



ELSTEAD PARISH COUNCIL

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30th January 2017

Mr P. Wenham
Chief Executive
Waverley Borough Council
The Burys
Godalming
Surrey

cc. Cllr J. Potts, Cllr D Harmer, Cllrs J. and D. Else, Elstead Parish Council

5 ANDERSON PLACE ELSTEAD: LETTER OF COMPLAINT

Dear Mr Wenham,

INTRODUCTION

Elstead Parish Council has instructed me to register this complaint against Waverley Borough Council (WBC) in relation to its handling of:

- the enforcement of conditions attached to the planning consent given to application WA/2008/1526 (Plot 5, the Green Elstead)
- the granting of consent to application WA/2016/1773 for the change of use for the same premises.

BACKGROUND

Under application WA/2008/1526 Messrs AJ Tracy and Sons secured outline planning consent on 6 April 2009 for the construction of 4 residential units and one combined retail/office unit on the site of a former builders yard at the Green in Elstead. The planning consent included a condition (no 8) that the retail/office unit must be erected and completed prior to the completion of the 4 residential units.

The 4 residential units were completed in 2013. The retail/office unit was also constructed, but was clearly designed as a residence rather than as commercial premises, in contravention of the approved plans. This is confirmed by the planning officer's report on

application WA/2015/0523 (lodged 12 March 2015), which stated that, following a Members' site visit, the building had been found to have been laid out internally as a dwelling. The report goes on to state that

'In particular, the configuration of the building is such that no separate access would be provided to the first floor office space, and (it) has been divided into 3 small rooms which would be likely to be too small to function effectively as offices, notwithstanding the submitted plans which label this floorspace as such.'

Following representations from residents and Elstead Parish Council, WBC planning officers instituted enforcement action to require the building to be put into a state suitable for commercial use in accordance with the approved plans. This enforcement action appears to have been terminated in August 2016. The Parish Council has not been allowed to see the enforcement officer's report, but we understand the report concluded that internal alterations had been completed and that although the alterations did not restore the property to the approved plans *'it was not considered expedient to pursue the matter further'*.

In order for the premises to be let commercially, they need to be assessed for business rates by the Valuation Office (VOA). So far as the Parish Council is aware, no such assessment was ever made. We understand the developers' agent arranged a VOA inspection in March 2016, but the VOA concluded that as the building was clearly constructed as a dwelling it could not be assessed as business premises until the necessary alterations had been made. After the termination of enforcement action in August 2016, WBC reported the building to the VOA with a view to it being added to the ratings list as business premises, but so far as we are aware it was never assessed as such by the VOA.

On 18 August 2016 the developer (Peak Quality Homes) lodged an application (WA/2016/1773) for the change of use of the premises from retail/office to residential. This application was given consent on 12 October 2016, without referral to Members. A key argument in the case for consent was that the developers maintained, and the officers agreed, that the site was not viable for retail/office use.

PLANNING ENFORCEMENT

The Parish Council's first complaint is that WBC's attempts to enforce condition 8 of the original planning consent for 5 Anderson Place were belated and ineffective and were terminated without due cause.

Enforcement action was only initiated at the instigation of residents and the Parish Council. No inspection of the interior of the premises appears to have been carried out until the occasion of the Members' site visit on 13 July 2015 (i.e. nearly 2 years after the building work had been completed), when it was found that the building had been constructed as a dwelling rather than as a retail/office premises. Indeed, the agent acting for the developers had during this period marketed the premises as a residence: it appeared on-line as such on 30 September 2014 and the advertising hoarding outside the premises referred to 5 (not 4) dwellings for sale.

Enforcement action was commenced later in 2015, with the aim of securing modifications

to the building to make it suitable for business use. The only modifications which were made were however purely cosmetic (e.g. the boarding up of bathrooms and en-suites and the removal of doors from closets) and no attempt was made to remedy the main defects in terms of business occupation i.e. the lack of separate access for the upstairs suite, the presence of facilities for residential occupation which were quite useless for business use (bathroom, closets, hallways) and the loss of parking spaces owing to the construction of a garage over 2 of the available 4 spaces (the remaining 2 spaces had also been made smaller by the sale of part of their space to a neighbouring property without consent). Full details of the state of the building, listing the factors which made it quite unsuitable for business use, both before and after the enforcement action, are shown in the attached Annex .

Nevertheless, for reasons as yet unrevealed, WBC decided in August 2016 to terminate enforcement action even though it was clear that the premises remained quite unsuitable for business use. As noted above, the enforcement officer's report has not been made public.

The Parish Council maintains that WBC has demonstrably failed in its duty to secure proper enforcement of the conditions attached to the original planning consent and terminated without good cause its belated attempts at proper enforcement.

GRANT OF PLANNING CONSENT TO APPLICATION WA/2016/1773

More or less coincidentally with the termination of the enforcement action referred to above the developers submitted their (second) application for a change of use of the premises from retail/office use to residential use. Consent for this was granted on 12 October 2016, using delegated officers' powers.

The main issue in the consideration of this application was whether or not there was any demand locally for business premises of this kind. The Parish Council submitted extensive and detailed comments (recorded in the officer's report) in support of the retention of the current planning use and providing evidence of strong local demand for the type of business premises originally approved. For their part, the applicants argued that they had marketed the premises for business use for the previous 3 years without success, which demonstrated that there was no local interest in the premises (even though they had up till then been marketing the premises as a residence!)

The planning officer accepted the applicants' case for a change of use, largely on the basis of the advice of WBC's Estates and Valuation Officer, who considered that *'the period of marketing carried out by the applicant is sufficient and the advertising was sufficiently broad'*. There is however no evidence that the planning officer made any attempts to establish what rent was being demanded by the developer, and whether or not this would have been reasonable. Nor did the officer's report take any account of the unsuitable and unlawful state of the building (even though in the officer's report on WA/2015/0523 it is stated that *'the building is not designed and laid out in a way which would make it functional and marketable as commercial and retail premises'*). Nor did the report mention the previous advertising of the premises for residential use, or of the failure of the applicant to obtain an assessment of the premises for business rates. All of these factors, both individually and collectively, should in the officer's mind have fatally undermined the

applicant's arguments in support of a change of use.

The contemporary evidence available to the Parish Council was that there was a strong local demand for business premises. Immediately prior to the change of use application, another business premises on the other side of the Green (The Cobblers) was let immediately, by the applicants' own agent. There were 2 unsuccessful applicants for the same premises, neither of whom was offered 5 Anderson Place as an alternative. Previously, in November 2015 another local business had enquired about the availability of 5 Anderson Place, but the rent proposed was found to be excessive in terms of the space available and rent being charged elsewhere: over £35 per annum per usable square footage, compared with £17 per square foot for the Cobblers. The interested party also found the premises were quite unsuitable because there was no separate entrance for the upstairs unit (contrary to the terms of the planning consent) and because of the other defects listed in the Annex.

The Parish Council maintains that the grant of planning consent in this case was mistaken. It further maintains that WBC failed in its duty to follow its own policies, set out in Policy IC2 of the Local Plan, item 7.14, which states that before permitting any change of use from employment, *'the Council will require the applicant to demonstrate that there is no need for the site to be retained'*. Item 7.16 of the same policy is even tougher, in that it states that any proposal for such change of use would need to be *'thoroughly examined'* and the applicant would *'need to demonstrate, and the Council would need to be satisfied'* that there was no demand for the land to be retained in employment use. The Parish Council argues that WBC failed to take adequate steps to examine the planning application against these policies and that its decision was manifestly unreasonable because of this failure and because of the compelling alternative evidence of a strong and continuing local demand for business premises.

The Parish Council further maintains that the planning application should have been given more than normal scrutiny in regard to the above issues in the light of the planning history of the site and of the obvious and repeated attempts of the developer to circumvent and to render ineffective condition 8 of the original planning consent. It also argues that given the clear degree of local interest in the outcome officers should have remitted the case for consideration by the Area Planning Committee, rather than take the decision themselves under delegated powers. This would have enabled the Parish Council and other interested parties to make oral representations prior to a final decision being taken.

REMEDY

Regrettably, the failure of the enforcement action and the issue of planning consent for the change of use are now irreversible, with the result that the village has lost a further employment site. Nothing can now be done about this. The Parish Council is however concerned about the longer term implications of WBC's failures for the proper enforcement of planning conditions and for the handling of future applications for change of use from business to residential. It therefore seeks the following statements and assurances from WBC:

- WBC accepts that its enforcement action in this case was inadequate and should not have been terminated in August 2016;
- For the future, WBC undertakes robustly to pursue enforcement action where breaches of planning consent are brought to its attention, and will fully engage with the Parish Council in this process. In particular, it will not terminate enforcement action before fully explaining the reasons for cessation to the Council and giving it adequate time to respond. It also agrees to send the Parish Council copies of all enforcement inspection reports;
- WBC accepts that its consent to the change of use application in October 2016 was mistaken;
- WBC undertakes that in the case of future similar applications for change of use it will apply due diligence in determining whether or not there is market demand for the business premises concerned. In particular, it accepts that a full examination of the rents being demanded for the premises subject to the application and of comparable premises in the locality will be undertaken.
- WBC agrees that any further applications of change of use from business to residential in Elstead Parish will be considered by the Area Planning Committee where the officers' recommendation is to consent.

The Parish Council trusts that WBC will be able to provide the statements and assurances listed above. If this is not the case, the Council feels it would have no option but to refer these matters to the Local Authority Ombudsman for consideration.

I am copying this letter to Julia Potts, Council Leader, and to our local Borough Councillors, Jenny and David Else.

Yours Faithfully,

Juliet Williams
Clerk - Elstead Parish Council

ANNEX

Plot 5, The Green, Elstead GU8 6DA (Formerly Tracy's Yard) aka 5 Anderson Place, Elstead GU8 6DA

Notes from inspection for prospective tenant by K. Brooke on 3.10.14.

Found site completely different to approved plans and entirely unsuitable for intended use. In answer to complaint, agent said developer was required to build it like this and seemed ignorant of how much it varied from the approved floor plan. The plan presented by the agent at the viewing was the floor plan as built.

Complaint with details of unsuitability reported to Beth Howland-Smith in Planning Enforcement Dept. the following week via e-mail.

Photos sent to Borough Counsellor Bryn Morgan showing: sign in front of building marketing 5 houses; generic sign for commercial property thrown up against the wall; bathroom and en-suite.

Elements unsuitable for business premises:

- Three ground floor entrances all lead into ground floor retail space. No separate entrance into stairwell for first floor: cannot access without walking through retail space.
- WC for disabled not provided, which creates discrimination problems regarding customers and employees. Is disabled WC not required in new build business/retail premises?
- Removal of stairwell reduces flexibility of site, creating security/insurance issues for two businesses operating in the building and thus reducing marketability.
- Central hallway on ground floor reduces retail space and creates security/shoplifting issue for watching customers in separated area.
- French doors at rear of largest retail space create security risk and reduce useable display/wall space.
- 1/3 of ground floor retail space prepared for installation of domestic kitchen, (although approved as A1/B1 space: no hot food preparation allowed). Unconnected wires and pipes protrude into room by as much as 1ft. Power outlets and hook-ups on 3 walls for wide range of domestic appliances built in and labelled (e.g. range hood, oven, dishwasher, washer/dryer, fridge/freezer), making use for retail very difficult (and obviously not the intended use of the space).
- Told prior to viewing that four parking spaces were available, but found two taken up by single garage and the remaining space quite narrow for two cars. In answer to complaint, agent said garage was an asset as storage space and that the access road could be used for parking, neither suggestion being a useful remedy to inadequate parking provision.
- More than 1/3 of space on first floor taken up by residential amenities: full luxury bathroom with bathtub, ensuite toilet/shower, hallways to access the various spaces, built-in wardrobes and airing cupboard.
- Space on first floor broken up into small rooms, with no central working space and very little flexibility.
- Amount of space quoted as "gross internal floor areas" (474 sq. ft each floor) is misleading, as the actual floor space available is significantly less due to the residential layout and

amenities, perhaps 2/3 of that amount. This makes the rent per sq. ft. even more expensive than quoted, and not at all competitive with other local business premises.

- Since the premises have not been assessed by the VOA, business rates could not be figured into the cost of business at this site.
- The building is unfinished, with no window ledges, floor finishes, or window treatments; wires and pipes protruding into the “welfare area”. When asked when these would be finished, agent said the building was complete. Asked which, if any, of these finishes would be provided, agent said buyer or tenant would have to provide these at their own cost, thus adding an undetermined amount to rental costs.
- Aside from the unsuitability of the building as a business premises, the prospective tenant was put off by possible complications in the tenancy due to the premises not being built as approved, not being signed off, and the apparent duplicity of the owner and/or agent in building and marketing.

Viewed again 15.09.16, after interior changes approved by enforcement. Intended to view with local business owner who first expressed interest to agent in Dec 2015, but as this site was not suitable for business tenancy and not ready immediately (lack of finishes, etc.), she rented elsewhere in the village.

Elements unsuitable for business premises following remedial works:

- None of the problems listed above were rectified, and changes agreed in WA/2015/1890 (Officer Report, p. 12) have not been made or have been badly executed, as detailed below.
- “Alterations to the ground floor layout to allow for open plan retail area and separate access to stairwell” have not been incorporated. The only access to first floor is still through ground floor retail space.
- One wall had been removed on first floor, but awkward spaces were created where built-in cupboards remained, with only their doors removed.
- Bathroom and ensuite shower not removed, so available space still reduced by these unnecessary elements. Bathtub in bathroom and ensuite shower now boxed in with bare plasterboard, which looks shoddy and unprofessional and reduces marketability. Further, the wall boxing in the ensuite shower has a large vent installed, which swings open to give a view of the ensuite.
- Front window on ground floor has been enlarged, but interior left unfinished with wall cavity showing.
- Instead of retail space on ground floor being opened up, instead it has been further reduced by erecting an unnecessary wall between the boiler and the “welfare area”. Where this new wall meets the exterior wall, it half-covers a wall switch in the “welfare area”. This wall is also bare plasterboard, looking shoddy and unprofessional and adding to costs.
- Doors were added in the ground floor that conflict with each other, making passage between the ground floor areas very awkward. The layout is now more difficult, the lack of reasonable finishes is off-putting, and the space available to do business is even less than before: much less than advertised.
- The overall impression is that no reasonable effort whatsoever has been made to change the building to make it more suitable for business. Aside from removing a wall upstairs, no changes were made that created the approved amount of floor space or parking space or

made the premises more marketable. Changes made were instead quite obviously what was easiest for developer to remove to restore premises to residential use as quickly as possible without damage to any of the residential amenities.

