The Planning Inspectorate

Appeal Decisions

Site visit made on 28 January 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal A Ref: APP/D1590/C/19/3235536
1 Station Masters House, Station Road, Thorpe Bay SS1 3LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Paul against an enforcement notice issued by Southend-on-sea Borough Council.
- The enforcement notice was issued on 14 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey front and side extension.
- The requirements of the notice are:
- (a) Remove the unauthorised single storey front and side extension.
- (b) Remove from the site all rubble, materials and equipment associated with complying with this notice.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/D1590/C/19/3235535
1 Station Masters House, Station Road, Thorpe Bay SS1 3LU

- 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 Surinder Paul against the decision of Southend-on-sea Borough Council.
- The application Ref 19/00523/FUL, dated 1 March 2019, was refused by notice dated 21 May 2019.
- The development proposed is a single storey front and side extension retrospective.

Decisions

Appeal A Ref: APP/D1590/C/19/3235536

1. It is directed that the enforcement notice be:

    - varied by deleting the words "4 calendar months" within section 5 (What you are required to do) and its replacement with "10 calendar months"

2. Subject to this variation, the appeals are dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/D1590/C/19/3235535

3. The appeal is dismissed.

Appeal A on ground (a), the deemed planning application and Appeal B

4. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together.

Main Issues

5. The main issues are the effect of the development upon:

    - the character and appearance of the host building and the area;
    - the living conditions for the neighbouring occupiers of Homerowan House, with particular regard to noise and disturbance; and
    - the adequacy of parking provision to serve the extended restaurant, and the effect of any lack of provision on the free flow of traffic and highway safety.

Character and appearance

6. The appeal property relates to a restaurant within an existing part two storey, part single storey building, attached to Thorpe Bay Railway Station. The restaurant also adjoins the side/rear garden of a block of flats, known as Homerowan House, and a railway line to the rear of the site. The existing building comprises of render/brick finish with a tiled pitched roof.

7. The Council has previously granted planning permission for a single storey side extension[1], which provided a dining area, kitchen and storeroom for the restaurant. This permission, now implemented, made of brick and red tiled pitch roof ensured that the former building's character and appearance were retained and that the consequent effect upon the surrounding area was acceptable.

8. Whilst I note that there is no objection to the principle of the development which supports the operation of the restaurant by providing an enlarged dining and storage area, the current unauthorised development, extends the building considerably, covering a larger area of the forecourt, and projects forward of the front building line of the main building and the adjoining railway station building. The flat roof of the extension, although not visually prominent, is not in keeping with the roofs of the original building and later extension and diminish the character of the host building. Furthermore, the large window openings together with their lack of subdivision, in combination with the black windows frames, timber cladding, and roller shutters contrast unfavourably with the materials of the original building, which are outlined above.

9. Despite the low height of the extension and its set-back from the road, the resulting development is dominant and prominent, particularly in this highly prominent location at the front of the building, close to the main entrance to railway station. As a result, the development diminishes unacceptably the

[1] Approved in Council ref: 12/00002/FUL.

character, appearance and integrity of the host building with consequent harm to the character and appearance of the surrounding area.

10. I have had regard to the content of the appellant's appeal statement which highlights the variety of form, materials and design of buildings in the area, some of which appear to have been altered/extended. However, these do not alter my decision. In any event, I have assessed this case on its own merits.

11. Furthermore, there is no substantive evidence before me to demonstrate that this harm could be overcome by a condition requiring details of an alternative front elevational treatment, as it is the combination of the design, materials and position of the extension which is particularly discordant.

12. I conclude that the development harms the character and appearance of the host building and the area, in conflict with Policies KP2 and CP4 of the Southend on Sea Core Strategy, 2007 (CS), and Policies DM1 and DM3 of the Southend on Sea Borough Council Development Management Document, 2015 (DMD), which amongst other things requires all new development to respect the character and scale of the existing neighbourhood where appropriate and secure improvements to the urban environment through quality design; and to make a positive contribution to the character of the original building and the surrounding area.

13. Finally, the development would not meet the aims of part 12 of the National Planning Policy Framework, 2019 (Framework), which requires development to be sympathetic to local character and history.

Living conditions of the occupiers of Homerowan House - noise and disturbance

14. In the absence of any noise assessment, the Council raises a concern that the extended restaurant has the potential to lead to noise and disturbance for the occupiers of Homerowan House, a block of retirement flats, approximately 20m away from the restaurant[2] due to the intensification of the use of the restaurant during opening hours when the windows/doors of the restaurant are open. I also observed during my site visit that the rear gardens for this block of flats and windows at the rear of the building are located in relatively close proximity to the extended restaurant.

15. However, prior to the erection of the single storey front extension, the restaurant had an outdoor seating area, in the same position as the extension. As such by enclosing this outside seating area the development would be expected to result in a reduction of the noise and disturbance experienced by neighbouring occupiers of Homerowan House.

16. Furthermore, the restaurant lies adjacent to the railway station, railway line and the main road opposite the railway station, where background noise levels are relatively high during the restaurant opening hours. Therefore, the modest increase in activity associated with the enlarged restaurant is unlikely to result in any significant increase in noise and disturbance to neighbouring occupiers of Homerowan House. It would thus not result in harm to their living conditions in this regard.

17. On this basis I am therefore satisfied that a noise assessment, assessing the impact of the development on neighbouring occupiers, is not required on this

[2] Measurement taken from the appellant's and Council's appeal statement.

occasion. In reaching this conclusion, I have also taken into consideration the lack of objections from occupiers of this building and indeed, the letters of support received in relation to this issue.

18. Therefore, I conclude that the development has not resulted in harm to the living conditions of the neighbouring occupiers of Homerowan House, with particular regard to noise or disturbance. In this respect, the development complies with Policies KP2 and CP4 of the CS, and Policies DM1 and DM3 of the DMD, which taken together, requires new development to enhance the amenity value of the environment; secure good relationships with existing development, and protect the amenity of immediate neighbours, and surrounding area.

19. It would also comply with the aims and objectives of the Framework which seek to ensure that developments create places with a high standard of amenity for existing users.

Car parking provision

20. The Council have raised objections that the development results in an increase in floor space of approximately 105sq.m[3], which generates additional parking pressure in the vicinity of the site, with consequential harm to the free flow of traffic and highway safety. Policy DM15 and Appendix 6 (Vehicle Parking Standards of the DMD requires a maximum 1 space per 5sq.m of additional floorspace for Class A3 restaurant uses, and therefore the Council state that the development requires 21 additional car parking spaces to be provided.

21. Whilst I note that the restaurant has no existing car parking spaces, the standards set out in Appendix 6 of the DMD relates to a maximum requirement and not a minimum. The restaurant is an existing established business and I am not convinced that the extension results in such a significant increase in patrons that would justify such a significant increase in parking spaces. For instance, the extension occupies part of the forecourt of the restaurant which was previously in use as an outdoor seating area, and part of the extension is also occupied by storage area for the restaurant.

22. Any modest increase in vehicle trips and parking resulting from the development could be accommodated in the nearby car parks, which includes the Council owned car park on Station Road Thorpe Bay Broadway, or the NCP car park connected to the railway station. Furthermore, I have not been provided with any evidence to suggest that these existing car parks are currently at full capacity. Indeed, the provision of 21 parking spaces as suggested by the Council would not being in accordance with the government's aim of reducing the reliance on the private motor car and encouraging more sustainable forms of transport.

23. I also recognise the site is in a location with good accessibility to public transport, located next to a Thorpe Bay railway station and also served by nearby bus routes on the main road directly in front of the restaurant. In addition, Paragraph 109 of the Framework states that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety or the residual impacts on the road network would be severe. Even if the development results in a modest increase in parking pressure, in

[33] Measurement taken from the Council's Officer's Report for planning application ref: Ref 19/00523/FUL.

the locality, there is no evidence to suggest that this would lead to congestion harmful to highway/pedestrian safety.

24. Therefore, the provision of no additional parking spaces is considered acceptable on this occasion and does not result in any harmful effect on the free flow of traffic and highway safety. In this respect, the development complies with Policy CP3 of the CS, and Policy DM15 of the DMD, which states that development will be allowed where there is physical and environmental capacity to accommodate the type and amount of traffic generated in a safe and sustainable manner; that any traffic generated must not unreasonably harm the surroundings, including the amenity of neighbouring properties; and that all developments should reduce sole reliance on the car for accessibility. Finally, the development also accords with paragraph 109 of the Framework, as outlined above.

Conclusion on Ground (a) and the Deemed Planning Application and Appeal B

25. Whilst I have found no harm with regards to the living conditions of neighbouring occupiers, and the adequacy of the parking provision to serve the development, these are neutral considerations that do not weigh in favour of the development and for that reason do not outweigh my conclusion on the first main issue regarding character and appearance. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application, and Appeal B, should be dismissed.

Appeals A on ground (g)

26. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from 4 to 12 months, in order to provide the appellant with additional time to raise the funds to carry out the works in a way that does not compromise the running of the business and threaten its viability. I have identified under ground (a) that the development results in harm to the character and appearance of the host building and the surrounding area, and the 12 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements.

27. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. To help ensure that the operation and viability of the existing business is not threatened it seems reasonable to allow for some further time for the works to be carried out. In light of the above, a 10 month period for compliance would strike a more reasonable and proportionate balance to comply with the notice. I shall therefore extend the period from 4 to 10 months for compliance with the notice.

28. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusions

29. **Appeal A -** For the reasons given above, and having regard to all other matters raised, I conclude that the Appeal fails on ground (a) and I shall refuse planning permission on the deemed application and uphold the notice. I also conclude that the period for compliance with the notice falls short of what is

reasonable. I shall vary the enforcement notice prior to upholding it. Appeal A on ground (g) succeed to that extent.

30. **Appeal B -** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R Satheesan

INSPECTOR