



Appeal Decisions

Site visit made on 3rd March 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd March 2021

Appeal A Ref: APP/D1265/W/20/3260086

Land to the north of Casa Velha, Ringwood Road, Three Legged Cross BH21 6RB

- 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 G of Westcroft Construction Ltd against the decision of Dorset Council.
 - The application Ref 3/20/0657/CONDR, dated 30 March 2020, was refused by notice dated 26 August 2020.
 - The application sought planning permission for erection of 14 commercial units for B1(b), B1(c) and B8 use together with access and associated parking without complying with a condition attached to planning permission Ref 3/19/1365/FUL, dated 16 March 2020.
 - The condition in dispute is No 18 which states that: *The development hereby approved shall only be in operation during the hours 07:00 to 21:00 Mondays to Saturdays, with no operations on Sundays or public holidays, including deliveries to site.*
 - The reason given for the condition is: *To protect the amenities of nearby residential properties.*
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Appeal B Ref: APP/D1265/W/20/3262018

Land to the north of Casa Velha, Ringwood Road, Three Legged Cross BH21 6RB

- 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 G Ward of Westcroft Construction Ltd against the decision of Dorset Council.
 - The application Ref 3/20/0983/FUL, dated 12 June 2020, was refused by notice dated 24 September 2020.
 - The development proposed is erection of 5 commercial units for B1(b), B1(c) and B8 use, together with access and associated parking.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Application for costs

3. An application for costs was made in respect of Appeal A by G of Westcroft Construction Ltd against Dorset Council. This application is the subject of a separate Decision.

Procedural Matters

4. Both Appeal A and Appeal B relate to the same site. The application form for Appeal A gave the site address as 'Casa Velha, Ringwood Road, Three Legged Cross BH21 6RB'. The appeal form referred to the site as 'Land to the north of Casa Velha, Ringwood Road, Three Legged Cross'. This is the same address as given for Appeal B. This more accurately reflects the address of the appeal site and I have therefore referred to this in my banner heading above.
5. As set out above there are two appeals on this site. Appeal A seeks to vary a condition, following the grant of planning permission for fourteen commercial units. This permission has not been implemented yet. Appeal B seeks the erection of five commercial units in place of four of the units previously approved. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
6. The third reason for refusal for Appeal B was due to no noise assessment of the scheme being provided, without which the Council could not be certain that the proposal would not harm the amenity of neighbours. As part of the appeal, the appellant submitted a Noise Impact Assessment (NIA)¹ dated September 2020 (2020 NIA). I have had regard to this in my decision.
7. On 1 April 2019, East Dorset District Council ceased to exist and became part of a new Unitary Authority known as Dorset Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I shall therefore determine the appeal having regard to the policies of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy 2014 (Local Plan).

Background and Main Issues

8. Planning permission² was granted for erection of fourteen commercial units for B1(b), B1(c) and B8 use together with access and associated parking. I shall refer to this as the 'approved scheme'. This permission was subject to Condition 18 that restricted the hours of operation from 0700 to 2100 Mondays to Saturdays, with no operations on Sundays or public holidays, including deliveries to the site. Appeal A seeks to vary the condition to allow the use to operate on Sundays and public holidays from 1000 to 1600.
9. Appeal B seeks full planning permission. It proposes to add an additional, fifth unit next to the four units approved under the original planning permission for the site and to which Appeal A relates.
10. The main issue in Appeal A is whether the condition is necessary and reasonable having regard to the effect of the proposed development on the

¹ Acoustic Consultants Ltd – Noise Impact Assessment, Reference 8597/PR/DO, September 2020

² 3/19/1365/FUL

living conditions of neighbouring occupiers with particular regard to noise and disturbance.

11. The main issues in Appeal B are the effect of the proposed development on:

- the living conditions of future occupiers of the adjacent approved residential development³, with particular regard to noise and disturbance and outlook; and
- the character and appearance of the area.

Reasons

12. The appeal site is located within a village and off Ringwood Road, a relatively busy thoroughfare within the area. The site is largely enclosed by residential development including a nursing home, Oakdene, to the east, detached houses to the south and, once built, a recently approved residential scheme for nine houses will be to its west. On the opposite side of Ringwood Road there are additional houses. The site is accessed via a shared drive with both Oakdene and Casa Velha, a dwelling to the south.

13. The layout of the approved scheme is such that the nearly all the commercial units would be surrounded by roads both on and off the site. The only exception would be Unit 11 in the south-west corner of the site which would be adjacent to the side garden and garage of one of the houses within the approved housing development.

14. The proposed additional unit in Appeal B would occupy the space between the approved commercial units and the garden and garage of one of the houses within the adjacent approved housing scheme. The side garden to this property would be reduced to accommodate the additional commercial unit which would be set in from the shared boundary by approximately 2.5 metres.

Living conditions – Noise and disturbance (Appeals A and B)

15. The National Planning Policy Framework (the Framework) sets out at paragraph 180 that new development should 'mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development - and avoid noise giving rise to significant adverse impacts on health and the quality of life'. The Framework refers to the Noise Policy Statement for England (NPSE)⁴ which elaborates on noise policy.

16. To assist with establishing whether the occupiers of adjacent development would be subject to acceptable or unacceptable levels of noise the NPSE refers to three noise levels. Those levels being: the No Observed Effect Level, the level of noise below which no effect can be detected; the Lowest Observed Adverse Effect Level (LOAEL), ie the level of noise above which adverse effects on health and the quality of life can be detected; and the Significant Observed Adverse Effect Level, ie the level above which significant adverse effects on health and quality of life occur.

³ approved under planning applications Ref 3/18/3235/OUT and 3/19/1699/RM

⁴ Department for Environment, Food & Rural Affairs, 2010

17. The appellant submitted a NIA⁵ (2019 NIA) in respect of the original scheme. This was supplemented by a Technical Note⁶ in support of the application to vary Condition 18. The 2019 NIA undertook baseline measures of noise levels and modelling of noise levels for activities within the commercial units in accordance with the British Standards⁷. The baseline monitoring took place over two weekdays on 25th and 26th June 2019 from two separate locations. One at the north-west corner of the site adjacent to Ringwood Road and the other, at the entrance to the site opposite Oakdene, on the eastern boundary of the site.
18. The 2019 NIA concluded that noise arising from the approved scheme would fall below LOAEL. It concluded that the impact of site operations for the B1 and B8 uses during the daytime period would have no adverse impact on the dwellings in the vicinity of the site. The 2019 NIA also recommended that noise limits of 49dB L_{Ar, 1 hour} for the daytime period (0700 to 2300) and 26dB L_{Ar, 15min} for the night time period (2300 – 0700) should be applied to the development.
19. I accept the findings of the 2019 NIA insofar as the proposal would be unlikely cause a statutory nuisance. However, the assessment as to whether noise would be a statutory nuisance is different from planning considerations that need to consider whether there would be an adverse effect on the living conditions of neighbouring occupiers. In this regard, I note that the Council's Environmental Health officer commented that the proposed development would create noise, and given the site borders residential properties, this could give rise to complaints.
20. The 2019 NIA did not include any baseline monitoring on Sundays or public holidays. It did not therefore assess the effect of the proposal in relation to its operating on Sundays and public holidays when background sound levels are likely to be different. Furthermore, the appellant's Technical Note submitted in support of the Appeal A proposal, whilst acknowledging that baseline noise levels would be expected to be similar or lower on a Sunday or public holiday, did not provide any data to confirm these levels.
21. The 2019 NIA assumed one HGV movement per hour. However, I have been provided with no evidence to justify this figure. I note however that each of the commercial units has been designed with full height roller doors to accommodate HGVs or other commercial vehicles. The proposed use includes up to 388 square metres of B8 storage or distribution which would amount to around a quarter of the units. Given this use, it seems to me that it would be possible for a broad range of commercial vehicles to be accessing the site throughout the day. This would cause some additional noise and nuisance locally.
22. The appeal site is within a village, largely surrounded by residential development. The proposed use would be audible from surrounding development even though the predicted noise levels are not expected to give rise to statutory nuisance. Furthermore, this has not been assessed against the ambient noise levels in the locality on Sundays or public holidays. On this basis, it seems to me that extending the operations of the approved scheme to

⁵ Acoustic Consultants Ltd, Noise Impact Assessment, Reference 7800/PR/BL, July 19

⁶ Acoustic Consultants Ltd, Technical Note, 25 August 2020

⁷ BS 4142:2014 Methods for rating and assessing industrial and commercial sound and BS7445-1:2003 description and measurement of environmental noise. Guide to quantities and procedures.

- include Sundays and public holidays when residents might have a greater expectation of peace and quiet, could harm the living conditions of these neighbours through increased noise and disturbance.
23. With regard to Appeal B, the scheme proposes to add an additional commercial unit at the south-west corner of the site. This would be adjacent to the boundary of the approved residential development to the west and some 8 metres from the nearest house within that development. The 2020 NIA concluded that noise arising from the fifteen unit scheme would result in an increase in the specific sound level to the west of the site from 44 $L_{Aeq}(1 \text{ Hour})$ dB to 46 $L_{Aeq}(1 \text{ Hour})$ dB. This would fall below LOAEL and would not adversely affect health and the quality of life.
24. The approved housing development at this far end of the site would be significantly closer to the commercial units than elsewhere on the site which are separated from it by roads and landscaping. The noise generated by the development may not give rise to levels of noise that would amount to a statutory nuisance. However, the activity throughout the day arising from the commercial unit, including commercial vehicle movements, opening and shutting the roller shutter door and general noise associated with a commercial space in such close proximity to a domestic dwelling and its outdoor space, would give rise to noise and disturbance. This would not ensure that satisfactory living conditions could be provided for the future occupants of this house.
25. With regard to Appeal B, I have considered whether conditions limiting noise levels to that set out within the 2020 NIA and restricting operation hours would overcome the harm that I have found. However, due to the very close proximity of the impacted house and its future occupants, I am not satisfied that this would effectively mitigate the harm I have identified in these circumstances.
26. I therefore conclude that, in respect of Appeal A, the disputed condition is both necessary and reasonable having regard to the effect of the proposed development on the living conditions of neighbouring occupiers with particular regard to noise and disturbance. In Appeal B, I conclude the proposed development would harm the living conditions for future occupiers of the adjacent approved residential development, with regard to noise and disturbance.
27. Both schemes would therefore not accord with Policy HE2 of the Local Plan which support development compatible with or improving of its surroundings in relation to nearby properties, including minimising general disturbance to amenity. They would also be contrary to the Framework which requires the mitigation and minimisation of noise and disturbance from new development on neighbouring amenity.

Living conditions – Outlook (Appeal B)

28. The proposed unit would be positioned a short distance from the garden boundary and single-storey garage to one of the approved dwellings in the neighbouring residential development to the west of the appeal site. Its side elevation would extend along the boundary with the approved house from which it would be separated by approximately 8 metres.

29. The approved drawings for the residential scheme, show two ground floor windows, serving a kitchen and living room and a first floor bedroom window in the side elevation facing the appeal site. These windows would experience a reduction in outlook as they would face towards the nearby proposed commercial unit. However, these windows are secondary windows which would look towards a building that would not be unduly tall, beyond a driveway and garage and boundary landscaping. As such, any reduction of outlook from these windows would not be significant.
30. I conclude that the proposed development in Appeal B would not harm the living conditions of future occupiers of the adjacent approved residential development, with particular regard to outlook. Insofar as it relates to outlook, it would therefore comply with Policy HE2 of the Local Plan, which supports development compatible with its surroundings in relation to nearby properties, including minimising general disturbance to amenity. It would also comply with the Framework which seeks well-designed places with a high standard of amenity for existing and future users.

Character and appearance (Appeal B)

31. The approved commercial scheme for 14 units is arranged in short terraces set away from surrounding residential development by roads and landscaping. This would make the development open and spacious in character. The separation from the surrounding residential units would also provide a transition between these two contrasting uses.
32. The proposed development would extend the most southerly terrace of approved commercial units to provide a fifth unit. Four of the units would be as approved under the earlier planning permission. These are two-storey units with a dual pitched roof, featuring double height glazing and double height roller doors. The fifth unit would be wider than each of the four units and lower in height, with a hipped roof.
33. The extended terrace would be at the far end of the wider site, some distance from the public highway. It would therefore only be visible from surrounding residential properties and from within the newly created commercial development. The reduced space between the proposed unit and the approved housing adjacent, would result in the commercial unit being closely juxtaposed to a smaller domestic garden and garage. This would result in the commercial building being significantly closer to the house than elsewhere within the approved housing development. This would be out of character with the more spacious arrangement of the approved commercial scheme and its relationship with surrounding development.
34. The proposed unit, whilst designed to be a similar height to the adjacent approved residential properties, would be constructed as an industrial unit, with a metal frame construction, with metal sheet and wood cladding to its external walls. In this regard, it would be out of character and would sit incongruously in close proximity to the domestic development adjacent. The proposed fence and soft landscaping along this boundary, due to the close proximity of these contrasting uses, would not provide enough of a transition from the one use to the other.
35. For this reason, the proposed development in Appeal B would harm the character and appearance of the area. It would therefore conflict with

Policy HE2 of the Local Plan which requires new development to be a high quality of design, that is compatible with its surroundings in layout and visual impact. It would also not comply with the design objectives of the Framework which requires development to add to the overall quality of the area and to be visually attractive as a result of good layout.

Other Matters

36. The appellant is seeking the variation of operating hours in Appeal A to reflect demand and work practises for the future occupants of the units, without which it is considered that the units will be less attractive than other commercial properties that are not restricted. I have been provided by no substantive evidence of demand for commercial premises that operate seven days a week nor that the absence of this has suppressed demand for such units. I therefore give this limited weight.
37. Appeal B would provide a net gain in employment floorspace in an accessible location with associated economic benefits. However, this benefit would not outweigh the harms I have identified.

Planning Balance and Conclusion

38. The proposal in Appeal A would harm the living conditions of neighbours through noise and disturbance. For this reason, I conclude Appeal A should be dismissed.
39. I have found the proposed development in Appeal B would be acceptable in terms of its effect on the outlook for future occupants of the approved residential development. However, it would significantly harm the living conditions of these occupants through noise and disturbance. It would also harm the character and appearance of the area. As such the scheme would be in conflict with the development plan. There are no other considerations that outweigh that conflict and for this reason, I conclude Appeal B should be dismissed.

Rachael Pipkin

INSPECTOR