
Appeal Decision

Site visit made on 20 June 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 17th July 2017

Appeal Ref: APP/N2739/W/17/3171613

25 Sand Lane, South Milford, Selby, LS25 5AU

- 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 Costas Georgiou against the decision of Selby District Council.
 - The application Ref 2016/1176/FUL, dated 16 August 2016, was refused by notice dated 11 January 2017.
 - The development proposed is the existing double garage to be converted into a fish and chip shop.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular reference to noise and disturbance.

Reasons

3. The appeal site comprises a detached double garage associated with the dwelling at 25 Sand Lane. A post office/general store adjoins the other side of the dwelling and is operated by the appellant. There is a primary school opposite the site and residential properties to the east and south. The proposal seeks the use of the garage as a fish and chip shop.
4. The site is within the built up area of South Milford which is a Designated Service Village recognised by the Council as being in a sustainable location that is capable of taking growth and providing economic development. Policy SP14 of the Selby Core Strategy (Core Strategy) concerns town centres and local services and seeks to support local shops and services including village shops by promoting the establishment of new facilities to serve the day to day needs of existing communities and the planned growth of communities. The proposal would complement the operation of the adjacent shop and add to the range of local facilities and services in an area that is considered as a community 'hub'.
5. A pair of semi-detached houses adjoins the site immediately to the east. Additionally there are dwellings on the opposite side of Sand Lane east of the school, and on the south side of Sand Lane to the west of the shop. There are also houses to the rear of the site in Legion Street and The Meadows. Despite the presence of the existing shop and the school, the surrounding area is in my view predominantly residential.

6. The proposed opening hours of the fish and chip shop would be Monday to Saturday (and bank holidays except for Christmas day) 11.30 to 13.30 hours and 16.30 to 20.00 hours, and Sundays 16.30 to 20.00 hours. These seek to avoid drop off and pick up times from the school opposite in order to minimise the effect of the additional vehicular activity. Nevertheless, the operation of the takeaway would result in activity, including the comings and goings of some customers in vehicles to the site, that would be likely to lead to noise and activity, particularly at lunch time and in the early evening.
7. The adjacent shop operates from 05.30 to 19.00 hours and has an area of car parking to its frontage. I appreciate that this, along with the school immediately opposite, are a focus for the community and regarded as a busy and important hub. Accordingly I acknowledge that the area cannot be described as quiet and the activity associated with these existing adjacent uses creates some background noise and activity in the immediate area.
8. However, the activity associated with the school is for the most part limited to drop off and pick up times in the morning and early afternoon when I can appreciate that Sand Lane is busy with traffic. Nevertheless, these busy periods are by their nature relatively short-lived and do not take place at the weekend. The activity associated with the shop is likely to be more sustained throughout the week and during the day, but could be expected to lessen somewhat when the post office element of the business is closed.
9. In practical terms, it seems to me that the activity associated with the shop and the school would be likely to occur primarily during the day time and in the case of the school only during the week. In contrast, the appeal proposal would attract a good deal of its custom during the early evening when activity at the school would have ceased, and activity at the shop would have tended to diminish. This would also be so at the weekend when the school is closed.
10. The site is in a central location within the community that is accessible on foot and by bicycle. I note the appellant's view that it is reached via easy, flat, pedestrian routes with footpaths and that customers would have no need to walk alongside or cross busy roads. I have also had regard to the argument that it would be an accessible facility that would be particularly useful to the elderly who could access the site without needing a car. There is also the potential for those using the shop to undertake linked trips to the takeaway which would reduce the potential number of car journeys to the site.
11. Even so, it is likely that some customers would arrive by car. The numerous letters of support for the proposal are from a relatively wide local area. Indeed, the appellant anticipates the comings and goings of a couple of cars to the site each 15 minutes. He clarifies that this estimation is based on custom and practice of similar situations and relates to the time it takes to cook the fish (around five minutes).
12. There would be two car parking spaces on the driveway immediately in front of the garage building and three spaces within the existing garden area immediately in front of the house at No 25. Two of these are shown to be dedicated parking for the occupiers of No 25 with the other one at the back edge of the pavement being available for customers. A turning head would also be provided for cars to manoeuvre within the site. The parking spaces on the driveway and the turning area would be close to the boundary with neighbouring No 23 to the east.

13. Although a 1.8 metre high fence is proposed on that boundary, the vehicle movements on the site frontage (including entering, turning, manoeuvring and leaving) would take place in relatively close proximity to the flank wall of No 23 and its front and rear gardens. Additionally, the three parking spaces to the front of No 25 would be right outside its ground floor front windows. Notwithstanding that this property is occupied by the appellant, and the two spaces adjacent to the house would be for his own use, the vehicle movements there would take place at very close quarters to No 25.
14. Furthermore, I am mindful that customers may also seek to park or wait on Sand Lane close to the front of the unit. Despite the provision of on-site parking, this could not be ruled out. Local residents refer to the tendency for shop customers to park in Sand Lane (including on the footpath) even though there is space to park on the shop's frontage. Such on-street parking associated with the proposed fish and chip shop would be likely to take place near to the residential properties to the east of the site.
15. I accept that some business uses can be carried out in residential areas and appreciate that local residents are accustomed to the comings and goings associated with the school and the shop. Even so, whilst the proposed fish and chip shop would not operate late at night, it would still introduce increased numbers of vehicles movements to the site and the immediate area. These would be over and above those associated with the school and the shop and at times when local residents could expect the area to be less busy. To my mind they would materially add to levels of noise and disturbance in the area, particularly at the weekend and in the early evening, and would result in an unacceptable increase in noise and disturbance close to residential properties. Such an increase would be disruptive and unduly harmful to local residents and, to my mind, would have significant adverse impacts on their health and quality of life. That No 25 is occupied by the appellant does not alter my view.
16. In terms of the proposed ventilation/extraction unit, the originally submitted plans show the electrostatic precipitator and extraction fan located externally on the side elevation of the garage facing neighbouring No 23 (with the chimney protruding above the flat roof by around 1 metre). The Council's Environmental Health Officer confirms that the system would be capable of controlling odours arising from the proposed development, but considers that the equipment would be located externally in very close proximity to the boundary of No 23 and would give rise to a potential loss of residential amenity due to noise. Accordingly, the Environmental Health Officer recommends that that additional information is sought from the appellant to consider the potential impact of noise.
17. As part of the appeal the appellant has provided amended plans which show the equipment moved away from the boundary with No 23 to the garage's rear elevation. I have seen no comment from the Council on this revised siting and acknowledge that the amended plans did not form part of the planning application. Even so, it seems to me that this amendment, along with the provision of the proposed 1.8 metre high boundary fence as an acoustic barrier, could be secured via planning conditions. The rear of the garage is positioned well behind the dwelling at No 23 towards the end of its garden and the equipment would be set off the boundary. The rear elevation of the garage is also separated from the boundary with 31 Legion Street's rear garden to the south.

18. On this basis, subject to the imposition of the conditions discussed, I am satisfied that the proposed ventilation/extraction equipment would cause no harm to the living conditions of nearby occupiers in terms of noise and disturbance. However, this does not alter my findings in relation to the noise and disturbance that would arise from the comings and goings of vehicles to the site as set out above.
19. I therefore conclude on this issue that the proposal would be harmful to the living conditions of the occupiers of neighbouring properties, with particular reference to noise and disturbance. This would be contrary to Policy ENV1 of the Selby District Local Plan (Local Plan) which states that in considering proposals the Council will take account of (amongst other things) the effect upon the character of the area and the amenity of adjoining occupiers (criterion 1). It would be at odds with Local Plan Policy ENV2 (criterion A) which states that proposals for development which would give rise to, or would be affected by, unacceptable levels of noise, nuisance, contamination or other environmental pollution will not be permitted unless satisfactory remedial or preventative measures are incorporated as an integral element of the scheme.
20. The proposal would conflict with Core Strategy Policy SP19 which concerns design quality and expects new development to contribute to enhancing community cohesion by having regard to local character, identity and context of its surroundings. It would fail to support the core planning principle of the National Planning Policy Framework (the Framework) to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Furthermore it would undermine paragraph 123 of the Framework which states that planning policies and decisions should aim to avoid noise from development giving rise to significant adverse impacts on health and quality of life as a result of new development.

Other matters

21. The appellant suggests that the proposal would support the operation of the existing shop/post office and is vital to ensure its retention in the future. He advises that the shop faces competition from supermarkets and that the margins for making it viable are tight. On the other hand, it is also stated that the appellant runs a successful and popular business. In any event, I have seen no substantiated evidence in relation to the shop's viability or to reliably demonstrate that it would necessarily cease to operate in the absence of the appeal scheme. As such, I afford this factor no weight in favour of the proposal.
22. The proposal would support the aims of Core Strategy Policy SP14 and add to the range of services in the village (particularly in the context of past and future housing growth there). There is considerable support for it, including from immediate neighbours and the Parish Council. They indicate that the proposal would replace a former fish and chip shop in the village that closed down, would lead to the reintroduction of a traditional village facility that would be a welcome addition to the current choices there, and would mean people would not have to travel to get fish and chips. Whilst this is a benefit of the scheme, I am conscious that similar benefits could arise from a fish and chip shop in an alternative location within the village away from residential properties. As such, this benefit is insufficient to outweigh the harm that I have identified in relation to the main issue in this case.

23. Despite the concerns of local residents, the Council raises no objections to the proposal in terms of the appearance of the front elevation of the garage and shopfront, the potential for anti-social behaviour and increased litter, flood risk, drainage, climate change, the previously developed nature of the site or highway safety. The absence of harm in these regards counts neither for, nor against the proposal.
24. I note that the Council's decision came as a surprise to the appellant who undertook pre-application discussions. However, I confirm that I have considered the proposal on its individual planning merits and made my own assessment as to its impacts.

Conclusion

25. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR