



Appeal Decision

Site visit made on 22 June 2020

by Conor Rafferty LLB (Hons), AIEMA, Solicitor

Decision by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/M4320/W/19/3241123

43A Old Park Lane, Southport PR9 7BQ

- 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 as amended for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jon Gillman against the decision of Sefton Council.
 - The application Ref DC/2019/01059 dated 3 June 2019, was refused by notice dated 5 August 2019
 - The application sought planning permission for the resiting of one storage container and siting of two storage containers without complying with a condition attached to planning permission DC/2017/00755
 - The condition in dispute is No 4, which states that: *The security gate attached to unit 3 should be retained and locked between the hours of 18.30 and 08.00 Monday to Saturday and 13.00 to 08.00 Saturday to Monday*
 - The reason given for the condition is: *In the interests of neighbour amenity*
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issue is whether the disputed condition is reasonable and necessary in the interests of the living conditions of the occupiers of No. 49A Old Park Lane, with particular regard to noise and disturbance.

Reasons for the Recommendation

4. The appeal site comprises the land and buildings at 43A Old Park Lane, set back from the road and accessed between the residential dwellings at 43 and 45 Old Park Lane. While the site itself is defined by its commercial use, the surrounding area is predominantly residential in nature and the rear gardens of the dwellings at 49A Old Park Lane and 44-50 High Park Road abut the appeal site.
5. The information presented indicates that the site has been used for storage historically. Four storage containers and three lock up units were present prior to 2017 when planning permission was granted for the retention of cladding

and external roller shutters to several units within the appeal site, the resitting of one of the storage containers and the siting of an additional two storage containers. A security gate was added to the site as part of that permission. The re-sited container and the two additional containers (Containers 5 – 7) are located along the boundary with the rear gardens of 49A Old Park Lane.

6. The appeal seeks permission to operate the site without complying with condition 4. This condition states that the security gate should be retained and locked between the hours of 18.30 and 08.00 Monday to Saturday and 13.00 to 08.00 Saturday to Monday in the interests of neighbour amenity. The appellant maintains that the condition is unreasonable on the basis that it effectively restricts the times at which containers 1-4 and the lock up units may be used, even though those elements benefitted from unrestricted usage prior to the 2017 permission. In addition, he contends that condition 4 is unnecessary because any noise arising from the new and re-sited containers can be controlled by condition 3 which restricts the hours at which those specific containers can be used.
7. Limited information has been presented about the precise nature of the site and the condition of the containers and units prior to the application in 2017. However, the application essentially related to the refurbishment of existing containers and units and the introduction of additional containers; the new and re-sited containers being directly adjacent to residential gardens. The application related to the whole site and not just the new units and it appears to me that the Council was entitled to consider whether conditions seeking to regulate the hours of operation were reasonable and necessary, having regard to the proximity of residential properties and the likelihood that the refurbishment and expansion would lead to an intensification in the use of the site. Essentially, the Council considered that such conditions were necessary to mitigate for the expansion of the number of containers and likely increased use of the site. In my view the principle of that approach was not unreasonable approach.
8. A level of noise and disturbance will have arisen at the appeal site associated with the use of Containers 5 -7. This likely includes both vehicular and pedestrian movements, engine noise, and the noise from the containers themselves when being opened and closed, or when objects within them are being moved. These containers, when combined with those already present, lead to an intensification of the use at the site as a whole causing an increase in noise and disturbance to a degree not previously experienced by the neighbouring occupiers.
9. Containers 5 - 7 are situated along the boundary to the rear of No. 49A. Due to the limited depth of the rear garden and patio area at No. 49A, the occupiers of this dwelling experience the increase in noise arising from the site. While a high breeze block wall runs along this boundary, it has limited effect in reducing the level of disturbance experienced. As such, unrestricted use of Containers 5 – 7 could lead to an unacceptable increase in the disturbance experienced by the occupiers of No. 49A, with associated noise occurring throughout the night and at weekends.
10. Condition 4 of planning permission DC/2017/00755 seeks to mitigate this by limiting the access to the site during the evening and weekends. This should ensure that the disturbance caused will be restricted to certain hours of the day

and avoided in the evening and at times when residents may reasonably expect a greater degree of peace and quiet. In doing so, it ensures that there is no unacceptable impact on the living conditions of the occupiers of No. 49A with regards to noise.

11. I recognise that the condition also has the effect of limiting access to Containers 1 – 4 and other units at the appeal site. However, for the reasons set out above, the 2017 permission related to the expansion and refurbishment of the site as a whole. I am satisfied that it was reasonable and necessary for the Council to off-set the increase in use and thereby the likely increase in disturbance through the imposition of condition 4. The appellant would have been entitled to continue to operate the site as it stood prior to the 2017 permission without restriction but the off-set for the expansion of activity was the imposition of conditions limiting the use of the site.
12. I recognise that condition 3 seeks to limit the hours within which containers 5 - 7 should be used. However, that condition alone would not be sufficient to mitigate against the increased use of the site as a whole that was brought about by the 2017 permission. In addition, due to the presence of other containers on site, and the lack of visibility of the appeal site, it wouldn't be readily apparent if someone within the site was using containers 5-7 as opposed to any of the other units. Moreover, in the absence of precise details as to how the site operates it is not clear if individuals or businesses have access to more than one unit. For example, it may be possible for someone to rent a unit or one of containers 1-4 in addition to one or more of containers 5-7. In such circumstances, the likelihood is that those using the units are likely to want to do so at the same time.
13. Therefore, in the interests of neighbouring living conditions I am satisfied that condition 4 is necessary and reasonable and that condition 3 alone would not provide sufficient mitigation. The effect of removing condition 4 would potentially allow unrestricted 24 hour access to the site. The appellant maintains that is not his intention and that he imposed restrictions himself on operating hours on units not restricted by the permission, albeit that he doesn't specify what those hours are. However, whilst that may be his intention planning runs with the land and ownership of the site may change in future. In addition, the appellant seeks removal of the condition altogether and has not suggested any amendment to the present hours permitted by condition 4. In the absence of any suggestion in that regard, and in the absence of any views from the parties or neighbouring residents it is not something that I have considered because to do so could cause injustice to those who may wish to comment.

Conclusion and Recommendation

14. Having had regard to all matters raised, I find that condition 4 is reasonable and necessary in the interests of the living conditions of neighbouring residents and recommend that the appeal should be dismissed.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

15. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be dismissed.

C Preston

INSPECTOR