
Appeal Decision

Site visit made on 19 May 2014

by Claire Victory BA (Hons) BPI MRTPI

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

Decision date: 19 June 2014

Appeal Ref: APP/T2215/A/14/2214664
105 Burnham Road, Dartford Kent DA1 5AZ

- 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 Baljit Gill against the decision of Dartford Borough Council.
 - The application Ref DA/13/01030/COU, dated 25 July 2013, was refused by notice dated 24 October 2013.
 - The development proposed was described in the application form as "double garage change of use to workshop, copys of original plans attached and letters".
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of detached garage to vehicle repair workshop at 105 Burnham Road, Dartford DA1 5AZ in accordance with the terms of the application, Ref DA/13/01030/COU, dated 25 July 2013, subject to the conditions in the following schedule.

Preliminary Matters

2. The development was described on the application form as "double garage change of use to workshop, copys of original plans attached and letters" but the Council and appellant are now describing the proposal as "change of use of detached garage to vehicle repair workshop (retrospective application)". Apart from the built-in vehicle inspection pit inside the garage, there were no indications on my site visit that the change of use had commenced. However, I have based my description of development in the decision on the revised wording (removing the reference to retrospective application as this does not constitute development) as it is more precise than that on the planning application form.
3. I have had regard to the Government's planning practice guidance, published on 6 March 2014, in reaching my decision, but in light of the facts of this case it has not altered my conclusions.

Main Issues

4. The main issues in the appeal are:
 - The effect of the development on the living conditions of neighbouring occupiers, with regard to noise and disturbance; and
 - The effect of the development on highway safety.

Reasons

Living conditions of neighbouring occupiers

5. The appeal property is a detached double garage within the rear yard of No 105. The garage shares a vehicle access with Nos 101 and 103 Burnham Road, which is entered from Chatsworth Road. Burnham Road is a distributor road and No 105 forms part of a small parade of shops. Chatsworth Road is predominantly residential in character, with a primary school at the opposite end of the road to the appeal site.
6. Planning permission was granted (ref. DA/12/00689/FUL) for the erection of the garage for storage ancillary to the commercial use of No 105. The proposal is to change the use to a vehicle repair workshop. The application form stated there would be no employees and the supporting letter referred to the proposed use as a sole trader. However, there is potential for more than one mechanic to use the garage at any one time, as photographs submitted by the Council and my observations on site indicate that the garage is capable of accommodating two cars.
7. The nature of vehicle repairs would likely involve noise generating activities which in close proximity to residential dwellings could give rise to disturbance during works to vehicles and when cars arrive and depart the site, and therefore has the potential to have an unacceptable impact on residents living nearby.
8. It is apparent that the use would be located very close to neighbouring residential accommodation. The appeal property is bounded on the west side by No 2 Chatsworth Road, and to the rear by No 107 Burnham Road, both residential properties. There are also residential properties opposite the site. This is a sensitive relationship and in these circumstances there is a significant risk that neighbours could be subjected to unacceptable levels of noise and disturbance which would harm the living conditions they currently enjoy.
9. The Council's Environmental Health officer noted the location of the garage for a car repair workshop was far from ideal, but considered that subject to certain conditions, as set out in the Council's Delegated Report, the potential harm to neighbouring occupiers from noise and disturbance could be mitigated. However, the effectiveness of such mitigation is uncertain. I acknowledge the view of Council's Environmental Health officer as a consultee, but I have determined this appeal on the basis of all the evidence before me including my observations at the site visit. In the absence of specific noise evidence from the appellant, and given the close proximity of residential properties to the garage, on the balance of available evidence it is by no means certain, even with the implementation of the mitigation measures that could be imposed by condition, that the amenity of adjoining occupiers could be adequately protected from noise and disturbance arising from the proposed use, including the location of any exhaust extraction equipment.
10. The appellant cites the economic benefits of the proposal, including local job creation; its small scale nature, and the mixed use character in the vicinity of the appeal site, and asserts that any noise and disturbance impacts can be dealt with adequately by condition. I acknowledge that the National Planning Policy Framework (the Framework) gives significant weight to economic growth, but this must be balanced with social and environmental objectives,

- including the need to secure a good standard of amenity of all existing and future occupants of land and buildings. Notwithstanding the small parade of commercial uses, the appeal site is located in a predominantly residential area, and the mix of uses should not prejudice the living conditions of its residents.
11. The appellant has also referred to a number of other vehicle workshops, which he contends provide a precedent for the proposed use. Dartford Tyres has vehicle accesses from both Burnham Road and Chatsworth Road, but the forecourt where repairs are undertaken fronts Burnham Road, and noise generated by the use would be experienced in the context of background traffic noise from vehicles on Burnham Road. I am not aware of the full details of that development, and in any case, the existence of an established industrial use within a predominantly residential area would not justify a new development which may create additional noise and disturbance to the detriment of the living conditions of adjoining occupiers. I note the appellant's point about the presence of a tyre storage area to the rear of these premises, but this is fenced off and not visible from Chatsworth Road. The other businesses referred to by the appellant are within industrial areas and some distance from residential properties, and so I do not consider they are directly comparable with the appeal proposal.
 12. The evidence is not conclusive and I have therefore considered, with due regard to the Framework and the Government's Planning policy guidance, the imposition of a condition to restrict the grant of planning permission to a period of 18 months. This would enable the mitigation measures referred to above to be implemented as necessary and to ascertain if a permanent change of use would cause unacceptable material harm in respect of the first main issue.
 13. The appellant does not support the inclusion of such a condition, on the basis that a temporary permission would impede business growth, contrary to the Framework, and that the Council has powers to restrain any breach of condition, so the 'benefit of doubt' should be granted. Nevertheless, for the above reasons I consider a condition to limit the grant of planning permission to 18 months is necessary to protect the living conditions of the occupiers of neighbouring dwellings.
 14. I conclude that there is the potential for the proposal to cause harm to the reasonable living conditions of nearby residents. However, there is insufficient clear evidence that the proposal would likely harm the living conditions of neighbouring occupiers, with regard to noise and disturbance such that dismissal of the appeal is warranted at this time. Accordingly, subject to certain conditions, and a reasonable period in which the effect of the proposal can be assessed I conclude that the current scheme would not conflict with Local Plan Policies B1, H12 and E14. These policies seek to ensure that development does not have an adverse effect on the occupants of adjoining land or the amenity of existing residents including through noise, and are broadly consistent with the Framework, which seeks to mitigate and reduce to a minimum adverse impacts on health and quality of life arising from new development, including through the use of conditions, and to avoid noise from giving rise to significant adverse effects. The 'trial period' will enable contemporary and detailed evidence to be obtained and used to determine any scheme to continue the use in the future.

Highway Safety

15. Burnham Road is a main distributor road, with shops and commercial uses as well as residential properties situated along it, while Chatsworth Road is a residential side road, with unrestricted parking. At the time of my site visit (11:00) there was a high demand for on-street parking close to the junction with Burnham Road, with cars parked along both sides of the street, but given the size of the garage it is unlikely that the proposed use would generate a demand for a significant level of car parking that could not be accommodated on Chatsworth Road during the day as there appeared to be capacity for on-street parking further down the road. I accept that the proposed use does not meet the Council's car parking standard of 1 car parking space per two employees plus 4 spaces per service bay, as advised in the Council's Parking Standards Supplementary Planning Document (SPD), but the proposed workshop can only accommodate two cars, and the applicant has stated that there is only one employee, so in practical terms there would be 1 space for the employee and 1 space for a service bay. Consequently I do not consider that harm to highway safety arising from a shortfall of on-site parking has been demonstrated, albeit such effects can be monitored over the 18 month period to be permitted.
16. Turning to the perceived risk to pedestrians from the proposed development, Chatsworth Road is likely to be used as a route for children walking to and from the Holy Trinity Primary and Junior School, but there are a number of existing vehicle crossovers along Chatsworth Road including the one to the appeal property. The Highways Authority did not consider highway safety would be prejudiced by the proposal, and I agree that there is no clear evidence to suggest the use of the garage for vehicle repairs would result in a materially greater number of vehicle movements than its use for storage in association with the commercial premises. As such there would be no material harm to highway safety in terms of conflict with pedestrians.
17. For the above reasons and based on the currently available evidence, I conclude that the development would not cause material harm to highway safety. Thus it would not conflict with the transport objectives of LP Policies B1, H12, T19 and T23. These policies are consistent with the Framework insofar as it seeks to ensure developments minimise conflicts between traffic and cyclists or pedestrians, and safe and suitable access can be achieved for all people.

Other Matters

18. A number of third parties expressed concerns regarding the hours of operation whilst the garage was operating as a car repair workshop without planning permission. The appellant refutes any suggestion that he would not comply with any conditions imposed, and I acknowledge that the likelihood or otherwise of the appellant complying with any conditions that might be imposed should the appeal be allowed has had no bearing on my determination of the appeal.
19. The appellant suggested a personal permission might be granted to restrict the use of the garage to his family but such permissions would only be suitable in exceptional circumstances and I have no evidence before me to indicate that the circumstances of this appeal are so exceptional that a personal permission would be justified.

Conditions and Conclusion

20. I have found that there is no evidence that the scheme would cause material harm to highway safety. I have also found that, subject to the conditions in the following schedule, there is insufficient evidence that the proposed use would cause material harm to the living conditions of neighbouring occupiers with regard to noise and disturbance albeit the potential remains to the extent that a temporary permission is warranted.
21. In addition to the standard commencement condition (1), I have imposed a condition (2) limiting the planning permission to a period of 18 calendar months from the date of commencement of development. This is necessary as the development is only acceptable subject to demonstration that the proposed noise attenuation measures can satisfactorily mitigate noise and disturbance to adjoining occupiers. I have also specified the approved plans for the avoidance of doubt (3).
22. I shall impose conditions requiring an acoustic assessment (4) and details of exhaust extraction equipment (5) to be submitted to and agreed in writing by the local authority to protect the amenity of adjoining occupiers. I shall also require the doors and windows of the building to be closed at all times the building is in use except for the ingress and egress by vehicles or personnel (6), a restriction on work outside the building (7), restriction on hours of operation (8), and a condition limiting the use to that applied for (9) for the avoidance of doubt, again in the interests of residential amenity. These would meet the relevant 'tests' set out in the Framework.
23. The Council's Environmental Health officer requested a condition requiring details of commercial waste collection to be submitted to the local planning authority and agreed in writing, but from my site visit I am satisfied the condition is unnecessary as there is sufficient space in the rear yard of No 105 to store commercial waste arising from the proposed use, so I shall not impose it.
24. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Claire Victory

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: land registry plan; layout plan; drawing ref. 10112B; covering letter from applicant dated 5 August 2013.
- 3) The permission hereby granted shall endure for a period of 18 calendar months from the date of commencement of development. Written notification of that date shall be given to the local planning authority no later than 14 days after the event, and the use hereby permitted shall be discontinued on or before 18 calendar months from that date in accordance with a scheme of work submitted to and approved by the local planning authority.
- 4) Before the building can be used for the use hereby permitted, the applicant must undertake an acoustic assessment of the activities undertaken and shall submit a scheme of acoustic protection for the building. The assessment recommendations including any acoustic protection measures required should be set out in a written report to be agreed in writing by the local planning authority. The measures shall then be implemented in their entirety in accordance with a timescale to be agreed in writing with the local planning authority and retained thereafter.
- 5) Dedicated vehicle exhaust extraction equipment shall be provided to eliminate the need for the opening of the doors when vehicle engines are running within the building. Details of the extraction equipment shall be submitted to and approved in writing by the local planning authority prior to the commencement of the use. The equipment shall be installed in accordance with the approved details prior to the commencement of the use and retained thereafter.
- 6) The doors and windows shall be closed at all times that the building is in use except for the ingress and egress by vehicles or personnel.
- 7) The use hereby permitted is restricted to the confines of the building and no work shall be carried out outside it.
- 8) The use hereby approved shall operate only between the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 Saturdays with no work on Sundays or public holidays.
- 9) For the period hereby permitted in condition 3, the premises shall be used for a vehicle repair workshop and for no other purpose.