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| Site Address:   | 21-21B St Catherines Road, Hayling Island                                                                                                           |               |              |
| Proposal:       | Variation of Conditions 5 and 6 of Planning Permission 05/51181/007 to allow vehicular access to the permitted dwelling over a block paved surface. |               |              |
| Application No: | APP/13/00970                                                                                                                                        | Expiry Date:  | 09/12/2013   |
| Applicant:      | Mr Mayday                                                                                                                                           | Team:         | Team 2       |
| Agent:          | Mr R Tutton                                                                                                                                         | Case Officer: | Richard Nash |
| Ward:           | Hayling West                                                                                                                                        |               |              |

Recommendation: **GRANT PERMISSION**

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## **1 Site Description**

The application site comprises a modest single storey dwelling, constructed of brick and tile and located within a plot to the rear of 21 St Catherine's Road. The dwelling is served by a parking and turning area accessed by a driveway to the side of number 21, off the south side of St Catherine's Road, west of its junction with St Aubins Park.

The access point to the site from the public highway is combined with that of number 21 and is surfaced with gravel. The turning area is surfaced with block paving but the driveway - with the exception of a relatively small area of block and concrete - is again surfaced with gravel. The driveway is bounded by a fence and trellis to the east (along the boundary with number 21) and a fence and hedge to the west (the boundary with number 21a). The site is somewhat unusual in the locality, which is predominantly characterised by low density residential development sited closer to road frontages.

## **2 Relevant Planning History**

01/51181/001

Outline Application for detached double length garage. Appeal Allowed.

05/51181/007

Reserved Matters application for erection of detached 3 bed dwelling with single garage. Approved.

13/00124/CMP

Breach of Conditions 5 and 6 of Planning Permission 05/51181/007. Current Enforcement Case.

## **3 Proposal**

The current application and seeks the Variation of Conditions 5 and 6 of Planning Permission 05/51181/007.

The conditions concerned state that:

*5: The garage (internal and external details), adjoining pedestrian gateway, 2m high brick wall along part of the northern and western boundary and bin storage area all shown on approved drawings 01.H and 03.B shall be constructed in strict accordance with the approved details prior to occupation of the dwelling hereby approved, and shall remain in situ in perpetuity. No additional doors, windows or other openings shall*

*be constructed within the garage unless otherwise agreed in writing by the Local Planning Authority.*

*6: Notwithstanding the submitted details shown on drawing no 01.H the tarmacadam pedestrian path shall only be a maximum of 1.8m wide. It shall be constructed prior to the first occupation of the dwelling hereby approved, and shall remain in situ in perpetuity.*

The dwelling has been completed and occupied, but the garage has not been constructed and the driveway to the property has been laid in the position of the 1.8 metre wide pedestrian path. The current application has therefore been submitted retrospectively

#### **4 Policy Considerations**

##### National Policies

National Planning Policy Framework

##### Core Strategies 2011 forming part of the HBLDF

CS16 (High Quality Design)

DM10 (Pollution)

Listed Building Grade: Not applicable

Conservation Area: Not applicable

#### **5 Statutory and Non Statutory Consultations**

Development Engineer:

No objection to change of material but would suggest original approval, especially condition 6, was to ensure vehicles would park in the two indicated spaces and there would only be a footway leading to the house.

Environmental Health Manager:

Initial Comments: No objection to resurfacing. Office has had no noise complaints to date, related to existing gravel drive.

Further Comments: Had assumed drive was already on site - paved/tarred drive would be quieter than gravel, unless used for skate boarding or the like. Have looked for, but cannot find any comments from 2005 - likely that EH were not consulted on a single dwelling [NB: This is a correct assumption]. Regarding comments about noise from opening and closing of car doors - this is an everyday occurrence and is part of 'living' noise in relation to dwellings - unless continuously over a period of time, whereby it may be construed to be a nuisance. Difficult to say how many cars may be at the property at any one time, but normal opening/closing of car doors and manoeuvring should not constitute a nuisance under normal circumstances.

#### **6 Community Involvement**

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 10

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 3 objections received from 2 addresses.

**Summary:**

Garage has not been built but dwelling appears to be occupied. Instead of path, a vehicular access shown as a gravel drive on the submitted plan, has been created. Appears Applicant is making a retrospective application for restrictions to be lifted - seems to make a habit of making retrospective applications. Puzzled that applicant can consider a vehicular access to site when conditions state so clearly that this should not be allowed.

Applicant fails to point out that conditions were imposed to in turn satisfy conditions imposed by Planning Inspector on outline permission for site. Clear that Inspector's decision led Council to impose conditions. Therefore clear that outline planning permission inextricably links garage at front of property and pedestrian access to bungalow. Highly probable that without condition to safeguard amenity of neighbouring residents, Inspector would have refused appeal. Therefore cannot be considered as a separate issue. Highway views are clear – no vehicles were expected to be present to rear of planned garage.

Noise Report only addresses vehicles moving along driveway. Does not address opening and closing of doors and need to manoeuvre directly in front of bungalow. Probable that future inhabitants of site will have multiple vehicles. Drive to bungalow is narrow and has very small area for manoeuvring. Inevitably will mean significant manoeuvring to allow for passage of more than one car, with consequential opening and closing of doors. Main bedroom of number 21a is situated at rear of property and adjacent to boundary with driveway – will inevitably result in disturbance to residents.

Environmental Health Officer (EHO) has stated no noise complaints received to date. Would like to point out that noise is a minor part of loss of amenity caused by breach of conditions. Statement does not stand up to scrutiny - most affected neighbour has been living abroad for 18 months and has not been in a position to comment and make a complaint. Occupation only took place after their moving abroad. Following a visit noticed what had occurred and informed Council immediately.

Original application for bungalow with integral garage in rear garden was refused by Council. Subsequent application, with garage moved adjacent to number 21 also refused, but allowed on appeal. Therefore, not only did Inspector require Council to ensure access should preclude use by four-wheeled vehicles, but Council had itself previously refused such access.

Backland development creates amenity problems, especially regarding vehicular access. Only means of protection of residential amenity is the imposition of conditions such as the Inspector required and the Council has done. Objections to various planning applications have always made point that position of bungalow would likely lead to neighbour conflict. In this respect, pond in rear garden of number 21a has a mini waterfall feature, with timed pump. Residents of application site have requested pump be turned off as noise of water was disturbing them. Opposing situation would be worse if Council grants application to vary conditions. Resulting disturbance will be completely unacceptable. Inspector's decision was meant to prevent this.

Despite statement made by Applicant at Appeal it is clear they never had any intention of adhering to conditions, since driveway as constructed is clearly to allow passage of motor vehicles. If Council had ensured conditions had been met current situation would not have arisen. Understand tenants of site have vacated and believe Council should invoke conditions requiring completion of garage and 1.8m wide pedestrian path before further occupation is allowed.

Ignoring conditions shows a flagrant disregard for planning system. Fact that Applicant did not appeal against conditions also indicates a disregard for process, which he hopes to circumvent by one or other means. Circumstances have not changed and Council should refuse application and enforce conditions accordingly.

**Comment:**

The application has been submitted retrospectively following an enforcement investigation. The fact that breaches of planning control exist on a site does not in itself justify refusal of any planning application - the proposal must be judged solely on its own merits. The impact of the proposal on neighbouring amenities is discussed below.

## **7 Planning Considerations**

The principle of development of the site has been established through previous approvals. The omission of the garage would reduce the potential impact on visual amenities and the resultant views of the resurfaced and wider access would have a limited visual impact. It is therefore considered that, having regard to the relevant policies of the development plan, the main issue arising from this application is:

### **Impact on neighbouring amenities**

One of the Council's reasons for refusing Outline application 01/51181/001 was that the provision of a driveway to serve the dwelling would be likely to result in additional levels of noise and disturbance. It was considered this would be materially harmful to the amenities of neighbouring residential properties.

In considering this issue at appeal the Planning Inspector did not explicitly uphold this reason for refusal. The Applicant had indicated that the access path to the dwelling would be designed for pedestrian use and not for vehicles. The Inspector's view was that any additional noise and disturbance from pedestrian comings and goings along the path, or from activities within the garden of the proposed dwelling, would not be significantly greater than that which could already arise from the site's then current use as part of the garden of number 21.

The Inspector considered that through the process of approval of design and landscaping details the Council could ensure the proposal would effectively preclude use of the path by four-wheeled vehicles. It was clear from the content of the decision letter that a condition relating to layout and landscaping was intended by the Inspector to address these matters.

The Council took this into account when considering the subsequent application for Approval of Reserved Matters (05/51181/007) and the conditions subject of the current application were thus imposed. The reasons for imposing these conditions were to ensure there would be no vehicular access beyond the then proposed garage

and to thus protect the amenity of adjoining residents. There was no explicit explanation as to how amenities might otherwise have been diminished but it is considered this would principally have been as a result of disturbance through noise.

With the exception of the failure to construct the garage and limit the width of the footpath as required by the conditions now under review, the layout of the site is as approved under the previous applications. There has therefore been no material change in circumstances in terms of the relationship between the dwelling now constructed on the site and those adjoining.

There is however a material additional consideration in that a Noise Impact Assessment (NIA) has been submitted with the current application. The previous proposals were not subject of this level of analysis and the Environmental Health Officer (EHO) was not consulted on either application.

Concern has been expressed that the application has been submitted retrospectively and the conditions should be enforced. However, as noted above, the existence of breaches of planning control is not in itself a reason for refusing a planning application. The Applicant has exercised their right to request a variation of the conditions and consideration has to be given to this in the context of the NIA and EHO advice, neither of which were available to the original Planning Inspector.

It is clear from the representations received that the principal concerns are related to noise arising from movement of vehicles and associated activities. There is a suggestion that this is not the only potential source of disturbance but, given the presence of screening to the driveway and the Inspector's previous comments regarding pedestrian use of the site, it is difficult to understand how any other form of 'disturbance' could manifest itself without there being an audible element.

The driveway as constructed has predominantly been finished with a gravel surface. The NIA has been compiled using measurements from a range of areas within the site and suggests that vehicular use of the rearmost element of the existing driveway does not result in any more nuisance to neighbouring properties than the parking area approved to the front of the site. The NIA also claims that noise impact would be reduced by a 'vast' degree if the driveway were to be resurfaced with block paving, as now proposed by the Applicant. The EHO has raised no objections to the proposed resurfacing of the driveway.

Concern has been expressed that the NIA only addresses noise emanating from vehicles moving along the driveway, and ignores the opening and closing of doors and the need to manoeuvre within a restricted area close to the dwelling on the site. The EHO advises that noise emanating from the opening and closing of car doors is an everyday occurrence of 'living' noise in residential areas - unless carried out continuously over a period of time, whereby it might be construed to be a nuisance. The EHO acknowledges it is difficult to predict how many vehicles would be at the site at any one time, but considers normal opening and closing of car doors and manoeuvring of vehicles should not constitute a nuisance under normal circumstances.

It is noted that the absence of the approved garage would open up the possibility that the access could be used to serve the rear garden of the original house (No. 21). Whether or not such a future occurrence is likely is debatable, but it is a risk and would potentially add to noise, it is considered reasonable that in the event of approval, this should be restricted by condition.

## 8 Conclusion

The professional advice of the EHO, having taken account of an NIA not previously available to the Planning Inspector or the Council, is that there is no defensible basis in terms of noise nuisance on neighbouring amenities, to refuse the application. Planning conditions can be used to specify the used of paving instead of gravel and its permanent retention, together with restriction to prevent vehicular access to the rear garden of no.21. Given the presence of screening and the Inspector's previous comments regarding pedestrian use of the site, it is unlikely that the proposal would lead to a detrimental increase in other forms of disturbance to neighbouring amenities. For these reasons the planning application is recommended for approval.

Although the neighbour responses refer to concerns that the conditions in question appear not to have been adhered to and that this is a disregard for planning control which should be enforced, planning law does not regard failure to comply as an offence (this would only become the case if a planning enforcement notice were served and then not adhered to). Law and government advice require that enforcement action may only be taken in cases where it is expedient to do so, and this in turn involves consideration of evidence and whether impacts can be mitigated by planning conditions. As set out in this report, the Inspector's appeal decision is a starting point but current evidence regarding noise impacts and the comment of the EHO, lead to the conclusion that a defensible, evidence-based case could not be made for refusal and enforcement. Conditions would also be imposed which provide some degree of mitigation.

## 9 **RECOMMENDATION:**

That the Executive Head of Planning and Built Environment be authorised to **GRANT PERMISSION** for application APP/13/00970, subject to the following conditions:

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

01 (Site and Location Plans)

**Reason:** - To ensure provision of a satisfactory development.

- 2 Within six months of the date of this planning permission, the 'existing gravel drive to be block paved' as annotated on the Site Plan included within drawing 01, shall be block paved in materials to match those used on the 'block paving parking & turning area' as annotated on the same Site Plan. The surfaces of the 'existing gravel drive to be block paved', 'block paving parking & turning area', 'block paving' and 'concrete hardstanding' annotated on the same Site Plan shall thereafter be maintained in these materials, unless otherwise agreed in writing by the Local Planning Authority.

**Reason:** To safeguard the amenities of the locality and/or occupiers of neighbouring property 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.

- 3 From the date of this planning permission, all boundary treatments to the site shall be permanently maintained in accordance with the details annotated on the Site Plan included within drawing 01, unless otherwise agreed in writing in advance by the Local Planning Authority. Furthermore, no vehicular access shall be formed at any time from the driveway which serves no. 21B St Catherines Road (the rear property) into the rear garden of No.21 St Catherines Road (the front property).

**Reason:** To safeguard the amenities of the locality and/or occupiers of neighbouring property 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.