

TITLE OF REPORT: Planning Appeals

REPORT OF: Paul Dowling, Strategic Director, Communities and Environment

Purpose of the Report

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

New Appeals

2. There have been **no** new appeals lodged since the last committee.

Appeal Decisions

3. There has been **one** new appeal decision received since the last Committee:

DC/16/00914/COU - Land At Soka Wine Centre, Devon House, Durham Road, Birtley

Change of use of part of existing car park for staff and part of existing side garden for residential flat to hand car-wash and car valet operation with new dropped-kerb exit point, erection and re-alignment of 1.8m high metal and timber fencing and 4x metal 1.5m high storage boxes

This was a committee decision refused on 26 October 2016.
Appeal dismissed on 21 June 2017.

Details of the decision can be found in **Appendix 2**

Appeal Costs

4. There have been no appeal cost decisions.

Outstanding Appeals

5. Details of outstanding appeals can be found in **Appendix 3**.

Recommendation

6. It is recommended that the Committee note the report

Contact: Emma Lucas Ext: 3747

FINANCIAL IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

Nil

HUMAN RESOURCES IMPLICATIONS

Nil

EQUALITY AND DIVERSITY IMPLICATIONS

Nil

CRIME AND DISORDER IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

HUMAN RIGHTS IMPLICATIONS

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

WARD IMPLICATIONS

Various wards have decisions affecting them in Appendix 3

BACKGROUND INFORMATION

Start letters and decision letters from the Planning Inspectorate



Appeal Decision

Site visit made on 6 June 2017

by **Caroline Jones BA (Hons) DipTP MTP MRTPI**

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

Decision date: **21st June 2017**

Appeal Ref: APP/H4505/W/17/3170022

Land at Soka Wine Centre, Devon House, Durham Road, Elisabeth-Ville, Birtley DH3 1JS

- 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 Anthony Lang against the decision of Gateshead Council.
 - The application Ref DC/16/00914/COU, dated 3 September 2016, was refused by notice dated 26 October 2016.
 - The development proposed is change of use of part of existing car park for shop and part of existing side garden for residential flat to hand car-wash & car valet operation with new dropped-kerb exit point, erection and re-alignment of 1.8m high metal and timber fencing and 4x metal 1.5m high storage boxes.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In seeking to address the Council's third reason for refusal an amended site layout plan, ref AD-16-12 was submitted with the appeal. The plan shows a revised location for the steel storage boxes and a reduction in length of the close boarded fence. Given the changes are a minor alteration to the original scheme and the Council have had an opportunity to comment on them, I do not believe any party would be unfairly prejudiced by my determining the appeal with regard to the amended plan and I have done so on this basis.

Main Issues

3. The main issues are:
 - The effect of the proposal on the living conditions of neighbouring residents;
 - The effect of the proposal on highway safety; and
 - The effect of the proposal on surface water drainage.

Reasons

Living conditions

4. The proposal would occupy part of an existing garden and car park immediately to the side of a large detached retail unit. The site currently has two access
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points, one to the north onto Windsor Road and one in the south east corner onto Durham Road. The surrounding area is predominantly residential but is mixed in character with nearby commercial uses and the busy Durham Road immediately to the east of the site.

5. The hand car wash and valet proposal includes the creation of a dropped curb exit point onto Windsor Road, the erection of four 1.5 metre storage boxes and the erection of a close boarded timber fence along the northern boundary. A one way system would be operated with the cars entering the site from the existing access/exit onto Windsor Road and leaving via the new exit point. The submitted plan shows the site would be laid out to serve 4 cars at a time.
6. Sources of noise and disturbance from such an operation would arise from the use of jet washers, vacuum cleaners and that created by the comings and goings of patrons. Although the plans show the nearest residential property at 18.5 metres, the boundary to the property is closer. There is also a residential flat above the retail unit with windows overlooking the appeal site and whose garden would be immediately adjacent. Whilst I note that this is occupied by the appellant's parents there is no surety that the flat would not change hands in the future and the protection of the living conditions of existing occupants regardless of who owns the land and building, is a proper planning concern.
7. Given the mixed character and busy road, I accept that residents living nearby can reasonably expect noisier living conditions than in a wholly residential area. However, by virtue of the intervening distances and considering the overall intensity of the operation of the site for seven days a week, from 0800 to 2000, there would be little opportunity for respite from the proposed use and the associated noise and disturbance. I note the appellant has suggested the possibility of reduced hours. However, even closing at 1800 on a Saturday and at 1600 on a Sunday the car wash would still operate at valuable times for rest and relaxation. Moreover, the car wash would give rise to noise at times when background noise levels are lower than during the working week when car washing is likely to be in demand.
8. A 1.8 metre high fence is proposed along part of the northern boundary which I accept may provide a degree of attenuation from noise. However, in the absence of any indication as to how loud the pressure washers, vacuum cleaners and associated operational noise would be, and the absence of any details as to the effectiveness of the fence in reducing noise, excessive noise levels may occur. In this respect there is a risk that the living conditions of neighbouring residents could be adversely affected by unacceptable levels of noise and disturbance.
9. I have considered whether the harm could be made acceptable through the use of the appellants suggested conditions. In the absence of any evidence relating to existing background noise levels or details of equipment, I cannot be satisfied that restricting noise levels to no louder than 5dB above background noise levels would be appropriate in this instance. Whilst a condition controlling the use of radio/sound equipment on site would go some way in reducing noise from the site, it would not address the potential for unacceptable levels of noise and disturbance from other sources. Whilst I acknowledge it may be the case that that processes and equipment may change in the future, I must consider the appeal on the basis of the information

before me. It would not be reasonable to require every piece of equipment to be submitted to the Council.

10. The appellant has suggested that noise survey work or details of the acoustic fence could be conditioned prior to opening. However, this requires some certainty that the proposed use can be accommodated without giving rise to unacceptable levels of noise and disturbance. Not enough detail has been provided to demonstrate that adequate/effective mitigation could be achieved to avoid material harm to the living conditions of neighbouring occupiers. Given this uncertainty, it would be unreasonable to condition these matters.
11. Taking the above matters into account, there is insufficient information provided, or controls proposed to prevent noise and disturbance from the proposed development from unacceptably harming the living conditions of nearby residents.
12. I therefore conclude that there is an unacceptable risk that the proposal would be materially harmful to the living conditions of neighbouring residents. Accordingly, the proposal conflicts with saved Policies ENV61 and DC2 of the Gateshead Unitary Development Plan (2007) (UDP) which seek to ensure that new noise generating development does not produce unacceptable levels of noise and that new development does not cause undue disturbance to nearby residents. I also find conflict with Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (2015) (CS) which requires, amongst other things, development to prevent negative impacts on residential amenity and wider public safety from noise. The policies are consistent with the National Planning Policy Framework (the Framework) which seeks to protect residential amenity from undue noise and disturbance. Therefore, in line with paragraph 215 of the Framework I attach them significant weight.

Highway Safety

13. The proposed access to the car wash is via the existing entry point currently used for both access and egress for the retail unit. This access is approximately 14 metres from the busy A147 Durham Road. During my site visit, which was carried out at approximately midday on a weekday, I saw that traffic was heavy with a continuous flow of vehicles, including heavy goods vehicles and buses, in both directions on Durham Road. Despite the maximum speed limit of 20mph on this part of Durham Road, I observed many vehicles travelling well in excess of 20mph past this junction. Although not as busy, Windsor Road also had a steady flow of traffic and I observed queuing traffic of 2 or more cars at the junction on Windsor Road waiting to join Durham Road on several occasions.
14. The existing access on Windsor Road is not of sufficient width to accommodate two way car movements. If a car was exiting the car park, any cars waiting to use the car wash would have to queue on Windsor Road. Irrespective of whether minimum junction spacing standards should apply, given the short distance to the junction, there would only be capacity for approximately two cars to queue before they would cause an obstacle on Durham Road. Despite its modest size, at peak times when both the car wash and store would be busy there would be a considerable risk of this occurring. Given the significant volume of traffic using Durham Road and the speed of traffic past this junction I consider that this would be to the detriment of highway safety and directly increase the risk of accidents occurring.

15. I do not dispute that visibility of this junction is good from both directions on Durham Road. However, vehicles travelling south on Durham Road wishing to turn right onto Windsor Road may not see cars waiting to use the car wash as a result of traffic queuing at the junction waiting to join Durham Road. I accept that heavy goods vehicles and buses would have views over cars but this would not be the case for cars wishing to turn right or on the occasions that a bus or heavy goods vehicles is sat at the junction. Thus I consider the intensification of the access in close proximity to the junction would also increase the risk of collision at this location, regardless of the speed at which vehicles may be turning.
16. There has been one accident in the last five years, although I appreciate that the accident rate is considered low in the long term. However, the car wash would be a materially different form of development than that which exists and would be likely to generate more vehicle movements, even taking into account its modest size. As a result, the proposal would intensify the use of the access and a low record of accident data does not justify granting planning permission for an arrangement that would be unsafe.
17. The appellant has submitted car parking surveys which were undertaken at peak times which is also when the car wash would likely to be at its busiest. During these times, there were never more than two cars parked in the staff car park. At most the car park contained eleven cars but the majority of time there were 6 or fewer cars in the car park. Even though the aisle width is below normal standards, this is an existing situation and I am not persuaded that the proposal would lead to capacity issues within the car park. Moreover, even if the proposal did result in staff or customers parking off site, there is no clear evidence of a local parking issue before me. At my site visit, although I appreciate that this was just a snapshot in time, there did not appear to be high levels of on street parking. Nor has it been demonstrated that even if the proposal were to result in an increase in on street parking, how this would be bound to have a harmful effect on highway safety. However, this does not outweigh the concerns raised above.
18. I note the Council's concerns regarding manoeuvrability within the site. However, the submitted swept path analysis shows that manoeuvres in and out of the site are achievable including that to the northern bays. Whilst the angle at which cars would exit the site is perhaps not ideal, this matter would not warrant dismissal of the appeal.
19. I am satisfied that the reduction in length of the close boarded fence bounding the footpath would allow for satisfactory visibility between those cars exiting the site, oncoming vehicles and pedestrians using the footpath. The amendments made to the location of the storage boxes now means that the operating widths would each be 1.06 metres. I am satisfied that this would be sufficient. Whether or not the existing access in the south east corner of the site should have been closed is not matter for this appeal. The use of the proposed access and exit for the car wash could also be conditioned were the appeal to succeed. Nevertheless these matters do not outweigh the harm that I have found above.
20. The appellant has cited bullet point three of paragraph 32 of the Framework and contends that the proposals are far from severe. However, this is primarily

concerned with matters of highway capacity and congestion rather than highway safety considerations in themselves.

21. I therefore conclude that the proposal would have an adverse impact on highway safety and accordingly conflicts with Policy CS13 of the CS which seeks to ensure, amongst other things, that development connects safely to and mitigates the effect of development on the existing transport networks. The policy was adopted in 2015 and therefore found to be compliant with the Framework. I therefore attach significant weight to the policy.

Drainage

22. I agree with the Council that the proposed development would have the potential to increase the amount of water entering the existing drainage system and/or lead to increased surface water run off outside the site. Although the proposed fence could prevent some water runoff, it would not run the entire length of the boundary. However, I note that Northumbrian Water have not objected to the proposals and no evidence has been presented to indicate that the development would result in insurmountable pressure on the local drainage system, or that the drainage implications of the development could not be satisfactorily mitigated.
23. I therefore conclude that surface water drainage details could be adequately controlled through the use of suitably worded condition. I therefore find no conflict with Policy CS17 of the CS, Policy DC1 (h) of the UDP or the Framework. These seek to ensure, amongst other things, that planning should take full account of flood risk, that surface water infrastructure is provided with adequate capacity and that development does not significantly pollute the environment with out-fall or discharges of any kind.

Other Matters

24. The appellant has suggested a temporary permission could be used in order to determine the impacts of the proposal. However, I have found that the proposal would have a detrimental effect on the living conditions of neighbouring residents and highway safety and a temporary permission would not negate this harm.
25. The appellant has drawn my attention to another car wash approved by the Council. However, whilst the proposal would share some similarities with other hand car wash businesses, from the information before me it appears the setting and surrounding area of the approved scheme is not directly comparable and I am not aware of all the information that was before the Council when determining this application. Furthermore, I note that the distance to the nearest residential properties is greater than in the appeal scheme. In any case, each application and appeal must be assessed on its own merits.
26. I have had regard to the letters of support received. I acknowledge that the development will be well screened, will provide employment and would be a convenient location for such a use which would reduce the need to travel for some customers. However, I consider that the benefits of the scheme are outweighed by the potential harm to the living conditions of neighbouring residents and the detrimental impact on highway safety.

27. Planning law requires that applications for planning permission must be determined in accordance with the development plan¹, unless material considerations indicate otherwise. The Framework is one such material consideration. I have found the relevant development plan policies consistent with the Framework and have attached them significant weight in the determination of the appeal. In this respect the fourth bullet point of paragraph 14 does not apply. Furthermore, due to the harm that I have identified to the living conditions of neighbouring residents and to highway safety, the scheme would not accord with the social dimension of sustainable development set out at paragraph 7 of the Framework. Therefore, in the overall round, the scheme would not constitute sustainable development.

Conclusion

28. Although I have found no harm in respect of surface water drainage, this is not sufficient to outweigh the harm that I have found in relation to living conditions and highway safety.

29. For the reasons given above and taking into account all matters raised, I conclude that the appeal should be dismissed.

Caroline Jones

INSPECTOR

¹ Section 38(6) of the Planning and Compulsory Purchase Act and section 70(2) of the Town and Country Planning Act 1990.

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
DC/16/00914/COU	Land At Soka Wine Centre Devon House Durham Road Birtley	Change of use of part of existing car park for staff and part of existing side garden for residential flat to hand car-wash and car valet operation with new dropped-kerb exit point, erection and re-alignment of 1.8m high metal and timber fencing and 4x metal 1.5m high storage boxes	Written	Appeal Dismissed
DC/17/00001/COU	3/5 Beaconsfield Avenue Gateshead NE9 5XT	Change of use of ground floor from residential to Use Class A1 (as expansion of existing adjoining shop); relocation of dwelling entrance to rear; and residential loft conversion with hip to gable extension and new velux windows	Written	Appeal in Progress
DC/16/01278/HHA	19 Queen Elizabeth Avenue Sheriff Hill Gateshead NE9 6RE	Erection of dormer window at the front of the property.	Written	Appeal In Progress