

TITLE OF REPORT: Planning Appeals

REPORT OF: Anneliese Hutchinson, Service Director,
Development, Transport and Public Protection

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 **one** new appeal lodged since the last committee:

DC/17/01293/ADV - Intu Metrocentre, Whickham, Gateshead NE11 9YG
Display of 22.25m high internally illuminated LED feature display sign (additional info received 06/03/2018 and 10/04/2018).
This application was a delegated decision refused on 13 June 2018.

Appeal Decisions

3. There have been **two** new appeal decisions received since the last Committee:

DC/18/00105/FUL - Smileys Car Wash, Nobles MOT Centre, Sunderland Road, Gateshead
VARIATION OF CONDITION 2 (Hours of Operation) of permission
DC/12/00577/COU to allow opening Mon - Sat 08:00 -18:00 and Sunday 09:00 - 18:00 (currently limited to between 0900 and 1800 Monday to Saturday and between 0900 and 1600 on Sundays and Public Holidays).
This application was a delegated decision granted on 29 March 2018.
Appeal allowed 2 October 2018.

DC/18/00390/GPDE - 31 Calder Walk, Sunnyside, Newcastle Upon Tyne, NE16 5XS
Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by 4.5m, with a maximum height of 3.9m, and eaves height of 2.8m.
This application was a delegated decision refused on 29 May 2018.
Appeal dismissed 2 October 2018.

Details of the decisions 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



The Planning Inspectorate

Appeal Decision

Site visit made on 18 September 2018

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2018

Appeal Ref: APP/H4505/W/18/3201318

Smileys Car Wash, Nobles MOT Centre, Sunderland Road, Felling, Gateshead, Tyne & Wear NE10 0NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Miran Mehmet against the decision of Gateshead Council.
 - The application Ref DC/18/00105/FUL, dated 2 February 2018, was determined by notice dated 29 March 2018.
 - The application sought planning permission for change of use from car sales and associated valeting to a car wash and valeting services and car sales all open to the general public (retrospective) without complying with a condition attached to planning permission Ref DC/12/00577/COU, dated 27 September 2012.
 - The condition in dispute is No 2 which states that: *the operation of the premises shall be limited to between 0900 and 1800 Monday to Saturday and between 0900 and 1600 on Sundays and Public Holidays.*
 - The reason given for the condition is: *to ensure that no disturbance is caused to neighbouring properties as a result of unreasonable trading hours at the premises in accordance with policy DC2 of the Unitary Development Plan.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use from car sales and associated valeting to a car wash and valeting services and car sales all open to the general public (retrospective) at Smileys Car Wash, Nobles MOT Centre, Sunderland Road, Felling, Gateshead, Tyne & Wear NE10 0NR in accordance with the application Ref DC/18/00105/FUL dated 2 February 2018, but subject to a modified condition No 2 and a replacement condition No 5, with the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and as set out in the schedule of conditions.

Background and Main Issue

2. The appeal proposal relates to an existing car wash. The appellant wishes to change the permitted operating hours from 0900 to 1800 Monday to Saturday to 0800 to 1800 and from 0900 to 1600 on Sundays and Public Holidays to 0900 to 1800, to mirror those of another car wash on Sunderland Road. The Council determined the application and granted planning permission for the operation of the premises between 0800 and 1800 Monday to Friday, 0900 and 1800 on Saturdays and between 0900 and 1600 on Sundays and Public Holidays.

3. The main issue is whether the proposed opening hours would have an unacceptable effect on the living conditions of nearby residents with particular regard to noise and disturbance.

Reasons

4. The appeal proposal relates to an established car wash which is situated on Sunderland Road, on a site which also includes car sales and a MOT centre. The appeal site is situated adjacent to terraced housing with bungalows opposite across Sunderland Road, with a railway line to the rear.
5. Whilst a noise impact assessment was submitted with the original application, none has been submitted in support of this appeal. I have regard to the evidence that Sunderland Road is a busy commuter route. The Council conclude that road traffic noise on Sunderland Road between 0800 and 0900 on weekdays is such that the operation of the car wash at this time would not cause any additional adverse effect on the living conditions of the occupiers of neighbouring dwellings. I have no evidence to the contrary and consider this part of the proposal to be acceptable.
6. In regards to the proposed operating hours on Saturdays, Sundays and Public Holidays, I take into account the comments of the Council and interested parties that traffic volumes are much lower and that the noise environment is correspondingly quieter. This is not disputed by the appellant. However, there is no technical evidence before me to demonstrate that the operating hours sought, with operation starting an hour earlier on Saturdays and extending by two hours to 1800 on Sundays and Public Holidays would not give rise to unacceptable effects on the living conditions of nearby residents. Therefore, I have not been convinced that the condition should be modified as proposed.
7. The appellant has referred me to a hand car wash and valeting centre elsewhere on Sunderland Road which advertises 7 day a week opening between 0800 and 1800. However, whilst I have few details of that scheme, I note the Council state that the permitted opening hours are not dissimilar to those of the appeal premises. In any event, I have considered the appeal on its own merits.
8. The disputed condition as amended would enable the business to operate from 0800 on weekdays when the noise environment would be dominated by road traffic noise and would continue to safeguard the living conditions of residents on Saturdays, Sundays and Public Holidays. The amended condition is necessary, reasonable, relevant to planning and sufficiently precise to be enforceable and complies with Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 Policy CS14 and saved Policy DC2 of the Gateshead Unitary Development Plan which, amongst other things, are concerned with safeguarding living conditions.

Conclusion

9. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council advise that condition 5 of the original permission which was concerned with the provision of spray barriers on Sunderland Road has been discharged and in granting planning permission for

the application subject to this appeal, imposed a replacement condition 5 which seeks to ensure that the spray barriers are retained. The replacement condition 5 is not been disputed in this appeal and the appellant has also had the opportunity to respond to the Council's statement. I consider that it is appropriate to replace condition 5 as the Council suggest in the interests of the character and appearance of the area. Conditions 1, 3 and 4 are reapplied as per the original permission.

10. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed to the extent described. Therefore, I will vary the planning permission by modifying the disputed condition, along with replacing condition 5.

Philip Lewis

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: P1110026/01, 02 Rev A 03 and 04.
- 2) The operation of the premises shall be limited to between 0800 and 1800 Monday to Friday, between 0900 and 1800 Saturdays and between 0900 and 1600 on Sundays and Bank Holidays.
- 3) No sound system or similar equipment shall be installed or used on the premises.
- 4) No further equipment or machinery over and above that listed within paragraph 4.4 of the application Design and Access Statement shall be installed on the site without prior written approval from the local planning authority.
- 5) The spray barriers along the site boundary abutting Sunderland Road approved under condition 5 of planning consent DC/12/00577/COU shall be retained as approved and maintained for the life of the development.



Appeal Decision

Site visit made on 18 September 2018

by **Philip Lewis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 October 2018

Appeal Ref: APP/H4505/D/18/3209629

31 Calder Walk, Sunnyside, Newcastle upon Tyne NE16 5XS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A4 of the Town And Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Ms Bridget Lee against the decision of Gateshead Council.
 - The application Ref DC/18/00390/GPDE, dated 19 April 2018, was refused by notice dated 29 May 2018.
 - The development proposed was originally described as rear kitchen and dining room extension.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The provisions of Schedule 2, Part 1, Paragraph A.4 of the Town And Country Planning (General Permitted Development) (England) Order 2015 (GPDO) require the local planning authority to assess the proposed development solely on the basis of its impact on the amenity of any adjoining premises, taking into account any representations received. My determination of the appeal has been made in the same manner.
3. The revised National Planning Policy Framework (the Framework) was published on 24 July 2018, replacing that published in March 2012. I wrote to the parties and invited their submissions in respect of the new Framework and any implications for their cases.

Reasons

4. Schedule 2, Part 1, Paragraph A.1 of GPDO allows for the enlargement, improvement or other alteration of the original dwelling house. Until 30 May 2019, paragraph (g) of that Class makes provision, subject to conditions, for single storey rear extensions up to 6 metres in length and 4 metres in height for properties other than detached dwellings.
5. 31 Calder Walk is an end of terrace two storey property. The proposed single storey rear extension would span the full width of the dwelling projecting out about 4.5 metres to the rear, with a maximum height of about 3.9 metres, sloping down to the rear to an eaves height of about 2.8 metres.

6. The proposed extension would project out along much of the depth of the modest rear garden and would give rise to a significant area of flank wall along the common boundary with the neighbouring 29 Calder Walk. The flank wall would be considerably higher than the existing boundary treatment.
7. Due to the orientation of the terrace, the height and depth of the extension and its position on the common boundary, it would give rise to a detrimental loss of light and overshadowing of the modest rear garden of No 29. Furthermore, No 29 has a window and door to its kitchen/diner situated close to the common boundary. Whilst there is another window to this room, the close proximity of the proposed extension would inevitably reduce the light into this room. The proposed extension would also, due to its scale and position, have an adverse effect upon outlook for the occupiers of No 29 from both the kitchen/diner windows and garden. I noted at my site visit that the garden levels are appreciably below finished floor levels of both Nos 29 and 31, but that does not change my conclusions.
8. The appellant has referred to a fallback position being available under permitted development rights for an alternative scheme for a rear extension and a curtilage building positioned along the common boundary with No 29. However, the evidence does not suggest that there is a realistic likelihood that such a scheme would be carried out and consequently, I am not convinced that there is a greater than theoretical possibility that such a development would take place. In any event, from what I have read, I am also not convinced that any such fallback position would be more harmful than the appeal scheme to the living conditions of the occupiers of No 29, given the extent of harm found due to the height and depth of the proposed extension along the common boundary and the potential harm which may arise from such a fallback scheme as described.
9. Insofar as it relates to the impact of a proposal on the amenity of the occupants of adjoining premises, I have considered the development plan policy and supplementary planning guidance cited by the Council. When taken together, Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 Policy CS14, saved Policy DC2 of the Gateshead Unitary Development Plan and the Council's Supplementary Planning Document Household Alterations and Extensions seek to ensure that development proposals respect and avoid loss of amenity, an approach with which the appeal proposal fails to comply. The proposal would also run contrary to the design policies of the Framework which seek, amongst other things that developments create places with a high standard of amenity for existing and future users.

Conclusion

10. For the reasons given above and having had regard to all matters raised, I conclude that the appeal should be dismissed.

Philip Lewis

INSPECTOR

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
DC/17/00473/HHA	17 Limetrees Gardens Low Fell Gateshead NE9 5BE	First floor extensions to side and rear	Written	Appeal in Progress
DC/17/01293/ADV	Intu Metrocentre Whickham Gateshead NE11 9YG	Display of 22.25m high internally illuminated LED feature display sign (additional info received 06/03/2018 and 10/04/2018).	Written	Appeal in Progress
DC/17/01358/OUT	Former Monkridge Gardens Residents Association And Lands At 21 And 23 And Land South Of 9-23 Monkridge Gardens, Gateshead Dunston Hill NE11 9XE	Outline planning permission with all matters reserved for the clearance, lowering and levelling of site and the erection of up to 10 dwelling-houses, with new shared-surfaced vehicular and pedestrian access	Written	Appeal in Progress
DC/18/00105/FUL	Smileys Car Wash Nobles MOT Centre Sunderland Road Gateshead	VARIATION OF CONDITION 2 (Hours of Operation) of permission DC/12/00577/COU to allow opening Mon - Sat 08:00 -18:000 and Sunday 09:00 - 18:00 (currently limited to between 0900 and 1800 Monday to Saturday and between 0900 and 1600 on Sundays and Public Holidays)	Written	Appeal Allowed
DC/18/00244/ADV	592-596 Durham Road Gateshead NE9 6HX	Display of 1 x 48 sheet LED advertisement with changeable content on gable elevation.	Written	Appeal in Progress

DC/18/00390/GPDE	31 Calder Walk Sunniside Newcastle Upon Tyne NE16 5XS	Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by 4.5m, with a maximum height of 3.9m, and eaves height of 2.8m.	Written	Appeal Dismissed
DC/18/00440/TPO	9 Axwell Park Road Axwell Park Blaydon NE21 5NR	Felling of one Sycamore tree in garden of 9 Axwell Park Road.	Written	Appeal in Progress