restrict the extended use for a temporary period.
24. Whilst occupants of the attached dwelling may experience some noise through the party wall, it is considered that this should not have a significant adverse impact on amenity.
25. As there would be no external alterations to the building, the proposal would preserve the character and appearance of the Conservation Area. Consequently, the proposal achieves the objectives described as desirable of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
26. The application was not subject to pre-application discussions and it was not necessary to contact the applicant during processing of the application.

RECOMMENDATION

It is RECOMMENDED that planning permission be granted subject to the following condition(s)

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.

[To comply with Section 91 of the Town and Country Planning Act 1990, as amended by the Planning & Compulsory Purchase Act 2004].

2. The development hereby permitted shall be carried out in accordance with the 1:1250 site location plan received on 30/4/18 and the proposed floor plans received on 26/4/18 (accompanying application ref. 18/00962/FUL).

[For the avoidance of doubt and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan].

3. The use hereby permitted shall involve no more than 3 treatment rooms.

[To protect the amenities of nearby residents and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

4. The rear (south elevation) door shall not be used by staff/clients to access/egress the building except for in an emergency.

[To protect the amenities of nearby residents and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

5. The premises shall not be open to clients outside the following hours:

0900-2000 on Monday to Friday

0900-Midday on Saturday

And not at all on Sundays and Bank Holidays

[To protect the amenities of nearby residents and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

6. The premises shall only be used for a physiotherapy practice and no other purpose.

[To protect the amenities of nearby residents and to comply with policy GP2 (Design & Amenity Criteria) of the Rushcliffe Borough Non Statutory Replacement Local Plan]

Notes to Applicant

This permission does not give any legal right for any work on, over or under land or buildings outside the application site ownership or affecting neighbouring property, including buildings, walls, fences and vegetation within that property. If any such work is anticipated, the consent of the adjoining land owner must first be obtained. The responsibility for meeting any claims for damage to such features lies with the applicant.

This grant of planning permission does not alter the private legal situation with regard to the carrying out of any works involving land which you do not own or control. You will need the consent of the owner(s) involved before any such works are started.

The provisions of the Party Wall Act 1996 may apply in relation to the boundary with the neighbouring property. A Solicitor or Chartered Surveyor may be able to give advice as to whether the proposed work falls within the scope of this Act and the necessary measures to be taken.

This permission does not give any consent needed to display advertisements.

You are advised to ensure disturbance to neighbours is kept to a minimum during construction/internal alterations by restricting working hours to Monday to Friday 7.00am to 7.00pm, Saturday 8.00am to 5.00pm and by not working on Sundays or Bank Holidays. If you intend to work outside these hours you are requested to contact the Environmental Health Officer on 0115 9148322.