The Planning Inspectorate

Appeal Decision

Site visit made on 1 March 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Appeal Ref: APP/A1530/W/22/3303577
The Dukes Seafood, Coast Road, West Mersea, Colchester CO5 8NA

- 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 Mr David Whiting of The Dukes Seafood against the decision of Colchester Borough Council.
- The application Ref 212723, dated 1 October 2021, was approved on 3 May 2022 and planning permission was granted subject to conditions.
- The development permitted is described as application for removal or variation of conditions 2 for the inclusion of or a rear walkway and alterations to the approved fence to northern boundary, following grant of planning permission 201920.
- The conditions in dispute are Nos 2, 3, 5, 6, 7, 8 and 9 which state that:
  (2). The external facing materials to be used shall be those specified on the submitted application form and drawings and the roofing materials shall be of natural slate.
  (3). No demolition or construction work shall take outside of the following times: Weekdays: 08:00-18:00; Saturdays: 08:00-13:00; Sundays and Bank Holidays: No working.
  (5). Prior to the first use of the development hereby permitted, control measures shall be installed in accordance with a scheme for the control of fumes, smells and odours that shall have been previously submitted to, and agreed in writing by, the Local Planning Authority. This scheme shall be in accordance with Colchester Borough Council's Guidance Note for Odour Extraction and Control Systems. Such control measures as shall have been agreed shall thereafter be retained and maintained to the agreed specification and working order.
  (6). The technical letter prepared by dB Consultation ltd approved via discharge of condition application 211426 shall be adhered to in perpetuity.
  (7). There shall be no parking on site unless details of parking have been submitted to, and agreed in writing by, the Local Planning Authority.
  (8). No unbound materials shall be used in the surface treatment of the proposed vehicular access throughout.
  (9). There shall be no external lighting at the site, including floodlighting unless precise details have been submitted to and agreed in writing by the Local Planning Authority.
- The reasons given for the conditions are:
  (2). To ensure that materials are of an acceptable quality appropriate to the area.
  (3). To ensure that the construction phase of the development hereby permitted is not detrimental to the amenity of the area and/or nearby residents by reason of undue noise at unreasonable hours.
  (5). To ensure that there is a scheme for the control of fumes and odours in place so as to avoid unnecessary detrimental impacts on the surrounding area and/or neighbouring properties, as there is insufficient detail within the submitted application.
  (6) To ensure that the development hereby permitted is not detrimental to the amenity of the surrounding area by reason of undue noise emission and/or unacceptable disturbance.
  (7). To ensure the safe vehicle and pedestrian management and safe ingress and egress to the highway in the interests of highway safety.
  (8). To ensure that loose materials are not brought out onto the highway, in the interests of highway safety.
  (9). In the interests of residential and visual amenity.

Decision

1. The appeal is allowed and the planning permission ref 212723 for the erection of two wooden sheds adjacent to the existing seafood bar for extension and improvements to food preparation and storage areas, formation of new disabled customer toilet, erection of fencing/gates to front of site, improvements to site surfacing, provision of removable 'sail' type cover to part of existing seating area, small extension to hours of opening and type of food sold. Variation of condition 2 for the inclusion of a rear walkway and alterations to the approved fence to northern boundary, following grant of planning permission 201920 at The Dukes Seafood, Coast Road, West Mersea, Colchester CO5 8NA granted on 3 May 2022 by Colchester Borough Council, is varied by deleting conditions 2, 3, 5, 6 and 9 and substituting for them the following condition:

   (9). There shall be no external lighting at the site, including floodlighting, except in accordance with details which have been submitted to and agreed in writing by the Local Planning Authority.

Preliminary Matters

2. Although I have technically allowed the appeal, I have not found in favour of the appellant in respect to all conditions. My reasons in respect of each matter are set out in this decision letter.

3. The application form stated that the conditions in dispute were numbers 2, 8, 9 and 10. However, the appellant's statement makes the case for the removal or variation of conditions 2, 3, 5, 6, 7, 8 and 9. That was also the basis on which the Council made its decision. I have therefore considered the appeal on the same basis.

4. The appellant advises that he made the application as an amendment to the original planning permission, albeit acknowledging that a new planning permission would be granted. The description of development employed by the Council does not make adequate reference to the original description of development, and refers only to the proposed changes and the reference number of the original permission. In my decision I have therefore re-inserted the description of the original permission, along with the description of the amendment agreed by the parties.

Background and Main Issues

5. In November 2020 Colchester Borough Council granted planning permission Ref 201920 for the erection of two wooden sheds adjacent to the existing seafood bar for extension and improvements to food preparation and storage areas. With the formation of a new disabled customer toilet, erection of fencing/gates to the front of the site, improvements to site surfacing, provision of a removable 'sail' type cover to part of the existing seating area, and a small extension to the hours of opening and type of food sold.

6. In October 2021 the appellant sought a variation of the plans condition for the inclusion of a rear walkway and alterations to the approved fence to the northern boundary. The Council granted planning permission Ref 212723 varying the plans condition. It also reimposed most of the conditions of the 2020 permission, and substituted the conditions relating to noise levels and parking with others. The appellant seeks the removal or variation of conditions 2, 3, 5, 6, 7, 8 and 9.

7. The main issues are therefore:

   - whether construction-related conditions 2, 3, 5 and 6 are relevant to the development permitted and necessary, with particular regard to time limits for demolition and construction work, external materials, and odour and noise control measures;

   - whether it is relevant to the development permitted, necessary, and reasonable in all other respects for parking to be prohibited at the site prior to the submission and approval of parking details, and for bound materials to be required in the surface treatment of the vehicular access in conditions 7 and 8; and

   - whether it is necessary for external lighting to be prohibited at the site prior to the submission and approval of external lighting details, and whether Condition 9 should be amended to refer to the appellant's submitted lighting details.

Reasons

Construction-related conditions:

8. The appeal site is a waterfront parcel of land within the West Mersea Conservation Area (CA) and the West Mersea Waterside Area of Special Character (ASC). A 17th/18th Century Grade II listed building, 102 Coast Road is also located on the opposite side of the road, but is separated from the appeal site by other dwellings. The Council's Heritage Officer advises that an Article 4 Direction restricts permitted development rights for the erection of fences, gates and other means of enclosure, in order to protect the open aspect of the estuary front.

9. Conditions 2, 3, 5 and 6 relate to external materials, time limits for demolition and construction work, and odour and noise control measures. Each of these matters are relevant to the development permitted.

10. The appellant advises that the buildings have been constructed in accordance with the original approved plans, and at the time of my visit it appeared that the proposed physical works were largely complete. I am satisfied that Condition 1, which requires that the development be carried out in accordance with the details shown on the plans, is sufficient to ensure the materials are of an acceptable quality appropriate to the area.

11. I have not seen the technical letter referred to in Condition 8. Nevertheless, the Council states that the odour extraction and control systems installed are adequate, and sufficient to meet the requirements of conditions 5 and 6. As a result, it considers these conditions are no longer required. With the information before me, I have no reason to disagree.

12. In conclusion, the physical works have largely been completed, and although they are relevant to the development permitted, construction-related conditions 2, 3, 5 and 6, are not necessary to make the development acceptable.

Parking and access surface:

13. The appeal site includes the external area used for external seating and vehicle parking, and the site frontage used for vehicular access. Both have the potential to affect matters of highway safety, even if consent has been granted

for car parking on the site previously. Parking details and the surface of the vehicular access are therefore matters relevant to the development.

14. The Highway Authority, Essex County Council, are concerned at potential conflict between vehicles and pedestrians, and the risk of loose material being carried onto the highway.

15. The plans submitted for application 212723 did not specifically show on-site parking, and Condition 7 prevents parking on the appeal site unless details have been submitted and agreed. Condition 8 prohibits unbound materials being used in the surface of the vehicular access.

16. The appellant seeks to utilise 'plastic gridding' to contain stones, rather than use bound materials in the surface of the vehicular access. In the absence of detailed proposals and comments from the highway authority in relation to the adequacy of this alternative, I am unable to specify that change directly. The appellant therefore seeks a mechanism for the submission of an alternative scheme, but without restriction on parking prior to submission, approval and implementation. He does so on the basis that the 2020 planning permission has been implemented, and that "all planning permissions on the site over the last few years have required the provision of two parking spaces".

17. I have only been provided with the 2020 permission, which included 2 parking spaces, each with direct access onto Coast Road. However, at the time of my site visit cars were not parked in accordance with the approved layout, and there were railings across the frontage, preventing parking in the manner approved. I also saw no evidence of bound materials in the surface treatment of the vehicular access throughout, as required by condition 9 of that permission, and noted that loose material had been carried onto the footway.

18. The 2020 planning permission demonstrates that suitable arrangements could be made for the parking of some vehicles within the appeal site. However, as there is no parking layout shown on the submitted plans, without a condition requiring details to be submitted and agreed there would also be no limitation on the number of vehicles which could be parked, or how they access and park within the site. As a result, there would also be a potential risk of vehicular/pedestrian conflict, particularly during peak season, when visitor numbers are higher. With the information before me I therefore cannot confirm that the parking of vehicles generally on the appeal site is acceptable in relation to the development.

19. Consequently, having considered the appellant's proposed changes, I have not seen a way to facilitate the submission of parking and surface treatment schemes while allowing concurrent vehicular parking on the appeal site. The approved access and parking layout has not been carried out, and I cannot by condition require compliance with a condition of another planning permission; which in any event relates to a bound surface the appellant does not wish to provide. Most significantly, at the present time unbound material is being carried beyond the site boundaries, which could lead to imminent highway danger.

20. I am therefore unable to remove or vary conditions 7 and 8, even to facilitate parking in the manner previously approved in the 2020 permission, while alternative details of parking and surfacing are submitted, approved and implemented.

21. In conclusion, conditions 7 and 8 are therefore relevant to the development, necessary and reasonable. No suitable alternative means have been found to facilitate parking at the site prior to the submission, approval and implementation of parking details, and for suitable alternative measures to be taken to prevent unbound materials entering the highway.

External lighting:

22. The western side of Coast Road is largely undeveloped, with only limited lighting, and is located within the CA and ASC. Suitable control of lighting is therefore necessary on the appeal site.

23. Although the appellant's appeal statement refers to detailed lighting plans, there is very little information before me relating to external lighting proposals. I note the Ansell Lighting AHELED/EB technical data sheet. Drawing number 2020/521/03.K may also depict some lighting, but not explicitly so. These details are not sufficient to protect the character and appearance of the CA and ASC.

24. In conclusion, it is necessary for external lighting to be prohibited at the site prior to the submission and approval of external lighting details, as required by condition 9. I have made minor changes to the precise wording, without altering its fundamental aim, to ensure its enforceability.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting some of the disputed conditions and substituting another.

Peter White

INSPECTOR