



Appeal Decision

Site visit made on 27 September 2022

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2022

Appeal Ref: APP/V1260/W/22/3295396

Land Rear of 78a and 79b Herbert Avenue, Poole BH12 4HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Tony Phillips of Pentagon Poole Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref APP/21/00423/F, dated 16 March 2021, was approved on 4 March 2022 and planning permission was granted subject to conditions.
 - The development permitted is: Removal of condition 5 of planning permission APP/16/01697/F as described in that Description of Development to allow the garage hereby approved to be kept available at all times for the use of the occupiers of one of the following flats known as: Flat 1 Nidina Court, 78A Herbert Avenue, Flat 2 Nidina Court, 78A Herbert Avenue, Flat 1 Burberry Court, 78B Herbert Avenue, and Flat 2 Burberry Court, 78B Herbert Avenue.
 - The condition in dispute is No 7 which states that: The garage which is the subject of this application shall be used for parking of domestic/ non-commercial vehicles only and shall not be used as a storage unit or in connection with a commercial operation or for business use.
 - The reason given for the condition is: In order to ensure that sufficient parking levels are maintained across the site and in the interests of providing a safe and suitable access in accordance with Policy PP35 of the Poole Local Plan (2018).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I understand that there is an on-going enforcement matter relating to whether the garage and parking bays have been built and laid out in accordance with approved plans. However, that is a separate matter which does not have a bearing on my assessment of this appeal.

Background and Main Issues

3. Planning permission for the garage was originally granted on the basis that it would be used by the occupants of one of four adjacent flats at 78A or 78B Herbert Avenue (Ref APP/16/01697/F). Condition 5 was imposed to that effect. The permission was subsequently varied to remove condition 5 and the restriction on who could use the garage. At the same time, condition 7 was added to require that the garage is used only for the parking of domestic/non-commercial vehicles and not used for storage or in connection with a commercial operation or for business use.
4. The appeal seeks permission to use the garage without complying with condition 7. In addition to the stated reason for the condition, the Council's

officer report makes reference to the potential for commercial or storage use of the garage to lead to harm to neighbouring occupants as a result of increased noise or traffic at the appeal site.

5. Therefore the main issue is whether condition 7 is necessary and reasonable in the interests of protecting the living conditions of neighbouring occupants, with particular regard to noise and disturbance and access to parking.

Reasons

6. The garage is opposite the front elevation of the detached house at 78C Herbert Avenue, at relatively close proximity. It is also located to the rear of flats at 78A and 78B Herbert Avenue, in the immediate vicinity of their off-street car parking spaces and requiring use of the same vehicular access. In addition, rear windows from those flats overlook the garage and parking area to varying extents. Outside garden space for those flats also adjoins the car park without intervening vegetation or boundary treatment.
7. Removal of condition 7 in its entirety would enable the appeal garage to be used for commercial purposes, including storage associated with a business use. This would be likely to lead to a level of activity that would be more intensive than that which could reasonably be expected from use of the garage for parking of a domestic vehicle. Such comings and goings would give rise to a level of general noise and disturbance at an intensity that would be disruptive to neighbouring occupants. This would be particularly harmful due to the proximity of the appeal site to the existing flats and house, their shared vehicular access and outside garden space.
8. In addition, removing the restriction on use of the building for storage would be likely to result in users of the garage parking outside of the garage rather than within it. This would restrict neighbouring occupants' access to the unallocated parking spaces. Those spaces are understood to be provided to meet the needs of the residential accommodation, without allowing for a separate, independent use of the garage. Alternatively, there would be a temptation for users of the garage to park ad hoc within the parking area, occupying vehicle circulation and manoeuvring space in what is a relatively constrained area.
9. As such, and given the limited number of parking spaces on site, removal of condition 7 would be likely to contribute to the demand for parking spaces regularly exceeding supply, or at best making access to parking difficult. No robust evidence is before me to the contrary. This would unacceptably inconvenience neighbouring residents, thus harming residential amenity. Therefore, without any reasonable means of restricting the intensity of the use of the garage by commercial vehicles, removal of the condition in its entirety would unacceptably harm the living conditions of neighbouring occupants with respect to noise and disturbance and access to parking.
10. I have also given consideration to the potential for condition 7 to be amended to allow use of the garage for parking of domestic/non-commercial vehicles and for domestic storage. I accept that many garages are used for general domestic storage rather than parking of a vehicle. However, in this instance it is intended for users to be residents living elsewhere, rather than occupants of the adjacent house or flats. I am satisfied that visits to the garage to park a vehicle would be unlikely to be particularly disruptive to neighbouring occupants. In contrast, visits to the garage to bring and take away items for

domestic storage are likely to result in comparatively more comings and goings.

11. Furthermore, in the event that the garage was used for storage, users of the garage would be likely to arrive and leave by car, and park outside, rather than within the garage. Consequently, its use for storage would result in a similar level of disturbance to neighbouring occupants and their access to parking compared to removal of the condition in its entirety.
12. I therefore conclude that the condition is reasonable and necessary to protect the living conditions of neighbouring occupants with respect to noise and disturbance and access to parking. Accordingly, the proposed removal or variation of condition 7 would be contrary to Policy PP27 of Poole Local Plan (November 2018) (Local Plan) which, amongst other matters, seeks to ensure developments are compatible with surrounding uses and avoid harm to existing residents. It would also be contrary to Policy PP35 of the Local Plan. Amongst other matters, this seeks to create safe and accessible places.
13. In addition, the removal or variation of condition 7 would be contrary to paragraph 185 of the Framework which seeks to ensure development is appropriate for its location taking into account the potential sensitivity of the site to impacts that could arise.

Conclusion

14. For the reasons given above, the appeal should be dismissed.

Rachel Hall

INSPECTOR