
Appeal Decision

Site visit made on 8 August 2014

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 August 2014

Appeal Ref: APP/X1735/A/14/2212109

3 Elm Grove, Hayling Island PO11 9EA

- 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 Simmons against the decision of Havant Borough Council.
 - The application Ref APP/13/00982, dated 30 September 2013, was approved on 26 November 2013 and planning permission was granted subject to conditions.
 - The development permitted is the erection of new building and lych gate following demolition of timber building and garages and change of use from printers to MOT Centre. (Revised Application).
 - The condition in dispute is No 3 which states that: *The building shall be used only for MOT tests and associated minor maintenance and not at anytime for any other use including mechanical or body work repairs nor uses involving panel beating nor the use of any angle grinder, nor shall it be used as a tyre changing or exhaust repair or replacement premises.*
 - The reason given for the condition is: *To protect the amenities of the area and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework 2012.*
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Decision

1. The appeal is allowed and the planning permission Ref APP/13/00982 for the erection of new building and lych gate following demolition of timber building and garages and change of use from printers to MOT Centre (Revised Application) at 3 Elm Grove, Hayling Island PO11 9EA granted on 26 November 2013 by Havant Borough Council, is varied by deleting condition No 3 and substituting for it the following condition:

3) The building shall be used only for MOT tests and associated minor maintenance and not at any time for any other use including body work repairs not associated with the MOT tests, nor uses/repairs involving panel beating nor the use of any angle grinder, nor shall it be used as a tyre changing or exhaust repair or replacement premises.

Procedural Matters

2. The Appellant seeks to vary the condition by having the word *mechanical* removed. It is part of the Appellant's business plan to have associated MOT servicing which entails *mechanical repairs*, a service normally offered by MOT Test Centres.

Main Issue

3. The main issue in this case is the effect of the variation of the condition on the living conditions of nearby residents by reason of noise and disturbance.

Reasons

4. The appeal site is located to the rear of the Post Office on Elm Grove. It is adjacent to and accessed through a public car park. The site is currently derelict with a single storey timber building previously used as a printing workshop and 2 garages – one single and one double. There is a 2m fence to the western and northern boundaries. To the south there is a 1m high wall and to the east there is no boundary between the premises and the patio area of nearby flats. To the south of the site lies the South Hayling United Reform Church. Elm Grove is mixed in character with commercial properties at ground floor level and residential accommodation above. There are residential properties in Elm Close which is located to the west of the public car park.
5. At the time of the Council's decision the development plan for the area included the Havant Borough Core Strategy (HBCS) and the Saved Policies of the Havant Borough District Wide Local Plan 1996-2011 (HBDWLP) forming part of the Havant Borough Local Development Framework. The policies most relevant to this appeal are Policies DM10 and CS16 of the HBCS.
6. Policy DM10 relates to the control of pollution regarding new development including noise pollution. It advises in paragraph 10.29 that some forms of development which can result in pollutants are necessary to the economic and social needs of the Borough. This would include some industrial uses which, although necessary, may be detrimental to amenity. Only in instances where the risk is appropriately managed will development be permitted. Consideration will be given to any mitigating measures that could be implemented into development schemes to ensure its effects are sufficiently alleviated.
7. Policy CS16 promotes high quality design and amongst other matters seeks to ensure that development does not cause unacceptable harm to the amenity of neighbours through various matters including noise. The Council has recently adopted the Havant Borough Local Plan (Allocations) document on 23 July 2014 but this has no material bearing on the initial decision reached. The National Planning Policy Framework (NPPF) (2012) is a material consideration in this case. Paragraph 17 of the NPPF indicates that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
8. The Appellant is concerned that the wording of the condition would restrict carrying out necessary 'associated minor maintenance' as the words 'no mechanical' could be interpreted that such minor maintenance could not be carried out as it requires some degree of mechanical operation. The Council accepts that the term 'associated minor maintenance' does involve some degree of mechanical work on a vehicle such as repair of light bulbs/window wipers but *other* mechanical or body work repairs such as changing tyres, replacing brakes would have more impact because it would necessitate the use of air tools and any body work would almost certainly lead to the use of an angle grinder and possibly hammering. The Council considers the word 'mechanical' should be kept in the condition to protect residential amenity.

9. An acoustic report was submitted with the application by Apple Environmental Limited. In the absence of the MOT centre actually being present, secondary data has been referred to in order to make a prediction regarding the likely noise emanating from the premises during normal use. The report does contain some inconsistencies and contradictions but overall the conclusion is that normally there would be no need for the use of air tools during a test or the use of hammers or angle grinders. The dominant noise source would be the horn test and engine revving but with a maximum of two MOT tests occurring at any one time, the amount of time that these noisier activities would occur should only account for a few minutes in any hour. The Council accepts that some degree of mechanical work on a vehicle would be required in order to make the business sustainable.
10. From the acoustic evidence I consider that the proposal the proposal would not give rise to unacceptable noise transmissions. Bearing in mind the short time interval when the noisier activities would take place and the extra attenuation that would be achieved by the lych gate/fence, I would not anticipate this leading to complaints. The noise level at the two dwellings in Elm Close, situated at least 40m away from the open doors of the MOT centre, is expected to reduce to a level of between 49.7dB(A) and 43.7dB(A) where the background L_{90} was measured at 46dB. Moreover, with the construction of an effective noise barrier, the noise would be expected to reduce to a level of between 44.7dB(A) and 38.7dB(A) at the closest dwelling.
11. Any direct noise through the rear of the premises would be reduced significantly as it passes through the rear brick wall which has no openings. The assessment also concluded that the noise level at the nearest façade of the church hall, which is expected to be in the region of 58dB, which although above the background level here is very unlikely to affect activities occurring within the hall due to the noise attenuation offered by walls and windows.
12. Whilst the desire to protect residential amenities is legitimate, it has to be balanced against the need to meet the development needs of the business. In my view it would be contrary to business and community harmony if the owner was open to challenge on all mechanical works. Overall I consider the proposed variation in the condition would accord with Policies DM10 and CS16 of the HBCS and would not offend the aims and policies of the NPPF.

Other Matters

13. I have taken into account all other matters raised including the concerns set out in the representations from the South Hayling United Reformed Church and those from residents living at the Elm Close Estate. However, I have assessed the appeal proposal on its own merits and in the context of the development plan and other material considerations. None of these matters changes my view that the appeal should be allowed subject to the imposition of a varied condition.

Conclusion

14. I conclude on the main issue that the proposed variation in the condition would not have an unacceptable impact on the living conditions of nearby residents by reason of noise and disturbance.

Conditions

15. The Council has suggested a variation to the wording of the condition in paragraph 7.2 of its statement. However, from the evidence that is before me, I consider it is not necessary to include the word *mechanical* in the condition. I have considered the suggested condition in the light of the Planning Practice Guidance (2014) and Appendix A on model conditions which is attached to the former Circular 11/95. I consider that the condition 3, as varied, should be imposed in order to protect the living conditions of neighbouring residents.

Harold Stephens

INSPECTOR