
Appeal Decision

Site visit made on 16 February 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 06 March 2017

Appeal Ref: APP/Q1255/W/16/3156314
Unit 1, Rigler Road, Poole BH15 4BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Fortia against the decision of Borough of Poole.
 - The application Ref APP/16/00846/C, dated 27 May 2016, was refused by notice dated 29 July 2016.
 - The development proposed is renew for a further 24 month period, with minor amendments, planning permission ref: APP/15/01577/C, which grants temporary planning permission for a change of use from storage use (B8) to a car wash and car sales centre and the erection of an ancillary office, staff room, associated canopies and boundary treatments.
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Decision

1. The appeal is allowed and planning permission is granted for renew for a further 24 month period, with minor amendments, planning permission ref: APP/15/01577/C, which grants temporary planning permission for a change of use from storage use (B8) to a car wash and car sales centre and the erection of an ancillary office, staff room, associated canopies and boundary treatments at Unit 1, Rigler Road, Poole BH15 4BN in accordance with the terms of the application, Ref APP/16/00846/C, dated 27 May 2016, subject to the conditions in the attached Annex.

Application for costs

2. An application for costs was made by Mr A Fortia against Borough of Poole. This application will be the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the development on the living conditions of residents in Ivor Road in respect of noise, disturbance and water spray.

Reasons

Main issue

4. The car wash and car sales enterprise is currently operational on the site following a previous temporary planning permission for six months up to 14 July 2016. I note that the temporary permission was granted to enable monitoring of the noise and other environmental issues associated with the enterprise.
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5. The current operation comprises a car wash area utilising high pressure hose with pumps/compressors contained within an adjacent building; a car valeting area adjacent to the Rigler Road side of the site, a used car sales area, customer and staff parking, an office and workshop and storage buildings. The previously proposed storage buildings in the south-west corner of the site are now proposed to be workshop areas for the preparation and maintenance of vehicles associated with the car sales aspect. I saw that they were still in use for storage but that the garage at the southern end of the site was in use for such purpose.
6. In respect of noise and disturbance, the main potential source of this is from the car wash area and in particular the use of a high pressure water spray hitting the vehicles. This area is set a fairly short distance away from the boundary with those adjacent residential properties. However, I note that the Council's Environmental and Consumer Protection Services (ECPS) have conducted monitoring of noise levels. I have had regard to the conclusions reached by the ECPS that the levels are not to such an extent as to exceed guidelines or cause material harm. Although I have also had regard to the comments of residents of Ivor Road raising objection, I have received no other substantive monitoring evidence to contradict that carried out by ECPS. I therefore have no substantive basis upon which to come to a different conclusion to that of the ECPS.
7. Some degree of noise would also not be unexpected from a site which has previously been in a storage and distribution use, and is adjacent to an existing roofing supplies business which includes open storage of materials.
8. I have had regard to concerns about the washing of larger vehicles outside of the car wash area. However, such activity would have been in breach of one of the conditions of the original permission. A similar condition could be re-imposed to restrict the areas where car washing and valeting take place, which would enable control by the Council if necessary.
9. The valeting area is located well away from the Rigler Road properties and the potentially noisy vacuum is enclosed so as to provide attenuation. The proposed workshops would also be well away from those properties and could also be controlled by condition to ensure they are used solely in connection with the car sales for preparation purposes as opposed to major mechanical or bodywork activities.
10. I saw that instead of previously proposed plastic boundary sheeting to prevent water spray from reaching the residential properties to the rear of the site, anti-spray netting had been installed that can be drawn across the rear of the canopy relating to the car wash area. That netting is also set away from the boundary with the Ivor Road properties further reducing the likelihood of any spray reaching those properties. I have also had regard to the submission by the ECPS that no significant spray was observed at a site visit carried out.
11. I have no substantive evidence of any other sources of disturbance from the operation of the site that amount to a level that would be materially harmful to the living conditions of adjacent residents. I also have no substantive evidence of any other activities occurring on the site that are not associated with the appeal scheme. However, were there to be any, in breach of the lawful use of the site, then the Council would have the opportunity to control this.

12. For the above reasons, the continuation of the development concerned, with those amendments to the originally permitted scheme, would not cause unacceptable harm to the living conditions of residents in Ivor Road in respect of noise, disturbance and water spray. As such, it accords with policy DM1 of the Poole Site Specific Allocations and Development Management Policies which, in respect of this issue, seeks to protect amenity.

Other matters

13. I noted that there were cars for sale parked at the bottom of the banking comprising the grass verge at the north-west corner of the site but within the site boundary. These are not prominent features in the streetscene due to the banking but particularly in the context of it being a commercial site. The latter is also true in respect of the small number of flags on the site frontage and advertising boards, and in respect of the visual impact of the canopies and other temporary structures on the site.

Conditions

14. The Council has suggested nine conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Government's Planning Practice Guidance and amended some of the wording.
15. The site forms part of a wider Regeneration Area (the RA) as set out in development plan policy and in particular is immediately adjacent to and accessed from an intended access point to the large area of the RA to the north-east of the site. There would be the potential for the existing use and layout of the site to be incompatible with the development intentions for the RA. However, as there is currently no clear indication as to when that development would commence, a temporary permission for a further two years beyond that originally permitted would be reasonable. The date of 28 July 2018 in the Council's suggested condition would be a little over that period but I have no substantive basis upon which to consider that difference to be material in terms of the timescales for the future development of the RA. I have therefore retained that date.
16. In the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would be required.
17. In order to protect the living conditions of the adjacent residents, it would be necessary for conditions to control the hours of operation and deliveries at the site; to ensure the car washing and valeting activities are restricted to the areas allocated for such, and that the anti-spray curtain is used and the car wash area canopy retained and maintained; and to ensure that the workshops shown on the approved plans are only used for the preparation of cars in conjunction with the car sales operation, and not for major mechanical works or bodywork reports.
18. In the interests of highway safety and the living conditions of adjacent residents, and as details have not previously been approved, notwithstanding the presence of existing lighting at the site, a condition to secure details and implementation of exterior lighting would be necessary. The condition is drafted in the form set out in the Annex because, unlike an application for planning permission for development yet to commence, in the case of a

retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with the requirements of this condition.

19. It would be necessary to secure by condition the retention of the vehicle parking and turning areas shown on the approved plans, in the interests of highway safety, and, to encourage the sustainable use of alternative modes of transport to the car, the retention of the cycle parking areas. The retention of the site access as shown on the approved plans would also need to be secured by condition until the opening of the RA Port Link Road (to be named as Jefferson Avenue) directly to the north of the site. It would also be necessary to secure the submission of a scheme relating to the closure of that existing access and implementation of an alternative site access from Rigler Road prior to the opening of Jefferson Avenue, in the interests of highway safety on the latter.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR

ANNEX – CONDITIONS

1. The use hereby permitted shall be for a limited period ending on 28 July 2018. Any works for the removal of structures and restoration of the land to its condition prior to the commencement of the use hereby permitted shall be carried out on or before 28 August 2018 in accordance with a scheme of work that shall first have been submitted to and approved in writing by the Local Planning Authority.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 001 Rev D, 002 Rev A, 003 Rev A, 004 Rev A.
3. The use hereby permitted shall not operate and no deliveries taken at or despatched from the site otherwise than between 08:00hrs and 18:00hrs daily.
4. Washing and valeting of vehicles shall only be undertaken in the respective areas designated as 'car wash' and 'valet area' on the drawings hereby approved. At all times whilst washing is being undertaken the 'anti-spray curtain' shall be in position screening the full width of the south east side of the 'car wash' canopy.
5. The canopy roof of the car wash area shall be retained and maintained as shown on the approved plans. In circumstances when the canopy needs to be removed for maintenance or repair, no washing of vehicles shall be carried out until the canopy is reinstated.
6. Unless within 1 month of the date of this decision a scheme, including a timetable for its implementation, for the exterior lighting for the site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the approved timetable, the use of the site shall cease until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 5 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme specified in this condition, that scheme shall be maintained and retained as such thereafter. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
7. The turning space, vehicle parking and cycle parking shown on the approved plan shall be retained and kept available for those purposes at all times. The access shown on the approved plan shall be retained and kept available for that purpose at all times subject to the terms of condition 8.
8. Prior to the opening of Jefferson Avenue, a scheme, including an implementation timetable, to close the vehicle access hereby approved with a permanent vehicle proof barrier and to provide an alternative vehicle access from Rigler Road, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be completed

in accordance with the approved timetable and in any case prior to the opening of Jefferson Avenue to through traffic.

9. The workshops shown on the approved plan shall only be used in conjunction with the car sales centre for the purposes of preparation of cars for sale at the site, excluding major mechanical works or bodywork repairs.