
Appeal Decision

Site visit made on 11 May 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/A1720/W/20/3264666

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.
 - The appeal is made by Mr and Mrs A Wells against the decision of Fareham Borough Council.
 - The application Ref P/20/0811/CU, dated 30 July 2020, was refused by notice dated 21 September 2020.
 - The development proposed is temporary consent for a takeaway coffee shop.
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Decision

1. The appeal is allowed and planning permission is granted for temporary consent for a takeaway coffee shop at 84 Merton Avenue, Portchester, Fareham PO16 9NH in accordance with the terms of the application, Ref P/20/0811/CU, dated 30 July 2020, and the location plan submitted with it, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - The effect of the proposal on the living conditions of the occupiers of neighbouring properties, having regard to noise disturbance impacts;
 - The effect of the proposal on the living conditions of the occupiers of neighbouring properties, having regard to privacy impacts; and
 - Whether the garage is a suitable location for a takeaway coffee shop having regard to the impact on the vitality and viability of the Borough's centres and parades.

Reasons

Living conditions - noise

3. The appeal property comprises a detached double garage which fronts onto Alton Grove within an established residential area of bungalows and chalet bungalows. It is sited at the end of the long rear garden of 84 Merton Avenue, which is a semi-detached chalet bungalow. It lies close to the back of the public footpath and the site boundaries with 82 Merton Avenue and 5 Alton Grove.
4. I saw during my site inspection that the front part of the garage has been fitted out with a counter for the purposes of serving takeaway coffees, ice creams and cakes, together with other items associated with the proposed use,

including a coffee machine, refrigerator and till. The service counter is only apparent from the street when the front roller shutter door is open. The rear part of the garage is used for storage purposes. To the side of the garage, and separated from the appellants' rear garden and the rear garden of no.82 by fencing, is a hard-surfaced area, within which a customer queuing area has been laid out.

5. The garage was approved in 2009, and permission has recently been granted on appeal¹ to allow the removal of a condition of the original approval which limited its use to that for purposes incidental to the enjoyment of the dwelling house, and precluded its use for any business, industrial or commercial purposes. This permission did not specifically grant approval for the appeal proposal, and the evidence before me is that, notwithstanding the works that have been carried out on the site, the proposed takeaway coffee shop has not yet opened.
6. Directly opposite the site and the neighbouring residential properties to the west, is a large area of public recreational green open space which adjoins the Portchester foreshore, providing access to a public path that runs along the shoreline and which is used by, amongst others, walkers, cyclists and runners, and affords views over Portsmouth Harbour.
7. The Council's first reason for refusal is concerned about noise disturbance impacts to neighbouring residential properties arising from the coffee machine, visiting customers, and an increase in customer and delivery vehicles associated with the proposal. Of particular concern is the impact of the development on no.5 Alton Grove, a semi-detached, chalet dwelling sited close to the west site boundary. This property has its driveway and frontage parking area adjacent to the appeal site. There are habitable room windows on its front elevation including, at ground floor level, a lounge served by a bay window and a room which is used as a home office. The side boundary between the appeal site and no.5 is defined by a solid wall, with close-boarded timber fencing adjacent to the side wall of the garage and the hardstanding area in front of the garage.
8. The proposal is likely to generate an increase in activity and comings and goings associated with the appeal site. However, I am not persuaded, on the basis of the evidence before me and the proposed limited opening hours of between 9am and 5pm on weekends and bank holidays only, that any associated noise would result in material harm to the living conditions of the nearby residential properties. Many of these properties, including the adjacent property at no.5, have open frontages or low front boundary walls, and are already subject to a certain amount of day-time weekend external noise associated with existing traffic and pedestrian movements, and the activities of recreational users of the nearby open space and public footpath.
9. The coffee machine is situated within the front part of the building, and is set back from the front counter. Having regard to the conclusions of the appellants' submitted noise report, which includes comparisons between the background noise levels at the nearest residential receptors with those when the coffee machine is in operation, I concur with the view of the Council's Environmental Health Officer that potential noise levels arising from the coffee machine and milk steamer would be unlikely to materially affect neighbouring residential

¹ Appeal Ref: APP/A1720/D/20/3264662

premises. This takes account of factors including the orientation of any openings in relation to neighbours, the distance to neighbouring properties, the solid construction of the garage building, the proposed hours of opening of the business, and the requirement for periodic checks of commercial coffee machines to ensure they are working properly. In coming to this view, I note that the Council's statement of case does not include a detailed noise report or other substantive evidence to dispute the appellants' findings in this respect.

10. Having regard to noise impacts from queuing customers, there is a hard-surfaced space behind the public footway in front of the garage where customers can stand to be served, and this is screened from no.5 by the aforementioned timber fencing. Should a queue build up, the proposed queueing area to the side of the garage is of sufficient size to accommodate the size of queue that would be anticipated by the small-scale nature of the proposal. This area is screened from the rear gardens of the appellants' dwelling and that of 82 Merton Avenue by close-boarded fencing.
11. With these measures in place, and having regard to the nature of the business, whereby it is likely that customers would take their purchases away for consumption elsewhere, such as at the harbour shoreline and nearby open space, rather than remaining close to the site after being served, I find that it is unlikely that queues would build up to such an extent that they would result in noise impacts that would be materially more harmful to neighbours than existing day-time weekend noise levels within the site vicinity. Furthermore, the cold nature of the food for sale means that customers are less likely to spend a long time waiting for orders, than would be the case should the proposal include hot food sales, which may require preparation/heating.
12. I have noted the Council's concerns about noise impacts arising from the opening and closing of car doors, in-car entertainment systems and engines starting and revving, and associated conversations when exiting and accessing vehicles, having regard to the availability of on-street parking within the site vicinity. However, there is no cogent evidence before me to suggest that the proposal is likely to act as a magnet to the general public to park close to the coffee shop and start and end their walks from there, nor for the proposal to lead to a significant increase in vehicular activity and on-street parking associated with customers of the takeaway coffee shop.
13. To my mind, the small-scale and takeaway nature of the proposal, the proposed restricted opening hours, and the limited range of food and drink to be sold from the premises, would make it more attractive to customers who are likely to be out walking, running or cycling within the area, including along the harbour shore path and the public open spaces adjacent to it. In making this assessment, I have noted that the public footpath is accessible from a number of public car parks, including those at Wicor Recreation Ground to the west of the site and Portchester Castle to the east, so it is highly feasible that the proposal would attract passing trade from car-travelling customers who have parked elsewhere to access the harbour footpath. The appellants' proposed use of social media to discourage customers parking vehicles within the site vicinity would also contribute to reducing noise impacts associated with customers' vehicles.

14. The appellants have confirmed that the anticipated number of deliveries associated with the proposal would be low, comprising a weekly ice-cream delivery, a two-weekly coffee delivery and a monthly drinks delivery. These figures appear to be proportionate to the scale of the proposal, and I do not consider that they are likely to give rise to a substantial increase in noise disturbance to neighbours above that associated with home deliveries that would be expected to take place within a residential area.
15. Notwithstanding the above, the temporary nature of the proposal would enable the monitoring of the operation of the business over a 12-month period in order to establish whether or not a permanent consent should be granted, having regard to potential noise disturbance impacts.
16. Therefore, based on the information before me, and for the reasons set out above, I find that, subject to conditions, the proposal would not result in material harm to the living conditions of the occupiers of neighbouring properties having regard to noise disturbance impacts. The proposal therefore accords with Policy DSP2 of the *Local Plan Part 2: Development Sites and Policies* (2015) (the Local Plan) in so far as this policy seeks to ensure that development proposals should not have significant adverse impact on neighbouring development or the wider environment by reason of noise.

Living conditions – privacy

17. The timber fencing between the appeal site and no.5 would act as a privacy screen to that property in respect of the proposed customer service area in front of the coffee shop counter. This, together with my above conclusions in respect of the low likelihood of customer queuing and gathering within the public domain close to the site, or additional on-street vehicle parking within the vicinity of the site, support my view that the appeal scheme is unlikely to give rise to a significant loss of neighbouring privacy.
18. I have also taken account that the open character of many of the nearby residential frontages, including no.5, means that they are already subject to a degree of privacy invasion from existing users of the road and nearby open space, and that this is a common situation within residential areas whereby privacy is not expected to be guaranteed within front gardens.
19. Therefore, for the above reasons, I conclude that, subject to conditions, the proposal would not result in material harm to the living conditions of the occupiers of neighbouring properties having regard to privacy impacts. The proposal therefore accords with Local Plan Policy DSP3 in so far as this policy seeks to ensure that development proposals should ensure that there will be no unacceptable adverse impact upon living conditions on neighbouring development by way of the loss of privacy.

Location

20. The Council's third reason for refusal relates to the failure of the proposal to accord with Local Plan Policies DSP37 and DSP38 by not providing a full sequential test to demonstrate that there no more centrally located sites that are available, suitable and viable, and not comprising a local shop intended to meet the shopping needs of the immediate locality.
21. The proposal represents a small-scale retail use within the appellants' home, which is specifically identified by the appellants as responding to a known

demand associated with recreational use within the site vicinity. The proposed day-time weekend and bank holiday opening hours of the business would support its association with recreational use. The closest designated 'main centres' of White Hart Lane and Portchester district centre are sufficiently distant from the harbour shore-line, so as to be unsuitable to adequately meet a demand for a refreshment facility in this location. As such, and given the proposed small size of the business, with a floor area of less than the size of a domestic double garage, the absence of a sequential test in the circumstances of this appeal proposal, is not considered to be contrary to the overall objectives of Local Plan Policy DSP37. By addressing an identified local recreational need, whilst not meeting a day-to-day shopping need, the proposal would accord with thrust of the presumption in favour of new local shops within the urban area as encouraged by Policy DSP38.

22. For the above reasons, I therefore conclude that the garage is a suitable location for a takeaway coffee shop having regard to the impact on the vitality and viability of the Borough's centres and parades, and the provision of new local shops of an appropriate scale. As such, the proposal accords with the objectives of Local Plan Policies DSP37 and DSP38 in so far as former does not support new out-of-town retail development that would harm the vitality and viability of existing centres, and the latter supports the provision of new local shops of an appropriate scale so as not to compete with or undermine the vitality or viability of nearby retail centres.

Other Matters

23. I acknowledge the third-party objections in respect of additional traffic and associated parking and highway safety concerns associated with the appeal proposal. The Council has raised no objection on these grounds, and neither do I, having regard to the small-scale nature of the proposal, the limited opening hours, and the likelihood of many customers either comprising walkers, joggers or cyclists or having parked their cars elsewhere. On-site parking is available for the appellants' dwelling at the front of the property, and on-street parking is available within the site vicinity for customers of the proposal, should it be required. At the time of my site visit which took place on a weekday morning, I did not see any evidence of existing on-street parking or traffic congestion issues within the vicinity of the site, albeit I recognised that this was a snapshot in time and the situation may be different at weekends or Bank Holidays. Notwithstanding this, the temporary 12-month approval would enable any highway safety issues to be highlighted prior to any permanent permission being granted.
24. I have noted the third-party concerns about litter, pollution, rodents, and antisocial behaviour. However, there is no evidence before me that it is likely that these matters would arise as a result of the proposed coffee shop, and the proposed temporary permission would enable such issues to be monitored.

Conditions

25. I have considered the Council's suggested conditions in accordance with Paragraph 55 of the Framework and the National Planning Practice Guidance and, where necessary, I have modified them and deleted conditions. It is necessary to define the plan for certainty (1).

26. Having regard to the details of the planning application and to enable an assessment of the impact of the operation of the appeal scheme on the living conditions of neighbouring properties, a condition is necessary to limit the permission to an initial temporary 12-month operating period (2).
27. Having regard to the circumstances of the site location in an out-of-centre residential area, in respect of the vitality and viability of the Borough's centres and parades and the living conditions of neighbouring occupiers, conditions are necessary to restrict the use of the premises to that of a takeaway coffee shop only (3) and to limit the operation of the approved use to that by the appellants only (4).
28. Conditions are necessary to ensure the retention of appropriate treatment along the boundaries with 5 Alton Grove and 82 Merton Avenue (5), and to restrict the hours of operation of the use hereby permitted (6), in the interests of the living conditions of neighbouring occupiers, having regard to noise and privacy impacts.
29. I do not consider the Council's proposed condition 4 to be necessary, since hot food sales from the premises would be precluded by condition no.3. I have not included a restriction on delivery hours as suggested by the Council's proposed condition no.5, having regard to the information submitted by the appellants in respect of the anticipated low amount of deliveries.

Conclusion

30. For the reasons given above, I conclude that the appeal should succeed, and planning permission be granted subject to conditions.

S Leonard

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved drawing: Location Plan (drawing 1 issue A).
- 2) The use hereby permitted shall be for a limited period being the period of 12 months from the date of this decision. On or before this date, the use shall cease and the site be restored to its former condition.
- 3) The part of the garage edged in red on the drawing approved under condition no.1 shall be used as a takeaway coffee shop and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 4) The use hereby permitted shall be carried on only by Mr and Mrs Wells.
- 5) The existing boundary treatment along the boundaries between the appeal site and 82 Merton Avenue and 5 Alton Grove shall be retained at its current height for the duration of the use hereby permitted.
- 6) The premises shall only be open for customers between the following hours: 0900 – 1700 Saturdays, Sundays and Bank Holidays.