
Appeal Decision

Site visit made on 10 December 2018

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 28 January 2019

Appeal Ref: APP/G1250/W/18/3193984

Pro Hand Car Wash, 1053 Wimborne Road, Bournemouth BH9 2BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr D Ramazan against the decision of Bournemouth Borough Council.
 - The application Ref 7-2017-1721-AB, dated 10 September 2017, was refused by notice dated 6 November 2017.
 - The application sought planning permission for alterations, erection of jet wash bays, relocation of portable building and canopy, change of use of land to car wash and erection of 1m high wall to close exit to Hillcrest Road without complying with a condition attached to planning permission Ref 7-2014-1721-Y (appeal ref APP/G1250/W/15/3013850).
 - The condition in dispute is No 8 which states that: *The mechanical equipment on site shall be limited to 1 number jet wash compressor housed in an acoustic enclosure; 2 number jet wash nozzles; and 1 number vacuum cleaner housed within a moveable acoustic enclosure. The acoustic enclosures shall be as approved in writing by the Local Planning Authority and shall be maintained and retained thereafter.*
 - The reason given for the condition is: *To safeguard the amenities of occupiers of adjoining and nearby properties and in accordance with Policies CS14 and CS38 of the Bournemouth Local Plan: Core Strategy (October 2012).*
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Decision

1. The appeal is allowed and planning permission is granted for alterations, erection of jet wash bays, relocation of portable building and canopy, change of use of land to car wash and erection of 1m high wall to close exit to Hillcrest Road at Pro Hand Car Wash, 1053 Wimborne Road, Bournemouth BH9 2BY in accordance with the application Ref 7-2017-1721-AB, dated 10 September 2017, without compliance with condition number 8 previously imposed on planning permission Ref 7-2014-1721-Y and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr D Ramazan against Bournemouth Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. In order to assess the proposal I conducted an accompanied site visit at which the use of a single vacuum cleaner and 2 vacuum cleaners was witnessed by myself, a representative of the council, the appellant and the appellant's agent.

Background and Main Issue

4. There is an extensive planning history to the site. Permission was allowed on appeal for the change of use of the site to a car wash facility (ref APP/G1250/W/15/3013850). The appellant subsequently sought to vary conditions 2 and 8, and the application was refused by the council and dismissed at appeal (ref APP/G1250/W/16/3163066). The proposal before me seeks to vary condition 8 insofar as it relates to the number of vacuum cleaners.
5. The main issue is whether varying the condition to allow for 2 vacuum cleaners to be used on the site would have a harmful effect on the living conditions of surrounding occupiers with particular regard to noise and disturbance.

Reasons

6. The appeal site is a corner site located at the junction of Wimborne Road and Hillcrest Road. It is accessed via Wimborne Road which is a heavily trafficked thoroughfare. The site is situated close to those residential properties along Hillcrest Road, and there are residential properties located on the opposite side of Wimborne Road.
7. The appellant was granted permission to use the site as a car wash in 2015, and as part of that decision the Inspector at that time considered the various noise outputs as part of the scheme in its entirety. The Inspector in the 2015 appeal described witnessing more than 1 vacuum cleaner at the time of the site visit; however the condition attached to the decision limited the use to a single vacuum cleaner. There is no evidence before me other than the Inspector's decision which would provide clarification on why more than 1 vacuum is alluded to in the site visit, whereas a single vacuum is then permitted in the conditions. However it is clear that the Inspector considered the overall amenity of local residents to be important, and I agree with that where commercial uses are alongside residential uses it is important to safeguard the amenity of residents.
8. The conditions relating to opening hours and equipment were further considered at appeal in 2017. The Inspector in that appeal acknowledged the findings of the previous Inspector with regards to the limited noise omitted by the vacuum cleaners, whilst identifying that these observations were a snapshot in time. The Inspector who considered the 2017 appeal did not confirm if they were able to witness the use of 2 vacuum cleaners and the Inspector did not take into account the Technical Note KR05053 in determining that appeal.
9. The particular issue before me is whether the use of an additional vacuum cleaner would lead to an increase in noise and disturbance that would have a harmful impact on the amenity of local residents. The Technical Note KR05053 confirms that the overall noise emissions from the vacuum enclosure increases by some 0.3dB(A) when 2 vacuum cleaners are used. Whilst there is some dispute as to the standard that was applied, the report clearly acknowledges a

small increase in noise, and this is representative of the noise level associated with an increase from 1 to 2 vacuums.

10. At the time of my site visit 2 vacuum cleaners were in use. The vacuum cleaners were in a portable enclosure, located below the canopy at the front of the site. When standing adjacent to the waiting area towards the rear of the site the noise of the vacuum cleaners was barely audible over the noise related to the general use of the site. When standing adjacent to the boundary where the vacuum cleaners are housed the noise was audible in the absence of traffic or other site related activity. However, it was not audible above the general use of the site, the predominant source of noise being the jet wash facility which is located towards the rear of the site.
11. On the basis of the sound evidence submitted and my observations on site I am satisfied that the provision of an additional vacuum cleaner would not materially increase the level of noise on site above that already permitted.
12. The site has been granted permission for use as a car wash, and the use of 2 jet washes means that the appellant is capable of valeting a steady volume of vehicles. Whilst the level of activity on site alters throughout the day, at the time of my site visit the car wash was busy which provided me with a clear indication of the level of activity and noise during a busy period.
13. The ability to valet a car more quickly would ensure that vehicles were not left idling whilst waiting, and would contribute to ensuring that vehicles were dealt with promptly. A second vacuum cleaner would not automatically result in an overall intensification in the use of the site compared to as existing due to the existing number of jet washes. I have sympathy for the residents as the use permitted is different to the historical use of the site. However, on the basis of the evidence I consider that the use of an additional vacuum cleaner would not result in an increase in activity that would be so harmful as to warrant dismissing the appeal.
14. I have set out in my reasons above that I agree with the findings of the 2015 Inspector that subject to the provision that the equipment is contained within an acoustic enclosure the noise of the vacuum cleaner or cleaners cannot be heard over the general background of noise within, and around, the appeal site. In addition I have had the benefit of considering the technical evidence submitted relating to noise, which was not considered by the Inspector in the 2017 appeal. Therefore, whilst both previous appeals are material considerations to which I attach significant weight, I have determined this appeal on the basis of its own merits with careful regard to the additional available evidence and my own observations.
15. Accordingly I find that the variation of condition 8 to allow 2 vacuum cleaners on the site would not result in a level of noise and disturbance that would be harmful to neighbouring occupiers. The variation of the condition would therefore comply with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (2012) with regards to minimising potential pollution by way of noise, and ensuring that the use respects the site and its surroundings.

Other matters

16. Representations have been made by interested parties relating to the use of the site generally, with particular concerns raised in relation to the enforcement

of the conditions attached to the 2015 permission. I appreciate the Council's concerns in regards to monitoring the conditions. However, the conditions are enforceable, and it is necessary to impose conditions to protect the amenity of residents. The council acknowledges that securing compliance with the conditions is an enforcement matter, and the council has the authority to pursue a breach of planning permission should it occur.

Conclusion

17. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition.
18. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharge. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all of those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

J Ayres

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 983 05 Rev E; 983 07 Rev D; 983 08 Rev A; and 983 09 Rev B.
- 2) No vacuum cleaning or jet washing machinery shall be operated on the premises outside the hours of 09:00 to 18:00 on Monday to Friday, 09:00 to 17:00 on Saturdays and 10:00 to 16:00 on Sundays or Bank Holidays.
- 3) With respect to any condition that requires the prior written approval of the Local Planning Authority, the works thereby approved shall be carried out in accordance with that approval unless subsequently otherwise approved in writing by the Local Planning Authority.
- 4) The change of use hereby permitted shall cease and all buildings hereby permitted shall be demolished to ground level and all equipment and materials brought onto the land for the purposes of such use and materials resulting from the demolition shall be removed within one month of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i) within 1 month of the date of this decision a detailed scheme for the relocation of the single storey building and erection of the jet wash bays shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

Following completion of the approved scheme, no jet washing of vehicles shall be carried out other than entirely within the jet wash bays as approved.

- 5) Within 1 month of completion of construction of the jet wash bays a follow up acoustic report shall be submitted to and approved in writing by the Local Planning Authority. The report shall detail the achieved noise levels from the use of 2 number jet wash bays with all equipment in use. The report shall demonstrate that the specific noise level of 40dB(A) as calculated in the acoustic report by Impact Acoustics, Ref. IMP4335-4 has been achieved. If the calculated level has not been achieved further acoustic measures shall be specified and implemented to achieve this and carried out in full within 1 month of submission of the report.
- 6) The change of use hereby permitted shall cease and all buildings permitted shall be demolished to ground level and all equipment and materials brought onto the land for the purposes of such use and materials resulting from the demolition shall be removed within one month of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i) within 1 month of the date of this decision a detailed scheme for foul and surface water drainage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 7) The change of use hereby permitted shall cease and all buildings permitted shall be demolished to ground level and all equipment and materials brought onto the land for the purposes of such use and materials resulting from the demolition shall be removed within one month of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i) within 1 month of the date of this decision a noise management plan as stated in section 8.4 of the acoustic report by Impact Acoustics, Ref. IMP4335-4 shall have been submitted for the written approval of the local planning authority.
 - ii) within 11 months of the date of this decision, if the local planning authority refuse to approve the scheme or fail to give a decision within

the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) the approved noise management plan shall be adhered to at all times.
- 8) The mechanical equipment on site shall be limited to 1 number jet wash compressor housed in an acoustic enclosure; 2 number jet wash nozzles; and 2 number vacuum cleaners housed within a moveable acoustic enclosure. The acoustic enclosures shall be as approved in writing by the Local Planning Authority and shall be maintained and retained thereafter.
 - 9) No radios or amplified music shall be played on the site at any time
 - 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no vehicular access to or from the site other than as shown on the approved plan 983 05 Rev E. All other existing and previously existing accesses to the site shall be closed and the footway reinstated to the specification of the Local Planning Authority within three months of the date of this decision.

END OF SCHEDULE