



Appeal Decision

Site visit made on 16 January 2020

by R Morgan MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/Q4625/W/19/3239238 305 Lode Lane, Solihull, B91 2HZ

- 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 A Lihari against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2019/01831/VAR, dated 11 July 2019, was refused by notice dated 5 September 2019.
 - The application sought planning permission for change of use to a car valet centre without complying with a condition attached to planning permission Ref PL/2017/02303/PPFL, dated 23 January 2018.
 - The condition in dispute is the fourth condition although numbered 3, which states that: *The use hereby permitted shall not be operated on site or open to customers outside the following times Monday to Saturday 09.00hrs to 18.00hrs and closed Sundays and Bank Holidays.*
 - The reason given for the condition is: *To minimise the effect of the proposal on the neighbourhood in the interests of the character of the site and amenities of the area in accordance with policy P14 and P15 of the Solihull Local Plan 2013.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use to a car valet centre at 305 Lode Lane, Solihull B91 2HZ in accordance with the application Ref PL/2019/01831/VAR dated 11 July 2019, without compliance with condition number 3 previously imposed on planning permission Ref PL/2017/02303/PPFL dated 23 January 2018, and subject to the following conditions:
 - 1) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers: Amended proposed plan number ASB568-02; Proposed drainage plan by Drainage Consultants Ltd 11/1/18; Details of water pressure equipment in email dated 20/10/2017 16:15hrs from Gurp's Benning of GT Designz Ltd; Existing Plan, Location Plan.
 - 2) As detailed on the approved plans, cars to be washed are to be driven into the 3 available bays and washed inside the building only with no vehicles washed outside of the building. The pressure washer unit will be located and used within the building only and not outside the building.

- 3) The use hereby permitted shall not be operated on site or open to customers outside the following times: Monday to Saturday 09.00hrs to 18.00hrs and Sundays and Bank Holidays 10.00hrs to 16:00hrs.

Preliminary matters

2. Solihull Metropolitan Borough Council granted planning permission for the use of the appeal site as a car valet centre in a decision notice dated 23 January 2018. The permission was subject to four conditions, including the disputed condition which precludes operation of the use on Sundays and Bank Holidays. The reason for the condition was to safeguard the character of the area and limit any potential adverse effects arising from noise and disturbance.
3. The appellant contends that it would be appropriate for a car valet centre to operate on the site on Sundays and Bank Holidays. The appeal proposal seeks to vary condition 3 to read as follows: *The use hereby permitted shall not be operated on site or open to customers outside the following times Monday to Saturday 09:00 to 18:00 and Sundays and Bank Holidays 10:00 to 17:00.*
4. A previous application to vary this condition in a similar way was refused by the Council and subsequently dismissed on appeal in August 2018¹. In dismissing the appeal, the previous Inspector found conflict with Policy P14 of the Solihull Local Plan 2013, which permits development only if it respects the amenity of existing and proposed occupiers, and would be a good neighbour. The Inspector also found conflict with paragraph 127 of the National Planning Policy Framework (the Framework) which, amongst other considerations, requires a high standard of amenity for existing and future users².
5. The previous Inspector's concerns related primarily to the need to safeguard the living conditions of those nearby, but he was unable to assess this fully due to a lack of robust evidence regarding the levels of noise generated by the proposal and how that would relate to the prevailing acoustic background on Sundays. Information on any potential benefits of the proposal was also lacking.
6. To address the issues raised in the previous appeal decision, the appellant has submitted a noise assessment and additional information about the anticipated effect of the proposal on the business.

Main Issue

7. The main issue is the effect of varying the condition to allow operation of the car valet centre on Sundays and Bank Holidays on:
 - i) the living conditions of the occupiers of nearby properties, with particular regard to noise and disturbance; and
 - ii) the character of the area.

Reasons

8. The appeal site is located in an area of Solihull which is predominately residential, with nearby streets being generally characterised by semi-detached houses. However, there are also a wider mix of uses in the vicinity. In the

¹ Appeal reference APP/Q4625/W/18/3202260

² Framework Paragraph 127f)

area immediately surrounding the appeal site is a small parade of shops with flats above, and a Halfords Autocentre. The site is adjacent to Lode Lane (B425), which is a busy through route.

9. The car valet facility is currently operational on Mondays to Saturdays. It is comprised of a building which contains an office area and space for valeting two or three cars. Outside there is an area of hardstanding in front of the building, with three marked parking spaces to the side, in an area which adjoins the shopping parade forecourt.

Noise and disturbance

10. Potential noise and disturbance from the business arises from traffic associated with the site as well as the use of equipment, which includes power washers and vacuum cleaners. In order to limit noise from the operation, a condition was imposed on the original permission which requires all washing to take place inside the building. Vacuuming also takes place inside the building and a vacuum compressor is located in the building. However, vacuuming is not specifically covered by the condition and equipment has been installed to enable vacuuming to take place outside, in three parking bays adjacent to the end of the parade of shops.
11. The submitted noise report was carried out in accordance with the relevant British Standard (BS)³ which provides guidance on the measurement and assessment of industrial noise with respect to its impact on sensitive residential receptors.
12. The report provides an assessment of the background noise level experienced between 10:00 – 11:00 on a Sunday. Background noise levels in the vicinity were found to be relatively high, with traffic flow along Lode Lane dominating the noise climate, along with occasional traffic movement along Henley Crescent and some aircraft noise.
13. The noise report identified the 3 nearest sensitive receptors (NSR). The closest, identified as NSR1, is the flat above the adjacent hair salon, which is located approximately 6 metres from the nearest parking bay where outside vacuuming takes place. The second NSR is the house across the road on Henley Crescent, some 17 metres away, and the third is on the other side of Lode Lane, around 60 metres away.
14. In terms of assessing the noise from the operation, the report assumes a worst-case scenario for the Sunday or Bank Holiday operation, with 6 jet washes and 3 valets in one hour. This accords with the appellant's comments that the extended business opening hours would result in an increased turnover of at least 20%, which implies that they would expect to be busier on Sundays than on other days of the week.
15. It is clear from the noise report that the only location likely to be affected by noise arising from the car valeting centre on Sundays would be NSR1, which is very close to the site. Even there, the effect is just below the level which is likely to be an indication of an adverse impact. It appears that the background noise levels, predominately arising from traffic on Lode Lane, masks noise from the car valet centre to a significant extent.

³ BS 4142:2014

16. The car valet centre is already operational during the rest of the week so local residents are aware of the noise and activity associated with it. Some local residents have objected to the proposal whilst others are supportive of it. Notably, the occupiers of the both the flat at NSR1 and the house identified as NSR2 do not object to the proposal, despite their close proximity to it.
17. I acknowledge the Council's efforts to limit Sunday opening of businesses to reduce noise and disturbance to surrounding residents. However, given the findings of the noise report there appears to be little justification to restrict opening on those grounds.
18. I conclude that the proposal would not cause harm to the living conditions of nearby occupiers with particular regard to noise and disturbance. As such there is no conflict with Policy P14 and paragraph 127f) of the Framework which are both concerned with protecting amenity.

Character

19. The previous Inspector found that Policy P14 was of primary relevance to the proposal, however he also considered Local Plan Policy P15, which seeks to conserve and enhance local character. He noted that the operation of the car valet on a Sunday could affect character in a broad sense, and found that non-residential premises in the area generally did not open on Sundays and this factor influenced local character. Although he considered character issues in his decision, the Inspector did not identify any specific conflict with Policy P15.
20. The character of an area can be defined by a wide range of factors. In this case, although the site is within an area which has been described as suburban, its location adjacent to a busy main road has a significant impact on the character of the area, both visually and as a result of noise and activity levels. The noise report has confirmed that, owing to background noise levels, the area is not tranquil or quiet, even on a Sunday. This proximity to the busy main road limits the extent to which the activity at the car valet centre affects the character of the area.
21. The absence of other businesses opening on a Sunday, and the effect of this on local character, is cited by the Council as a reason to resist this proposal. I note that the car valet centre is located adjacent to a Halfords Autocentre which is closed on a Sunday, but the convenience shop on the adjacent parade is open. The Council consider the shop to be different from the car valet centre in terms of their impact on the character of the area on Sundays. Both businesses will attract traffic, although the amount of traffic involved will be low in each case. I acknowledge that the shop will generate less noise. However, given my findings above and taking account of the existing noise climate, any additional noise from the appeal proposal would not detrimentally impact on the local character.
22. As a result, I conclude that the proposal would not cause harm to the character of the area, taken in its broadest sense, and I find no conflict with Policy P15.

Conditions

23. The appellants have suggested a time of between 10:00hrs and 17:00hrs for Sunday and Bank Holiday opening. However, given restrictions on other businesses for Sunday opening, and taking account of concerns expressed by

some residents, I agree that the Council's suggestion of opening until 16:00hrs is appropriate in this case.

24. It is not necessary to repeat condition 1 of the original permission, as the development is already operational. However, the other conditions which specify plans and require that washing takes place inside the building only are still necessary.

Conclusion

25. For the reasons given, the appeal is allowed and condition 3 varied.

R Morgan

INSPECTOR