



Appeal Decision

Site visit made on 8 December 2020

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15th January 2021

Appeal Ref: APP/H2265/W/20/3257861

The Oast House, Hollow Lane, Snodland, ME6 5LB

- 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 David Catterall of Zenacrown Limited against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/19/00786/FL, dated 29 March 2019, was refused by notice dated 5 June 2020.
 - The development proposed is described as: *'Partial demolition of existing vacant building, change of use of remaining floorspace and erection of new single storey extension for mixed restaurant and hot food takeaway (mixed A3/A5) use, incorporating a 'drive-thru' lane, creation of new vehicular access and egress point from Hollow Lane, provision of car and cycle parking, plant and extraction system, landscaping and both freestanding and elevational internally illuminated and non-illuminated signage.'*
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Decision

1. The appeal is allowed and planning permission is granted for *Partial demolition of existing vacant building, change of use of remaining floorspace and erection of new single storey extension for mixed restaurant and hot food takeaway (mixed A3/A5) use, incorporating a 'drive-thru' lane, creation of new vehicular access and egress point from Hollow Lane, provision of car and cycle parking, plant and extraction system, landscaping and both freestanding and elevational internally illuminated and non-illuminated signage* at The Oast House, Hollow Lane, Snodland, ME6 5LB in accordance with the terms of the application, Ref TM/19/00786/FL, dated 29 March 2019, subject to the conditions set out in Appendix A.

Application for costs

2. An application for costs was made by Zenacrown Limited against Tonbridge and Malling Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of nearby residents with specific regard to noise and disturbance.

Reasons

4. The appeal site comprises a roughly rectangular shaped area of land of approximately 0.25 hectares in area fronting Malling Road to the south, Hollow Lane to the west and Corona Terrace to the north. The site and its surrounding fall within the designated urban area of Snodland and currently comprises a

- two-storey building set back from the Hollow Lane frontage, with a large area of open hardsurfacing behind, used for parking. The building also incorporates historic 'Oast House' features within its rear/east facing elevation.
5. The street scene is predominately residential, however there are a number of significant commercial activities close to the appeal site. These include a hand car wash business near to Corona Terrace, a Shell petrol filling station – with services available for Heavy Goods Vehicles (HGVs) to refuel, and the Freemasons Arms public house located on the junction of Malling Road and Brook Road. The appeal site lies between Malling Road and Hollow Lane. Malling Road provides a key route into the settlement of Snodland, with a bus stop near to the appeal site and links into the village and the A228/M20.
 6. As detailed in the submitted evidence and confirmed during my site inspection, the settlement of Snodland is served by a number of services including around 10 other takeaway providers (such as Indian, Chinese, and Italian cuisines) or cafes. Access to the nearest school is around 510 metres, with the boundary of the school site located approximately 200 metres away.
 7. The appeal proposal seeks building works to the existing building, including partial demolition and improvements of the existing oast house, roundels and cowls. The building would be used as a restaurant and hot food takeaway with drive thru facility trading between 11:00 and 23:00, and the provision of a total 29 parking spaces.
 8. In terms of noise and disturbance, the Council's concerns appear to emanate from a number of factors including; the operation of the site and the activity of patrons.
 9. With regard to noise, the Appellant has submitted an updated Acoustic Assessment carried out by Ned Johnson Acoustic Consultants (Ref 531819 Rev A, dated 19 June 2019) on 4 July 2019 which identified that the '*level of activity expected to take place both at the entrance to the site and also within the site itself, the proposals would have no unacceptable impact upon the occupiers of the nearest residential properties.*'¹
 10. This was an assessment that the Council's own Environmental Protection experts agreed with 19 July 2019² where they essentially concurred with the Assessment's conclusion that there will be no impact from these noise sources, as their level at the nearest noise sensitive receptors will be below the existing background levels.' Put another way, the Council's environmental protection advisers raised no objection with this conclusion. With little to no evidence to the contrary, I see no reason to disagree with this position.
 11. The Council's statement differentiates between a 'statutory nuisance' in respect of noise as considered by the Environmental Protection team and a more general amenity judgement. In this respect the Council points to their view that the proposed development on this site could not function in a manner commensurate with its surroundings.
 12. However, it appears clear from the comments of the Council's own experts that they agreed that the use of the appeal site, as assessed within the Acoustic

¹ Appellants Statement of Case, paragraph 4.21

² Appendix 4 Appellants Statement of Case, LPA Environmental Protection Officers further consultation response dated 15 July 2019.

Assessment, would be below the existing background levels at the nearest noise receptors. As such, it is difficult to see in what way the noise arising from the site would be to a level that would be harmful to nearby residents.

13. In terms of disturbance, I agree that there may well be some noise arising from motor vehicle doors and engines and from patrons accessing and leaving the site. There is also the potential for some limited light pollution from the proposed use of the appeal site. However, the appeal site needs to be considered in its context. Whilst there are residential properties nearby, there are also a number of commercial operations. For example the petrol filling station near to the junction of Hollow Lane and Malling Road which has the ability to serve tankers, and the fact that Malling Road is a traffic route into Snodland served by buses.
14. Considered in this context it is difficult to see how the proposed commercial use of the appeal site, which was most recently used commercially for a double-glazing company, would result in material harm to the occupiers of nearby residents.
15. The Council point to the limited number of spaces serving the proposal (which was not unacceptable) and how the layout would have implications for customers and staff travelling around the site. However, no specific objections have been raised by the local highways authority on this point following various studies and documents being submitted by the Appellant. Indeed, it is clear from drawing SNC18/G121 Revision B, that a circular route would be provided around the car park for customers using the drive thru. For those choosing to dine-in, the number of spaces provided would meet that required by the local planning authority by its own admission.
16. Furthermore, in terms of noise and disturbance, there are a number of conditions which could be imposed in order to mitigate any adverse impacts arising from the proposal. I consider these in detail elsewhere in this decision. However, I am content that they would ensure that the development mitigate and reduce to a minimum potential adverse impacts rising from the development and noise giving rise to significant adverse impacts on health and the quality of life. Very little evidence has been provided from the local planning authority to support its assertion that it would not be possible through the use of planning conditions to address these matters. Therefore, the ability to mitigate noise, smells, light pollution, and/or any other forms of potential disturbance can only lead to the conclusion that the proposal should not fail on this point.
17. I therefore conclude that the proposal would not result in an adverse effect on the living conditions of nearby residents with specific regard to noise and disturbance.
18. Accordingly, it would accord with the cited Paragraphs 127 and 180 of the National Planning Policy Framework, which set out that; planning decisions should ensure that developments will function well and add to the quality of the area over the lifetime of the development, will create places that are safe, inclusive and accessible and which promote both health and well-being, with a high standard of amenity, and should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development.

Other Matters

19. A number of other matters have been raised by interested parties. I consider a number of these before considering whether the use of planning conditions is appropriate in this instance.
20. In terms of obesity and the proximity of the appeal site to nearby schools, there is limited explicit policy reasons within national planning policy that would provide a planning reason for dismissing this appeal. I note the observations made in respect of a distance of around 400 metres being suggested and the school site lying within this distance. Nonetheless, I see no reason in planning policy terms why permission should be withheld in this case, and am reinforced in this view that the local planning authority has also not drawn my attention to such policy. That is not to say that obesity is not an issue at a national or local levels: clearly it is. Nevertheless in the absence of a sound planning policy objection the appeal should not be dismissed on this ground.
21. With regard to access and highway safety, the local highways authority have considered the evidence and in their letter of 19 March 2020 indicated no objection to the proposal, subject to conditions. I see no reason to disagree with that assessment. I note concerns relating to the nearby Shell garage causing congestion together with the car wash that is adjacent to the appeal site. However, these are existing issues beyond the appeal site itself and beyond the control of the Appellant to resolve and therefore do not weigh against the proposal.
22. Similarly, issues have been raised in terms of land ownership of the site and that there is a Public Right of Way (PROW) MR76 that runs through part of the site. It is for the Appellant and relevant body to agree any diversion of that PROW if required, and it appears as though various strategies could be used to either divert the path or through landscaping ensuring that it is kept free for footpath users to access. In terms of land ownership, that is a private matter between the parties concerned and the grant of planning permission does not provide any specific rights or otherwise over such land.
23. In terms of smells and air quality, I acknowledge that many forms of hot food takeaways result in unpleasant smells; regardless of whether fried chicken, burgers, or chips for example. However, there are no substantive objections from the Environmental Protection team that suggest that the filtration and related systems proposed would not adequately prevent or minimise such smells.
24. The Council raise no significant issues with the external alterations to the building, and whilst I note various suggestions for alternative uses of the site such as residential dwellings, restaurant, or gym, I see no reason why the suggested use is unacceptable in principle.
25. I therefore find, whether alone or in combination, these other matters do not provide justification for the dismissal of the appeal proposal.

Conditions

26. The Council has suggested 18 planning conditions to be imposed. Section 3 of the Appellant's final comments indicates no comment on these suggested conditions. I have considered the imposition of suggested conditions in light of Paragraph 55 of the Framework, and the national Planning Practice Guidance.

27. A time limit for implementation condition is necessary to provide certainty. Similarly whilst not suggested a condition related to the proposal being implemented in accordance with the submitted drawings is necessary for the avoidance of doubt and to provide certainty.
28. Conditions requiring details of finished floor levels, external material samples, external lighting and a landscaping and boundary treatment scheme, are necessary to protect the character and appearance of the area. A condition requiring details of and implementation of such approved details, mechanical air extraction, and a condition relating to a litter management scheme, hours for deliveries, opening hours, are reasonable to minimise smells and odours to protect the living conditions of nearby residents.
29. Conditions requiring details of barriers, the layout and surfacing of vehicle circulation and parking areas, access onto Hollow Lane are completed, the provision of cycle storage, and a staff travel plan, are necessary in the interest of highway safety.
30. A condition relating to archaeological watching briefing is necessary in order to protect and record any unknown finds or artefacts or features of interest. However, this should also include a requirement to notify the LPA when works are due to commence so that an archaeologist or suitably qualified person is afforded access to the site should this be required to record such information.
31. A condition relating to work ceasing if any contamination is found, and then subsequent actions being required is necessary in the interest of public health and the wider environment.
32. Lastly, a condition has been suggested relating to details of proposed parking restrictions on Hollow Lane, the junctions of the Alex Hughes Close and Corona Terrace being submitted and approved by the LPA. The condition would then require the Appellant to enter into an agreement with the local highway authority to ensure the parking restrictions are implemented. However, such areas appear to lie outside of the appeal site area and within the responsibility of the local highways authority rather than the Appellant. On street parking restrictions are dealt with by other legislation and regulatory regimes beyond planning. As such, I do not consider that the imposition of the suggested condition would, in this case, be reasonable.

Conclusion

33. The Council have not indicated that the proposal would conflict with the adopted development plan. The Framework is an important material consideration and I have found no conflict with the policies contained therein. I therefore find that the proposal would accord with the adopted development plan and that there are no material considerations that indicate a decision otherwise than in accordance with it.
34. For the reasons given above, I conclude that the appeal should be allowed.

Cullum J A Parker

INSPECTOR

Appendix A – List of conditions imposed

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1:1250 scale OS plan of application site, Drawing no. SNC18/G099 – existing floor plans, Drawing no. SNC18/G100 Revision A – proposed general arrangement plan, Drawing no. SNC18/G121 Revision C – proposed site plan, Drawing no. SNC18/G122 Revision B – proposed site signage plan, Drawing no. SNC18/G210 – existing elevations, Drawing no. SNC18/G211 – proposed elevations 1, Drawing no. SNC18/G212 – proposed elevations 2, Drawing no. SNC18/G903 – proposed roof plan, Planning Statement (incorporating Design and Access Statement), Transport Assessment dated March 2019, Travel Plan dated March 2019, Delivery and Servicing Plan dated March 2019, Drawing no. STS0182-MO1 – proposed HVAC ground floor level, Drawing no. STS0182-MO1 – proposed HVAC roof level, Specification of silencers prepared by Noico Ltd, Drawing no. 2243 01 A – detailed planting proposals prepared by Liz Lake Associates, Acoustic Assessment (Document Ref. 531 819 Rev. A) dated 19th June 2019 prepared by Ned Johnson Acoustic Consultants, Technical Note dated 23rd May 2019, Technical Note dated 20th December 2019, and Technical Note dated 10th January 2020.
- 3) Prior to the commencement of the development hereby permitted, arrangements for the management of all demolition and construction works shall be submitted to and approved in writing by the Local Planning Authority. The management arrangements to be submitted shall include the following:
 - The days of the week and hours of the day when the demolition and construction works will be limited to and measured to ensure these are adhered to;
 - Procedures for managing all traffic movements associated with the demolition and construction works including (but not limited to) the removal and delivery of material to and from the site (including the times of the day when those deliveries and collections will be permitted to take place and how/where materials will be on/offloaded) and for the management of all other demolition and construction related traffic and measures to ensure these are adhered to;
 - Procedures for notifying the existing residents of Corona Terrace, Alex Hughes Close and Dene Hall as to the ongoing timetabling of works, the nature of the works and likely their duration, with particular reference to any such works which may give rise to noise and disturbance and any other regular liaison or information dissemination; and,
 - The specific arrangements for the parking of contractor's vehicles within or around the site during demolition and construction and any external storage of materials or plant.

The development shall be undertaken in full compliance with the approved details.

- 4) No development shall take place, other than demolition of any building, removal of hardstanding, or ground investigations works, until details of levels (slab and finished floor) have been submitted to and agreed in writing by the

Local Planning Authority. The works shall be carried out in strict accordance with those details.

- 5) No development shall take place, other than demolition of any building, removal of hardstanding, or ground investigations works, shall take place until details and samples of materials to be used externally have been submitted to and approved by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.
- 6) No development shall take place, other than demolition of any building, removal of hardstanding, or ground investigations works, until a scheme detailing the proposed siting, shading, levels of illumination and hours of use of any external lighting has been submitted to and approved by the Local Planning Authority.
- 7) The use shall not commence until full details of a scheme of mechanical air extraction from the kitchen, including arrangements for the continuing maintenance of this equipment and any noise attenuation measures required in connection with the equipment have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed before use of the kitchen commences and shall thereafter be maintained in strict accordance with the approved details. No cooking of food shall take place unless the approved extraction system is being operated.
- 8) The use hereby permitted shall not commence until full details of a Litter Management Scheme have been submitted to and approved in writing by the Local Planning Authority. The agreed Management Scheme shall be implemented and retained at all times.
- 9) The use hereby permitted shall not commence until full details of the proposed barrier at the entrance/exit onto Hollow Lane as shown on the submitted plan referenced SNC18/G121 Rev C received 4 July 2019 are submitted to and approved in writing by the Local Planning Authority. The details shall also include the intended operating regime. The barrier shall be maintained and retained in perpetuity.
- 10) The use hereby permitted shall not commence until the layout shown on the submitted plan referenced SNC18/G121 Rev C received 4 July 2019 as vehicle circulation and parking space has been provided, surfaced and drained. The areas shall be constructed of porous materials or provision made to direct surface water run-off from the hard surface to a permeable or porous area or surface within the site. Thereafter the area shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or reenacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking area.
- 11) The use hereby permitted shall not commence until the layout of the access onto Hollow Lane as shown on the submitted plan referenced SNC18/G121 Rev C received 4 July 2019 is completed and the vision splays retained and maintained thereafter.
- 12) The use hereby permitted shall not commence until the cycle parking as shown on the submitted plan referenced SNC18/G121 Rev C received 4 July 2019 has been installed. Thereafter the facilities shall be kept available for such use and no permanent development, whether or not permitted by the

Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude cycle parking.

- 13) The landscaping and boundary treatment shall be carried out in accordance with the details submitted under drawing referenced 2243 01 A received 1 April 2019. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 10 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the Authority gives written consent to any variation. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building to which they relate.
- 14) Deliveries and collections to and from the use hereby permitted shall be carried out between 07.30 and 17.00 on weekdays and Saturdays, with no deliveries or collections on Sundays or Public and Bank Holidays, and in accordance with the Delivery and Serving Plan received 1 April 2019.
- 15) The opening hours of the use hereby permitted shall be carried out between the hours of 11.00 - 23.00 on weekdays and Saturdays, and 11.00 - 22.00 on Sundays.
- 16) Prior to any building work on site, including but not limited to demolition, the Appellant shall give no less than seven days written notice to the Local Planning Authority so that they may appoint an Archaeologist or suitably qualified person to inspect the site and be afforded such access prior and during construction works. If during construction works items or features of archaeological and historic importance are discovered, all development shall cease. It will then be necessary for the Appellant, or their agents or successors in title, to secure the implementation of a watching brief to be undertaken by an Archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be submitted to Local Planning Authority immediately on discovery of any historic item or feature.
- 17) If during development, contamination not previously identified is found to be present at the site then all works will cease and the Local Planning Authority shall be notified in writing immediately. Works shall not recommence until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.
- 18) Prior to the first commencement of the use hereby permitted, a Staff Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The recommendations of the Staff Travel Plan will be implemented and retained thereafter.