

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 **two** new appeals lodged since the last committee:

DC/18/00727/OUT - Grazing Land At Beda Hills West Of, Woodside Walk, Rowlands Gill

Erection of four bedroom house.

This application was a committee decision refused on 1 November 2018

DC/18/00822/FUL - The Dairy, South Farm NE11 0ET

Erection of animal shelter (revised application).

This application was a delegated decision refused on 3 October 2018

Appeal Decisions

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

DC/18/00614/COU - Land Adjacent Rose Cottage, High Street, Wrekenton, Gateshead

Change of use from former petrol filling station to hand car wash and car valeting facility (Sui Generis Use).

This application was a delegated decision refused on 15 August 2018

Appeal dismissed 25 March 2019

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

Appeal Costs

4. There has been **one** appeal cost decision:

DC/18/00614/COU - Land Adjacent Rose Cottage, High Street, Wrekenton, Gateshead

Change of use from former petrol filling station to hand car wash and car valeting facility (Sui Generis Use).

Partial costs have been awarded and are to be confirmed.

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

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 26 February 2019

by **John Dowsett MA DipURP DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th March 2019

Appeal Ref: APP/H4505/W/18/3216472

Land adjacent Rose Cottage, High Street, Wrekenton, Gateshead NE9 7JS

- 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 Sukhwinder Dhillon of Dhillon Property Group against the decision of Gateshead Council.
 - The application Ref: DC/18/00614/COU, dated 18 June 2018, was refused by notice dated 15 August 2018.
 - The development proposed is change of use from former petrol filling station to hand car wash and car valeting facility.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The description of the development on the planning application form describes the proposal as 'Temporary Change of use from Class C3 (dwelling) to Class Sui Generis (Car wash facility) on site of bungalow and former petrol filling station', whereas the decision notice issued by the Council uses 'Change of use from former petrol filling station to hand car wash and car valeting facility'. Although it is stated that this alteration to the description was not formally agreed, the appellant has stated on the appeal form that the description from the decision notice is clearer and more accurate, and that he would prefer to use that description. There is no mention in any of the evidence to the proposed use being temporary and I would agree that this is a clearer description of the proposal. I have, therefore, used that for the purposes of the appeal.
3. The appellant has submitted with their appeal documents an amended plan, Drawing Number: WRKTN 418-101-Revision A, and additional assessments in the form of an Acoustic Report and an appeal statement on highways matters, which incorporates a detailed assessment of the effects of the proposal on the highway in the vicinity of the appeal site. This information was not before Council at time that the application was determined. The Council argue that this additional information represents an evolution of the scheme, that the appeal process should not be used to evolve a scheme, and what is considered by the Inspector at appeal should be essentially what was considered by the local planning authority and on which interested people's views were sought. I would agree that the appeal process is not the place to present substantive amendments to a proposal.

4. The question is, therefore, whether the amended plan and the evidence on noise and highways matters represents a substantial change to the proposal that means that it is now significantly different from that which was considered by the Council. The proposed development was described as a change of use of the site to a car wash and considered on that basis by the Council. Regardless of the amended plan and the evidence submitted that remains the case. There is little physical or operational development required as part of the proposal and the amended plan does not fundamentally alter this. Whilst the appellant has submitted information relating to noise and highways issues with the appeal, nothing in this substantively alters the proposal. It is to be expected that an appellant would submit evidence in support of their case to address the reasons for refusal that have been set out by the Council.
5. The Council have had the opportunity to comment on this evidence as part of the appeal process. The Council's Environmental Health Department and Development, Transport and Public Protection Department raised concerns in respect of the planning application. However, the Council had the opportunity to seek further views from these internal consultees between receipt of the appellant's evidence and submission of its appeal statement. I also note from the evidence that no third party representations were received during the consultation process on the planning application or as a result of the notification in respect of the appeal.
6. I do not consider that the amended site layout plan or the evidence submitted by the appellant alters the proposal to the extent that it is not the same as that which was considered by the Council i.e. the use of the land as a car wash, or that interested parties have not had the opportunity to comment on the evidence submitted, such that their interests would be prejudiced.
7. I have, therefore, considered the appeal on the basis of the details shown on Drawing Number: WRKTN 418-101-Revision A and the evidence that has been submitted by both parties in respect of the appeal.

Application for costs

8. An application for costs was made by Mr Sukhwinder Dhillon of Dhillon Property Group against Gateshead Council.

Main Issues

9. The main issues in this appeal are:
 - The effect of the proposed development on the operation of the highway in the vicinity of the appeal site;
 - The effect of the proposed development on the living condition of occupiers of nearby/neighbouring residential properties, with particular regard to noise; and
 - The effect of the proposed development on the operation of the drainage system in the vicinity of the appeal site.

Reasons

The effect of the proposed development on the operation of the highway

10. Policy CS13 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle Upon Tyne 2015 (the CSUCP) expects new development to connect safely to, and mitigate the effects of, the development on the existing transport networks. The National Planning Policy Framework (the Framework) seeks to ensure that safe and suitable access to the site can be achieved for all users and sets out that development should only be prevented or refused on highways grounds if there would be either an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
11. The appeal site is a former petrol filling station that has been decommissioned and has been used as informal parking for several years. At the time of my site visit the site was being used as a contractor's compound in connection with work that was being undertaken on an area of land to the south. The site presently has two access points from Old Durham Road. The proposed car wash facility would operate a one-way system through the site using the southern junction for access and the northern for egress.
12. Old Durham Road is a busy main road with a 30mph speed limit. Whilst there is a wide carriageway in the vicinity of the appeal site, this is marked out to provide a protected right turning lane into a supermarket located to the north of the appeal site on the opposite side of the road and a combined bus and cycle lane on the southbound carriageway. This results in a single northbound and southbound carriageway being available for general vehicle use. The bus lane terminates opposite the southern access to the site where the southbound carriageway then splits into two lanes for left turning and right turning onto Springwell Road.
13. The scheme has been assessed on the basis that there will be 60 two-way vehicle movements at the site during each of the morning and evening peak times. These are split on the basis that 50% of the vehicle movements would be in each direction both entering and leaving the site. The conclusion of the appellants' highways evidence is that the use of the site as a car wash would not result in a significant delays or queuing of vehicles on Old Durham Road as the junctions would work within capacity. I saw when I visited the site that visibility from the access points is adequate and meets the requirements for a 30mph road.
14. The operation of the junctions is, however, contingent on the site operating as shown on the amended drawing submitted with the appeal and the free movement of vehicles through the junctions. The amended drawing shows a capacity for 8 vehicles to queue behind the wash bays plus additional capacity, which the appellant states would allow for a maximum of 17 vehicles to be accommodated at the site including those being washed or valeted.
15. Whilst this plan represents an idealised layout, due to the size of the site it would require careful management or supervision to operate as shown and, because the drawing does not show vehicle tracking or swept paths, it is not clear how vehicles could be manoeuvred into or out of the additional bays shown even if there were only one queue of vehicles behind the wash bays. In addition, due to the proximity of the washing and valeting bays to each other,

- adjacent to the site egress, the working area for personnel between the bays would be very constrained if neighbouring vehicles were being washed and/or valeted simultaneously. If the valeting bays adjacent to the egress were in use these would prevent vehicles from leaving the wash bays located behind them from egressing the site.
16. The practicality of the close spacing of the vehicle queues, particularly at the proposed access to the site, are not demonstrated by swept paths for vehicles entering the site from the main carriageway and the proposed 1.8 metre high close boarded fence on the southern boundary of the site would limit advance visibility of conditions within the site for drivers approaching from the south.
 17. As such the layout appears as a contrived solution to demonstrate that an unrealistic number of vehicles could be accommodated, rather than a practical approach to using the site. The constraints imposed by the proposed layout would, in my view, lead to the internal arrangements of the site being altered on an ad hoc basis to overcome the practical shortcomings.
 18. Although a condition could require that the site be developed in accordance with this layout, I do not consider that, in practical terms, it would be possible to enforce the operation of the site in this manner as it would require a significant and regular amount of monitoring which it would be impractical for the Council to maintain.
 19. Whilst I accept that the highways assessment has been based on a larger number of vehicles movements than is likely to occur, there is no substantive evidence in respect of the actual anticipated number of vehicle movements that would be generated by the site or when the peak times for the operation of the facility might be.
 20. I have had regard to the previous use of the site as a petrol filling station, the more recent use as an informal parking area, and the fact that there has only been one recorded personal injury accident near the site since 1974. From the evidence, it is common ground that the appeal site has not operated as a petrol filling station for at least 17 years and that only a small number of vehicles use the accesses to the site at present. Road conditions and traffic flows will have altered since the site was last regularly in a formal use and it is not in dispute that the proposal will increase the use of the junctions with Old Durham Road over that resulting from the present use as informal parking. There is also no evidence before me in respect of accidents which did not result in personal injury. As such I can give only little weight to the suggestion that these factors indicate that the accesses would continue to operate safely were the development to proceed.
 21. Because of the above, I cannot be certain that the site would operate in the manner proposed by the appellant, due to the practical constraints imposed by the proposed layout, or that vehicles would be able to freely enter the site without obstruction. Similarly, I cannot be certain that, despite the appellant's assertion, the proposal would not lead to vehicles obstructing the flow of traffic on Old Durham Road.
 22. In the absence of such certainly, it has not been demonstrated that there would be a safe and suitable access to the site or that there would not be an unacceptable impact on highway safety.

23. I therefore conclude that the proposed development would cause harm to the operation of the highway in the vicinity of the appeal site. It would not comply with the relevant requirements of Policy CS13 of the CSUCP or the Framework.

Living conditions

24. Taken together, Policy CS14 of the CSUCP and Saved Policy DC2 of the Gateshead Unitary Development Plan 2007 (the UDP) seek to ensure that, among other matters, new development does not have an adverse effect on existing residential properties as a result of additional noise and disturbance. Saved Policy ENV61 of the UDP sets out that development that results in noise levels that exceed the pre-existing background noise level by 10dB will not be permitted and expects developers to demonstrate that acceptable noise levels can be achieved.
25. The appeal site is located in an area that is in mixed use, although it is primarily commercial in character. The closest residential property to the appeal site is Rose Cottage itself, which is directly adjacent to the appeal site and within the ownership of the appellant. At the time of my site visit Rose Cottage was unoccupied. To the south west of the appeal site, on the opposite side of Old Durham Road, there are commercial properties with residential accommodation above.
26. No information was submitted with the application in respect of the type of equipment that would be used in connection with the proposed development, nor were the opening hours of the facility given on the planning application form. The submitted noise assessment accepts that the Council were unable to support the proposal due to the lack of information.
27. Some further detail has been submitted with the appeal and it is stated that it is expected that the car wash would not operate longer than 08:00 to 20:00 each day. Information has also been provided in respect of the anticipated noise levels from the type of equipment proposed to be used at the site.
28. Although I accept that this information was not before the Council when it made its decision on the application, the Council had the opportunity to comment on it as part of their appeal submissions. The Council have not, however, challenged the findings of the noise assessment which concludes that the noise levels that would be generated using jet washing equipment and vacuum cleaners on the site are likely to be largely masked by other noise in the area, primarily generated by traffic on Old Durham Road.
29. The noise assessment uses a best case scenario and assesses the proposal using the quietest equipment cited in it. It does recognise that noise levels for vacuum cleaners vary significantly depending upon the model chosen and it is clear that, if equipment at the higher end of the noise range as set out the assessment were to be used, the increase over the background noise level would exceed the 5dB difference that the appellant states is largely undetectable. Nonetheless, there is no evidence that the resulting noise levels would exceed the 10dB increase above existing background level set out in Saved UDP Policy ENV61.
30. I do not consider that it would be possible to control the make or model of equipment used at the site using a planning condition, due to the practical realities of enforcing such a condition. That said, when I visited the site in the

early afternoon on a typical weekday, I observed that background noise levels in the area were high and the site is in a busy urban location primarily consisting of commercial properties and backing onto allotment gardens. The small number of residential properties in this area would not have the same expectation of a quieter living environment as those within a solely, or primarily, residential area.

31. I note that the application proposes that Rose Cottage, the closest residential property would be used to provide staff facilities for employees of the car wash facility. In the event that it was to be used for residential purposes the noise assessment concludes that the proposed 1.8 metre boundary fence on the northern site boundary, to which the Council have raised no objection, would provide sufficient attenuation.
32. In this context, even if there were to be an increase in noise levels in excess of 5dB above the prevailing background noise level, I do not find that this would either be materially detrimental to the living conditions of the occupiers of residential accommodation near to the site, or breach the thresholds set out in Saved Policy ENV61 of the UDP.
33. I conclude that the proposed development would not cause harm to the living conditions of occupiers of nearby/neighbouring residential properties, with particular regard to noise. It would not conflict with the relevant requirements of CSUCP Policy CS14 and Saved Policies DC2 and ENV61 of the UDP. It would also be consistent with the Framework which seeks to ensure that new development creates places with a high standard of amenity for existing and future users.

Drainage

34. No details of drainage were submitted with the application and little additional evidence was submitted with the appeal. Although I agree with the Council that the proposal will result in additional waste water arising from the use of the site, there is also force in the appellant's argument that this matter does not go to the heart of the proposal and could be addressed by way of a planning condition.
35. There is no evidence that the surrounding area is at risk from flooding or that there is not capacity in the existing drainage system to accommodate additional waste water flows. Similarly, there is no evidence that the water authority has objected to the proposal or that the drainage implications of the scheme could not be addressed.
36. I conclude that surface water and drainage matters could be adequately controlled using a suitably worded planning condition and that the proposal would not cause harm to the operation of the drainage system in the vicinity of the appeal site. It would not conflict with the relevant requirements of CSUCP Policy CS17, Policy DC1(h) of the UDP, or the Framework which expect, among other matters, that development should take full account of flood risk, that surface water infrastructure with adequate capacity is provided, and that development does not significantly pollute the environment.

Other matters

37. I accept that the proposal would be a re-use of a previously developed site in the built up area and that there would be an economic benefit from the

establishment of a new business and job creation. I also note that the Council have not raised any concerns in respect of the visual appearance of the proposed development. Nevertheless, due to the small number of jobs that would be created the economic benefits of the proposal would be modest and none of these factors, either singly or collectively, would outweigh the harm that I have found.

38. My attention has also been drawn to a planning permission granted for a similar facility elsewhere in the Council's area. I do not have the full details of this scheme or the circumstances that lead to it being accepted, and so I cannot be certain that these were directly comparable to the appeal proposal. In any event I have determined this appeal on its own merits.

Conclusion

39. I have found that the proposed development would cause harm to the operation of the highway in the vicinity of the appeal site and would not comply with the relevant requirements of the development plan or the Framework. Although, I have found that the proposal would not cause harm to the living conditions of the occupiers of nearby residential properties and that drainage matters could be addressed using an appropriately worded planning condition, neither of these factors would outweigh the harm that I have found, or the conflict with the development plan.
40. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR



Costs Decision

Site visit made on 26 February 2019

by **John Dowsett MA DipURP DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th March 2019

Costs application in relation to Appeal Ref: APP/H4505/W/18/3216472 Land Adjacent to Rose Cottage, High Street, Wrekenton, Gateshead NE9 7JS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Sukhwinder Dhillon of Dhillon Property Group for a full award of costs against Gateshead Council.
 - The appeal was against the refusal of the Council to grant planning permission for change of use from former petrol filling station to hand car wash and car valeting facility.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and, thereby, caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellant's application for costs is on the substantive grounds that the Council prevented or delayed development which should clearly be permitted; relied on vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis; refused planning permission on a planning ground capable of being dealt with by conditions; and has not determined similar cases in a consistent manner.
4. The planning application was accompanied by very little information regarding the operation of the site in terms of highways or noise. Detailed information was only made available after the Council had made its decision as part of the appeal submissions. As a consequence of this, both the Highway Authority and the Council's Environmental Health Departments raised objections to the planning application, with the latter specifically citing the lack of information as the reason for raising concerns. It is entirely reasonable for the Council to rely on comments made by its expert advisors.
5. The Council's officer produced a detailed report that assessed the proposal based on the information that was submitted. Whilst I have found taking account of the more detailed information submitted with the appeal that the reasons for refusal relating to noise could not be upheld, it was not unreasonable for the Council to conclude that it could not support the proposal

- as originally submitted, due to the paucity of the information originally provided.
6. As I have found that even taking into account the additional highways evidence, that it has not been demonstrated that the site could operate in such a manner that there would be no harm to the operation of the highway, it was not unreasonable for the Council to refuse permission based on less information and the advice of the Highway Authority.
 7. Although there is evidence that the Council has granted planning permission for a similar facility elsewhere in their administrative area, it is clear from the officer's report that more information about the operation of the facility was available as part of the consideration of this proposal. This is different from the appeal proposal, which contained very little information. I also note that another similar proposal was both refused planning permission and a subsequent appeal dismissed. Because of this I do not see any inconsistency in the Council's approach as the various proposals have clearly been considered on their own merits.
 8. The appellant also refers to the Council ignoring national policy, citing provisions in the now withdrawn Circular 03/2009¹. This point notwithstanding, although the Council officer's report does not make specific mention of national policies in respect of employment generating developments, it is clear on its findings in respect of the substantive issues relating to the proposed use and the reasons for refusal make reference to the provisions of the National Planning Policy Framework. The relevant policies in the development plan cited in the reasons for refusal have not been superseded by national policy which advocates an entirely different approach to these matters and there is, therefore, nothing which would indicate that national policy has been blatantly disregarded by the Council.
 9. Drawing the above strands together, the Council has not prevented or delayed development which should clearly have been permitted and has not acted unreasonably in respect of the matters referred to in the first and second reasons for refusal, even though I have ultimately found against the Council in respect of reason for refusal number 2.
 10. In respect of drainage arrangements for the site, whilst no specific information was submitted with the planning application, the site is within an existing urban area where a mains drainage system exists. There is nothing in the evidence that suggests there is an existing capacity issue in this system or that suitable oil/petrol interceptors could not be installed at the site. The Council made no submissions on this matter in their statement of case and elsewhere there is no evidence that drainage matters are so fundamental that they go to the heart of the proposal, and so could not be addressed through a planning condition.
 11. Whilst I accept that the Council were looking at the proposal as a whole, I conclude that it was unreasonable to have refused planning permission on this ground and that the appellant has incurred unnecessary expense in having to pursue this reason for refusal as part of the appeal.

¹ DCLG Circular 03/2009 - Costs Awards In Appeals And Other Planning Proceedings, April 2009

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated in respect of the third reason for refusal and that a partial award of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Gateshead Council shall pay to Mr Sukhwinder Dhillon of Dhillon Property Group, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and presenting the case in respect of drainage matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Gateshead Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

John Dowsett

INSPECTOR

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
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
DC/18/00486/FUL	Site At Rear Of Garage And Substation Adj Meadow View, Woodside, Ryton	Erection of two bedroom dormer sustainable eco home	Written	Appeal in Progress
DC/18/00614/COU	Land Adjacent Rose Cottage High Street Wrekenton Gateshead NE9 7JS	Change of use from former petrol filling station to hand car wash and car valeting facility (Sui Generis Use)	Written	Appeal Dismissed
DC/18/00727/OUT	Grazing Land At Beda Hills West Of Woodside Walk Rowlands Gill	Erection of four bedroom house	Written	Appeal in Progress
DC/18/00822/FUL	The Dairy South Farm NE11 0ET	Erection of animal shelter (revised application).	Written	Appeal in Progress
DC/18/00958/TPO	Woodlands Derwent Avenue Rowlands Gill NE39 1BZ	Tree works at Woodlands, Derwent Avenue, Rowlands Gill	Written	Appeal in Progress