



Appeal Decision

Site Visit made on 9 February 2021

by Mr Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/A1720/D/20/3264662

84 Merton Avenue, Portchester, Fareham, PO16 9NH

- 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. Wells against the decision of Fareham Borough Council.
- The application Ref P/20/0656/VC, dated 2 July 2020, was refused by notice dated 18 September 2020.
- The application sought planning permission for the erection of detached double garage without complying with a condition attached to planning permission Ref P/09/0797/FP, dated 17 November 2009.
- The condition in dispute is No 6 which states that:
"The use of the garage hereby permitted shall be limited to purposes incidental to the enjoyment of the dwelling house and shall not be used for any business, industrial or commercial purposes whatsoever."
- The reason given for the condition is:
"To protect the residential amenities of occupiers of nearby residential properties; in the interests of highway safety; in accordance with Policy DG1 of the Fareham Borough Local Plan Review."

Decision

1. The appeal is allowed and planning permission is granted for the erection of detached double garage at 84 Merton Avenue, Portchester, Fareham, PO16 9NH in accordance with the terms of the application, Ref P/20/0656/VC, dated 2 July 2020, without compliance with condition number 6 previously imposed on planning permission ref P/09/0797/FP dated 17 November 2009 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans, stamped "Permission 17-Nov-2009": Drawings 1 Issue A, 2 Issue A, 3 Issue A, 4 Issue B and 5 Issue A
 - 2) The development shall be carried out in accordance with the materials detailed on the planning application form dated 22nd September 2009.
 - 3) The detached double garage hereby permitted shall not be brought into use until roller shutter doors have been fitted to both vehicular accesses. These doors shall thereafter be retained and kept available for use at all times.
 - 4) The detached double garage hereby permitted shall not be brought into use until the sightlines have been constructed in accordance with the approved plans and shall thereafter be kept free of obstruction at all times.

Main Issue

2. The main issue is whether the condition is reasonable and necessary, having regard to the living conditions of the occupiers of neighbouring properties and highway safety.

Reasons

3. The condition seeks to ensure that the use of the garage remains incidental to the existing dwelling and that no commercial operations take place at the site. I am aware that the original application for the garage was accepted as a householder application and there is no allegation that the garage use is not part and parcel of the existing residential use of 84 Merton Avenue. I note the Council's concern that business uses incidental to the residential use of the dwelling could be undertaken from the garage that would have the potential to result in adverse effects on both the living conditions of neighbours, as well as on highway safety.
4. However, an incidental use would by its very nature require a functional relationship between that use and the existing residential use of the property. Furthermore, any use that was carried out on such a scale so as to change the character of the overall use of the planning unit would inherently not be incidental. Consequently, any use of the garage that resulted in noise, number of visitors, number of vehicle movements or deliveries, which were materially different in scale or character to that which would normally be associated with the residential use of a property, would not comprise an incidental use. Therefore, any incidental use would not be such that it would have a materially harmful effect in regard to the living conditions of neighbours or highway safety.
5. Accordingly, I find that the condition is not necessary in the interests of the living conditions of the occupiers of neighbouring properties and highway safety. Thus, the removal of the condition would not conflict with policy CS5 of the Fareham Local Development Framework: Core Strategy (2011) or policy DSP2 of the Fareham Local Plan Part 2: Development Sites and Policies (2015), insofar as they seek to ensure development does not adversely affect the safety and operation of the road network and that development does not have a significant adverse effect on neighbouring development.

Other Matters

6. I am aware of concerns expressed in respect of the appellants' intentions to open a takeaway coffee shop, however that is not the scheme that is before me and I am conscious that a separate planning application has been submitted for this. The issue of that use potentially operating from the site is a matter for the Council and the appellant. My decision on this appeal would not authorise any use of the building that would require planning permission in its own right. As such, this point and comments in this respect have little bearing on my decision on the appropriateness of the condition.

Conditions

7. The guidance in the Planning Practice Guidance (the PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other

conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

8. The development has been commenced and so a time limit condition is not necessary. In the interests of clarity, I have imposed a condition stipulating the approved plans and a materials condition. There are also conditions requiring roller shutter doors to be retained, as well as the sightlines to be implemented and kept free from obstruction, in the interests of highway safety. Given the proximity to the highway I consider these to be necessary conditions, which also have ongoing effect. I shall therefore retain conditions in these respects. I have however removed any "tailpieces" from the conditions I have imposed.

Conclusion

9. For the reasons given above I conclude that the appeal should be allowed.

Mr Martin Allen

INSPECTOR