



Appeal Decision

Site visit made on 16 September 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/V4630/W/19/3232283

Halliwell Funeral Service, 63 Norton Road, Pelsall WS3 4NR

- 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 J Coles, on behalf of Tamworth Co-operative Society Limited, against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 18/0962, dated 3 July 2018, was refused by notice dated 25 April 2019.
 - The application sought planning permission for the retention of hardstanding for parking of funeral director's cars without complying with a condition attached to planning permission Ref 07/2688/FL/E9, dated 17 March 2009.
 - The condition in dispute is No 3 which states that: There shall be no parking, storage or movement of any vehicles directly associated with the use of 63 Norton Road as a funeral director's unit on the site outside the hours of 0800–1800, Mondays to Fridays.
 - The reason given for the condition is: in the interests of the living conditions of nearby dwellings.
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Decision

1. The appeal is allowed, and planning permission granted for the use of the hardstanding in association with the funeral director's premises, at Halliwell Funeral Service, 63 Norton Road, Pelsall WS3 4NR in accordance with application Ref 18/0962, without compliance with condition 3 previously imposed on planning permission reference 07/2688/FL/E9, granted by appeal 17 March 2009 but still subject to the following conditions:
 - 1) The permission relates specifically to the car parking area shown hatched diagonally in red on the 1:500 scale site location plan numbered 5506.slp and to the access driveway leading thereto through the grounds of 64 Norton Road as shown on that same plan.
 - 2) This permission relates solely to vehicles directly associated with the use of 63 Norton Road, as a funeral director's premises, and no more than three such vehicles shall be parked or stored on the site at any one time.

Application for costs

2. An application for costs was made by Tamworth Co-operative Society Limited against Walsall Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether condition 3 is reasonable and necessary having regard to local policies and the National Planning Policy Framework (The Framework).

Reasons

4. The appeal site defines an external space to the sides and rear of a funeral director's premises at 63 Norton Road (No 63). The associated premises occupy half of a semi-detached property. It has an unoccupied flat at first floor, accessed by an internal staircase. The adjoining property, 64 Norton Road (No 64), was recently sold by the appellant and is now in use as a separate dwelling. The rear garden of No 64 is enclosed by a tall fence. The building, consisting of No's 63 and 64, is enclosed by two access drives and a small rear compound. Half of the rear compound includes a secure area with a single storey building. This is used in association with the funeral director's unit and enclosed by a fence and gate. The adjacent properties are residential in character and consists mostly of detached and semi-detached dwellings.
5. Condition 3 prevents the parking, storage or movement of vehicles associated with the business beyond the stated hours. The condition was imposed by appeal¹ to mitigate noise disturbance. At the hearing the previous Inspector was provided with evidence that confirmed that; No 64 was a dwelling occupied by an employee of the business, vehicles enter and exit the rear car park using the access drive to the side of No 64 as manoeuvring at the rear of No 63 was not possible, there was an average of 2-3 funerals a week arranged from the premises and there was no need to park on site outside the hours of 0800-1800 Monday to Friday. The Inspector considered that condition 3 was necessary to protect the living conditions of the occupiers of nearby properties. However, I understand that this view was without the benefit of a noise survey.
6. The Noise Survey² submitted in this case has considered the effect of noise impact on the rear and side facades of No's 64 and 65. The model shows only a modest increase in average sound pressure levels. It also shows that sounds associated with manoeuvring cars and the closing of doors, would be significantly below peak night-time road traffic noise. Furthermore, the Council's Environmental Health officer raised no objection to the proposal due to the limited number of anticipated vehicle movements. The Council has not challenged or contradicted the findings of the noise report and I afford significant weight to these conclusions.
7. The sale of No 64 conveyed 2 of the 3 spaces shown to the rear (and cross hatched in red on plan no. 5506.slp) to the new owner³ in 2017. Dedicated parking for the funeral director's business is mostly behind No 63. The Noise Survey considers vehicle manoeuvres to both parking areas. Therefore, whilst the change of ownership is a material difference, the driveway is shared between parties. I would expect the occupiers of No 64 to expect some reasonable disturbance on this basis. Furthermore, the effect of night-time disturbance would apply as equally to No 64 as to No 65 with therefore only a limited effect on increased noise sensitivity.

¹ Planning Appeal Decision: APP/V4630/A/08/2084502 and APP/V4630/C/08/2084357

² Environmental Noise Survey, noise.co.uk.ltd, 5 March 2018

³ Land registry Reference: WM824870 and WM234923

8. No's 64 and 65 have side and rear windows, serving habitable rooms. Many of these have a clear line of sight to the access drive and car park. Nevertheless, the rear compound is enclosed by a brick wall of around 1.8m, providing some noise screening. Furthermore, although the car park is adjacent to residential rear gardens, resident's windows are largely some distance from the boundary. No's 64 and 65 would be likely to be most affected by the proposal. Nevertheless, taking the evidence and site context into account, night-time activity would not substantially harm the living conditions of occupiers of adjacent residential properties. Also, vehicle headlights would be unlikely to cause disturbance with curtains drawn. Therefore, late-night disturbance would be unlikely to be invasive or sustained. Beyond No's 64 and 65, other nearby residential properties also overlook the site. However, these are a greater distance from the car park and would be less affected.
9. Representations indicate that the proposal would result in noise disturbance. I have noted the concerns expressed by local residents and Councillors. However, the level of activity and nature of the business suggests to me that any disturbance would be infrequent, slight and negligible. The business is a predominantly daytime activity. Concerns have also been raised that the proposal would result in night-time security issues caused by the sounds of activity. However, the frequency and level of noise activity would be unlikely to cause disturbance, with existing night-time maximum noise levels exceeding anticipated on-site noise levels. Therefore, the evidence before me does not describe a level of activity or sound that would result in an unacceptably adverse impact on the living conditions of adjacent residential occupiers.
10. Accordingly, the proposal would accord with saved policies GP2 and ENV32 of the Walsall Unitary Development Plan (2005), which amongst other things, seeks development that would not have an unacceptably adverse impact on the environment or fail to take into account its context.

Other matters

11. Representations indicate concerns in regard to access rights over the shared driveway. This is a private concern between landowners and therefore of limited weight in the balance of the merits of the case.
12. The site is within Pelsall Common and Old Pelsall Conservation area (CA). The statutory requirements⁴ require that special attention be paid to the desirability of preserving or enhancing the character and appearance of the CA. Being related to the restriction of hours of use, the proposal would have a negligible effect on the CA and would preserve its significance.
13. The Council has suggested the imposition of four conditions. In S73 applications, the National Planning Practice Guidance only allows for the imposition of further conditions in certain situations. This would only be where it would not materially alter the original permission and could have been imposed on the earlier permission⁵. A condition limiting commencement is not necessary as the development has already started. A further suggested condition, to limit parking for No 63 to a certain area of the site, was recommended by the Council's highway engineer. Although a laudable objective, this would result in a material change to the original consent.

⁴ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁵ Planning Policy Guidance: Paragraph: 040 Reference ID: 21a-040-20190723

Furthermore, it would not be necessary as a concurrent result of the deletion of condition 3.

Conclusion

14. For the above reasons the appeal is allowed, and Planning permission is granted. I will therefore grant a new permission without the disputed condition but retain those that are non-disputed from the previous permission.

Ben Plenty

INSPECTOR