

Appeal Decision

Site visit made on 5 June 2017

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

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

Decision date: 22nd June 2017

Appeal Ref: APP/R3325/W/17/3168645

Public Conveniences, Carrington Way, Wincanton, Somerset BA 99JS

- 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 Jason Brown against the decision of South Somerset District Council.
 - The application Ref 16/01243/FUL, dated 7 March 2016, was refused by notice dated 9 August 2016.
 - The development proposed is the change of use with alterations and extension of redundant public conveniences to fish restaurant/takeaway.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use with alterations and extension of redundant public conveniences to fish restaurant/takeaway at Public Conveniences, Carrington Way, Wincanton, Somerset BA 99JS in accordance with the terms of the application, Ref 16/01243/FUL, dated 7 March 2016, subject to the conditions set out in the Annex to this decision.

Procedural matter

2. The application was amended during its consideration by the Council and I shall take the amended plans into account in my decision.

Main Issue

3. The effect of the proposal on the living conditions of the occupiers of Homecanton House, with particular regard to noise, disturbance and odour.

Reasons

4. The appeal site is occupied by a detached brick-built public convenience located in a public car park, close to its eastern boundary. The appellant wishes to operate a high-end, sustainably sourced fish restaurant and takeaway, although I am mindful of the fact that if permitted it would allow other types of restaurant/takeaway to operate there in the future.
 5. The appeal site abuts the boundary of Homecanton House, a three storey purpose built block providing accommodation for the elderly. At the closest the extended building would be about 10m from the building, but some 22m away from the entrance of the premises.
 6. The part of Homecanton House nearest to the appeal site faces the back and side of a Co-Op supermarket, and an access road leading to a private car park
-

at the side of Homecanton House and a service area at the rear of the Co-Op and other properties on High Street. It is also close to the public car park. Whilst I have taken into account the likelihood that residents of Homecanton House are likely to spend more time in their homes than might be expected of other types of housing, I also recognise that it is on the edge of a town centre where residents could not reasonably expect the same levels of peace and quiet that might be experienced in a more suburban location.

7. The car park serves the town centre and, at the time of my visit, was very busy, and for some time, all the spaces were taken, with drivers cruising the car park looking for spaces. The lawful use of the site as a public convenience would also have generated some pedestrian traffic. During the day, I consider that the additional footfall generated by customers, or noise of patrons in the outdoor seating area, would make little difference to the background hubbub of what is a part of a bustling commercial area.
8. I consider it likely that during the evening, shopping activity would be less, and ambient noise levels would be lower. Even so, it is not proposed to open later than the Co-Op, and thus traffic to and from the restaurant would mix with that from people visiting the supermarket and other facilities in the town. Hours of opening could be restricted by the imposition of a condition. The restaurant would have a small external seating area, but this would be sited on the far side of the building away from Homecanton House, and I consider that the presence of the building would attenuate much of the sound which might come from this area. I therefore consider that residents of the block would not be significantly affected by noise or disturbance.
9. In respect of odour, full details of odour and fume extraction have not been provided. However, the food preparation area is shown as being located on the side of the building furthest from Homecanton House. Any fume extraction flue would terminate well below the height of Homecanton House. Even so, it would be located well away from the accommodation, and away from the direction of the prevailing wind. The site is surrounded by an extensive open area in which residual odours could dissipate.
10. Modern fume and odour control systems can be extremely effective in minimising smell from cooking. The appellant has referred me to the nearby Summer Palace Chinese Takeaway in High Street, the rear of which is close to the service area adjacent Homecanton House. The appellant says that there is no ventilation ducting at the rear of the premises, but I noted on my visit that there is a black square profile flue on the east-facing roof slope of the rear annex, well below the height of the window in the adjoining premises, and below the upper floor of Homecanton House. Even so, in a more congested environment, there have been no reports referred to me of nuisance arising from odour from this establishment, and I see no reason why the better located appeal site would result in clear harm.
11. In my experience, the effectiveness of odour and fume control can be dependent on the extent to which the system is maintained in accordance with the manufacturer's recommendations. The Council has suggested the imposition of a condition to require a scheme to be submitted and implemented for treating the fumes and odours, but I consider that a further requirement to ensure that it is adequately maintained is necessary to ensure that nearby residents' living conditions are protected.

12. I therefore conclude on the main issue that the proposal would not result in material harm to the living conditions of the occupiers of Homecanton House, with particular regard to noise, disturbance and odour. Nor would it conflict with Policies EQ2 or EQ7 of the South Somerset Local Plan 2006-2028, both of which aim to protect neighbours' amenity.

Other matters

13. I have had regard to the risk of customers' cars or delivery vehicles using the access road to Homecanton House for parking, exacerbating the current reported problems experienced by residents. However, the access road is a private one, and it is for the landowners to control who parks there and the failure to exercise effective control is not a reason to prevent development. The small size of the premises is unlikely to result in a substantial number of deliveries, or ones where loading and unloading would take a long time, and in my view, would be unlikely to lead to significant traffic or other problems.
14. Whilst some poorly managed restaurants might fail to store or dispose of food waste properly, thereby attracting rodents, there are now stringent hygiene regulations to deal with such matters, and a regime of regular inspections and enforcement is likely to be able to address such concerns.
15. I recognise that litter can be a problem with takeaways; however, in a commercial environment, some litter can be expected and, in an effort to minimise the problem I shall impose a condition to require that bins be provided, as suggested by the appellants.

Conditions

16. The Council has suggested a number of conditions which I have considered in the light of national guidance. A condition to require the development to be carried out in accordance with the approved plans is needed to achieve certainty. Conditions to require the treatment of fumes and odours, and to control the noise of such treatment, are needed to protect residents' living conditions. Conditions dealing with hours of opening and external lighting are needed for the same reason. A condition to secure the provision of litter bins is needed in the interest of appearance.

Conclusion

17. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR

ANNEX

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the approved plan entitled "As proposed – revised scheme" dated 6 June 2017.
- 3) The use as a takeaway / restaurant development shall not commence until a scheme for treating fumes and odours has been submitted to and approved in writing by the local planning authority and the means of treating the fumes and odours shall be installed and be operational before the development is brought into use or occupied. Thereafter the approved means of treating fumes and odours shall be retained and shall be maintained strictly in accordance with the manufacturer's recommendations.
- 4) No development shall commence until a scheme for the sound insulation of the odour control equipment referred to in the condition set out above has been submitted to and approved in writing by the local planning authority. The measures shall be implemented in strict accordance with the approved details prior to the occupation of the development and shall thereafter be retained as such.
- 5) Prior to the use as a takeaway / restaurant commencing, litter bins shall be provided in accordance with details to be submitted to and approved in writing by the local planning authority. Thereafter, the litter bins shall be made available for use at all times when the premises are open to the public.
- 6) No external lighting shall take place other than as agreed in writing by the local planning authority.
- 7) The use of the site hereby permitted shall not open to customers outside the hours of Monday to Thursday 11.30 hours to 21:00 hours, and Friday and Saturday 11.30 hours to 22:00 hours, and shall open at no time on Sundays and Bank holidays.