



Appeal Decision

Site visit made on 20 November 2017

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 19th December 2017

Appeal Ref: APP/N1025/W/17/3181226
3 Draycott Road, Breaston, DE72 3DA

- 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 Mrs Lynne Morgan against the decision of Erewash Borough Council.
 - The application Ref ERE/0417/0006, dated 3 April 2017, was refused by notice dated 30 May 2017.
 - The development proposed is the use of part of existing car park for siting of mobile catering unit in connection with existing motorcycle showroom.
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Decision

1. The appeal is allowed and planning permission is granted for the use of part of existing car park for siting of mobile catering unit in connection with existing motorcycle showroom at 3 Draycott Road, Breaston, DE72 3DA in accordance with the terms of the application, Ref ERE/0417/0006, dated 3 April 2017, subject to the following conditions:
 - 1) This decision relates only to the development identified on the following plans:
 - i) Site Location Plan
 - ii) Site Plan (Ref 16055.05)
 - iii) Block Plan (Ref 16055.06)
 - 2) No more than one catering unit shall be used on the site at any one time.
 - 3) The use hereby permitted shall only take place between the following hours:
08:30 – 14:30 Mondays, Tuesdays, and Thursdays
08:30 – 14:00 Fridays
08:30 – 15:00 Saturdays

Procedural Matters

2. The development has already been carried out and is described as being in connection with the existing motorcycle showroom, however the opening hours as specified within the original application and within the appeal documentation did not match the opening hours of the showroom. Specifically, as stated in the Planning Statement, the hours of operation are 08:30 – 15:30 (Monday – Friday); 08:30 – 14:30 (Saturdays), whereas the motorcycle showroom is open 09:00 – 17:30 on Monday, Tuesday, Thursday and Friday; 09:00 – 16:30 on Saturday. The premises are closed on a Wednesday and Sunday.

3. The Council, as well as some local residents, raised concern regarding the opening hours as well as the advertising of the business and considered that the business was clearly being marketed at customers other than those visiting the showroom.
4. Having sought clarification on this element, the appellant now proposes 08.30 - 14.30 on Monday, Tuesday and Thursday; 08:30 – 14:00 on Friday; 08:30 – 15:00 Saturday. It is now proposed to be closed on Wednesdays and Sundays, to match the showroom. The appellant states that the unit is open for fewer hours than the motor cycle business due to trading patterns and an earlier start is required to enable the cooking appliances to be turned on and to enable them to reach the required temperatures prior to cooking. In addition, it was always made clear in the statements that the unit was also open to the public.
5. The appellant has indicated that they would be content with a condition to specify the hours as more aligned with the showroom or, as an alternative, limiting the hours of opening to between 09:00 – 16:00 on the days it is open (excluding Wednesdays and Sundays) to ensure compliance.
6. Having regard to the above, as made, there were inconsistencies in the original application in terms of whether the business is in connection with the showroom, particularly as the hours sought included opening on a day when the showroom was closed. However, the options presented in respect of opening hours would better align with the showroom business than as originally specified. I am therefore satisfied that no party would be prejudiced by my determining the appeal on the basis of reduced hours in comparison with those originally sought. The concerns regarding the nature and scope of the business and which option for the opening hours would be appropriate are further discussed within my reasoning below.

Main Issues

7. The main issues are:
 - (a) Whether the appeal site is an appropriate location for commercial development, having regard to local and national policies which seek to direct such development to established centres.
 - (b) The effect upon the character and appearance of the area including the setting of the Breaston Conservation Area (CA).
 - (c) The effect upon living conditions of neighbouring residents with specific regard to odour, noise and disturbance.

Reasons

Commercial Development

8. The appeal site is part of a car park for an existing motorcycle showroom. The mobile catering unit subject to this appeal was in place at the time of my site visit and was open for business.
9. Breaston is a medium sized village and has a number of services and facilities including a supermarket, post office/local store, public houses, butcher, clothing alterations shop, restaurants and cafes and a hairdresser to the east of the site. To the west are a number of other small businesses including a florist, café and hairdresser. These businesses are located along Draycott Road as the main thoroughfare through the village. Other businesses are scattered

around the village, including a farm shop along Stevens Lane, to the north of the site. A number of residential properties are located in proximity to the appeal site, including to the north of Draycott Road.

10. Policy 4 of the Erewash Borough Core Strategy 2014 (CS) seeks to locate employment provision and economic development proposals towards the main settlements. Criterion d) seeks to encourage economic development of an appropriate scale to diversify and support the rural economy. Policy 6 relates to the role of town and local centres and promotes businesses in such locations.
11. I accept that Breaston is not identified by Policy 6 as a local centre, however there are a number of well-established services and facilities within the village, in close proximity to the appeal site. The mobile catering unit is complementary to the local service provision and is well positioned in respect of the other commercial uses.
12. Moreover, I am mindful that the National Planning Policy Framework (the Framework) promotes the development of local services in villages and seeks to ensure that facilities and services are able to develop and modernise in a way that is sustainable as well as ensuring an integrated approach to considering the location of housing, economic uses and community facilities and services (paragraphs 28 and 70).
13. In respect of concerns regarding the scope of the business, and as stated above, the appellant has clarified that the hours sought are intended to better align with the opening hours of the showroom. Two alternatives have been provided by the appellant, 08:30 – 14:30 on Monday, Tuesday and Thursday; 08:30 – 14:00 on Friday; 08:30 – 15:00 Saturday or between 09:00 – 16:00 Monday-Tuesday and Weds-Saturday.
14. Based upon the first alternative, the business would be open half an hour earlier than the showroom, however, this would be at a time when commercial activity is taking place within the wider area and I do not consider that 30 minutes difference in the morning would be substantial. The second alternative would allow for the start time to be consistent with the showroom, but would allow for a longer opening period up until 16:00hrs.
15. Both options would, in my view, ensure that the function of the unit is better aligned with the showroom opening hours. However, I acknowledge that whatever the precise hours the use is likely to attract a wider customer base rather than solely relying on visitors to the existing business. It would not be possible to enforce a condition restricting custom to showroom users, but in any case, even if some trading unrelated to the showroom did occur, in light of the commercial character of the area I find that there would be no harm from additional users.
16. In light of local concerns and objections, I consider that the first option, even with a 30 minute difference in the morning, would represent the most appropriate solution and I consider such a condition is necessary and reasonable in order to comply with the terms of the application and the use of the site in connection with the existing showroom. Should any activities commence outside of these hours, the condition would be enforceable.

17. On this matter, I therefore find no conflict with CS Policy 4. While CS Policy 6 seeks to promote businesses in town and local centres, in light of the size and facilities within Breaston, I find no harm in this regard. The development also complies with paragraphs 28 and 70 of the Framework.

Character and Appearance

18. The mobile catering unit is of a standard design associated with catering trailers with opening end and side panels and central wheels. Trellis has been attached to the side facing out onto the main road. It has been positioned to the southern corner of the site, adjacent to the showroom and residential development behind (No 1 Draycott Road). A small outdoor seating area has also been created.
19. The showroom is located in a modern 2-storey flat roofed building and is surrounded to the north and east by a car park. This site abuts the CA boundary, and No 1 and properties to the east are within the CA.
20. While the design is of limited aesthetic quality, the overall appearance of the unit is of a functional, ordinary and unassuming nature. Open views of the catering unit are gauged across the car park when travelling west along Draycott Road, as well as from Stevens Lane, the junction of which is opposite the site.
21. However, its positioning to the rear of the car park also reduces its visual impact and it would have limited visibility in views from the CA. Views of the unit looking into CA, along Draycott Road and towards the Church, are limited. I am also mindful that the area serves as a car park where other vehicles of all types may park. The development readily assimilates into its surroundings in this regard.
22. On balance, the effect of the development on the character and appearance of the area would be neutral. I therefore find no conflict with saved Policy EV5 of the Erewash Local Plan 2008 (LP) which seeks to preserve or enhance the special character and appearance of conservation areas. The development would also accord with CS Policy 11, which seeks to ensure that the significance of heritage assets is sustained and CS Policy 10 which promotes good design and local identity.

Living Conditions

23. The area is a mix of commercial and residential properties which surround the site. Some local residents have raised concern at odour from the unit, however I note that Environmental Health have no concerns in this regard. At my visit to the site odours from cooking were also limited to the immediate vicinity of the unit. While the emission of some cooking smells is to be expected, I do not consider that this would have a materially harmful effect on neighbouring residents.
24. In terms of noise, this would be generated by the unit as well as by visitors sitting outside. However, in light of the existing commercial use of the showroom and the level of commercial activity in the wider area as well as the limited operational hours, I do not consider that the development has a material effect in respect of noise disturbance over and above that of the sites showroom use. Again, I am mindful that Environmental Health have no concerns in this regard.

25. On this matter I therefore conclude that the development would not harm the living conditions of neighbouring occupants. There would be no conflict with saved Policy S8 which states that food and drink establishments will be permitted subject to (among other things) no adverse impact on residential amenity arising through disturbance, odours or noise.

Other Matters

26. Concern is raised by local residents in respect of highway safety and it is understood that lorries have been parked along Draycott Road while visiting the unit. However I agree with the Council that parking restrictions are in place along Draycott Road with double and single yellow lines. Waiting is also prohibited. I am also mindful that the Highway Authority has no objection. Car parking for other vehicles of the showroom and catering unit would have access to the car park within the site. I have also found, above, that the unit is relatively unobtrusive and as thus it would not be distracting to drivers to the detriment of highway safety.
27. Due to the separation distances between the appeal site and No 47 Main Street, as well as the presence of a hedge between these sites, I am satisfied that there is no enclosing effect or overbearing impact. Similarly properties to the northern side of Draycott Road are situated around 45m away from the unit and again there would be no harm.
28. Concern is also raised regarding compliance with food safety standards, however this is covered under separate regulatory requirements and is not a planning matter. Concerns relating to alleged social media campaigns are a private matter between parties and have no bearing on this appeal which I have determined based upon its planning merits.

Conditions

29. I have specified the approved plans, for clarity, although I have amended the Council's wording as the development is already in place. I have also conditioned the hours of operation, for the reasons as specified above. Again this differs from the Council's suggested wording as this would not restrict the hours of use, rather this would have restricted deliveries and other operations.
30. I have also specified a condition restricting the use of the site for one mobile catering unit in order to protect character and appearance and living conditions of neighbouring occupants.

Conclusion

31. For the reasons given, and taking into account all other matters raised, the appeal succeeds.

C Searson

INSPECTOR