



## Appeal Decision

Site visit made on 10 April 2014

by **Ray Wright** BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 8 May 2014

### Appeal Ref: APP/V2255/A/13/2203657

#### Dunster House Limited, Staplestreet Road, Faversham, Kent ME13 9HY

- 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 Dunster House Limited against the decision of Swale Borough Council.
- The application Ref SW/13/0658, dated 23 May 2013, was refused by notice dated 12 August 2013.
- The application sought planning permission for the construction of B1/B2/B8 units with outside storage without complying with a condition attached to planning permission Ref SW/11/0982, dated 4 November 2011.
- The condition in dispute is No 16 which states that: 'Any unit hereby permitted that shall be occupied by a use within Class B1 (business) of the Town and Country Planning (Use Classes) Order 1987 (or for any order amending, revoking and re-enacting that Order) shall not be used outside the hours of 0700 hours to 1900 hours on Mondays to Fridays and 0700 to 1300 hours on Saturdays, with no working on Sundays or Public Holidays unless otherwise agreed in writing by the Local Planning Authority.'
- The reason given for the condition is: 'In the interests of the amenities of the area, with special reference to the amenities of residents of the area, and in pursuance of Policy E1 of the Swale Borough Local Plan 2008'.

### Decision

1. The appeal is allowed and planning permission is granted for construction of B1/B2/B8 units with outside storage at Dunster House Limited, Staplestreet Road, Faversham, Kent ME13 9HY in accordance with application Ref SW/13/0658 made on the 23 May 2013 without compliance with condition number 16 previously imposed on planning permission Ref SW/11/0982 dated 4 November 2011 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
  - 1) Any unit hereby permitted that shall be occupied by a use within Class B1 (business) of the Town and Country Planning (Use Classes) Order 1987, (or any order amending, revoking or re-enacting that Order), shall not be used outside of the hours 0700 hours to 2100 hours on Mondays to Fridays, 0700 hours to 1900 hours Saturday and 0800 hours to 1900 hours on Sundays or Public Holidays.

- 2) Members of the public shall not visit the units outside the hours of 0830 hours to 1800 hours on Monday to Fridays, 0900 hours to 1700 hours on Saturdays and 1000 hours to 1600 hours on Sundays or Public Holidays.
- 3) No deliveries shall be received at, or despatched from, any unit used within Class B1 (business) of the Town and Country Planning (Use Classes) Order 1987, (or any order amending, revoking or re-enacting that Order) outside the hours of 0700 hours to 1900 hours Mondays to Fridays, 0800 hours to 1800 hours on Saturdays and 1000 hours to 1600 hours Sundays or Public Holidays.

#### **Procedural Matter**

2. The Planning Practice Guidance took effect on the 6 March 2014. This cancelled Circular 11/95 'Use of conditions in planning permission'. I have taken this into account in this decision.

#### **Main Issue**

3. The main issue in this case is the effect on the living conditions of adjoining occupiers having particular regard to New Cottage and Westland House.

#### **Reasons**

4. The appeal site consists of a modern commercial unit with offices on the Staplestreet Road frontage, with storage behind and an associated delivery yard and parking area to its side and rear. The business currently at the site relates to garden furniture and buildings, with various items displayed on the A299 Thanet Way frontage.
5. The condition in dispute refers to the 'B1 (Business)' use at the site and limits its hours of operation. The proposal would extend the evening use by two hours Monday to Friday, and would introduce afternoon and early evening use on Saturdays, together with Sunday operation.
6. The National Planning Policy Framework (Framework) indicates that there should be a presumption in favour of sustainable development and that significant weight should be placed on the need to support economic growth. However, one of the principles of the Framework is to seek a good standard of amenity for all existing occupiers of land and buildings. Similarly Policies E1 and FAV1 of the Swale Borough Local Plan (LP), indicate that development should cause no demonstrable harm to residential amenity and should avoid significant environmental impact.
7. The site is within a countryside location but two residential properties are located around 35m from the vehicle entrance to the site. B1 uses by definition<sup>1</sup> should cause no harm in residential areas. Consequently extended hours of B1 use within this site should have no adverse effect on these nearby properties or residents. The use currently operating is identified as having around 30 staff overall and therefore there is a potential for this number of cars to leave the premises at later times on Mondays to Saturday, and to additionally arrive and

<sup>1</sup> Under the Town and Country Planning (Use Classes) Order 1987 B1 use is defined as 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.

leave on Sunday. However, the site adjoins the extremely busy A299 and is located at one of its major junctions. In addition I note that the entrance to the appeal site development appears very similar to that of the public house previously located on the site. To my mind the limited later and additional traffic movements involved at this point would not be discernable in this context.

8. The appellant has indicated that the current use is visited by members of the public but such activity is ancillary to the main B1 use, and that the vehicle movements from visitors would continue to be low. Extended hours of B1 use at the site would also enable an increase in the hours visitors could attend the site. This could possibly cause more nuisance to nearby residents as, in the case of the current business, they are likely to spend some time outside the main building, viewing the different units on display, and this could potentially cause some noise and general disturbance. In addition the visitor parking is near the main site entrance, and consequently closer to the residential properties and is liable to be in far more frequent use than the staff parking. In the circumstances, I consider it reasonable, as put forward by the Council, to limit the hours of visiting members of the public more than the main B1 use itself. The hours for visiting members of the public, which appear to have been agreed by both parties, are reasonable.
9. The nature of the vehicles used in deliveries and their manoeuvring in the site also has the potential to cause noise and general disturbance to the nearby residential occupiers. An additional condition limiting such movements, should extended hours of operation of the main B1 use be agreed, is reasonable in the circumstances. This should be limited, as requested by the appellant, to the B1 operations only, however it should be to the hours set out by the Council.
10. I conclude that the extended hours proposed, with the additional controls on visitors and deliveries, would not materially harm the living conditions of nearby occupiers and would not conflict with the Framework or Policies E1 or FAV1 of the LP. I have considered, and where appropriate amended, the conditions suggested against the advice in planning practice guidance and for clarity. The existing conditions still subsisting should be retained.

#### **Other Matters**

11. Nearby occupiers have highlighted potential breaches of conditions and other breaches of planning control at the site and the lack of satisfactory action in this respect by the Council. However, this is a matter for the Local Planning Authority to deal with and, if necessary, should be addressed through their complaints procedure.

#### **Conclusion**

12. For the reasons given above, I conclude that the appeal should be allowed. A new planning permission should be granted without the disputed condition but substituting a replacement, with two additional conditions and retaining the relevant non-disputed conditions from the previous permission.

*Ray Wright*

INSPECTOR