

MC/16/1257

Date Received: 17 March, 2016

Location: 96-100 Delce Road, Rochester, ME1 2DH

Proposal: Variation of conditions 03 and 06 of MC/15/1234 to allow pressure washers to be used within the building and the alteration of opening hours from: 09:00 to 18:00 hours Monday to Friday; and 10:00 to 16:00 hours on Saturdays, Sundays and Public / Bank Holidays to 08:00 to 18:00 hours Monday to Friday (inclusive); 09:00 to 16:00 hours on Saturdays, Sundays and Public / Bank Holidays.

Applicant: Mr Sokoli

Agent: Miss Gulacsi Architecture Design Limited The Joiners Shop The Historic Dockyard Chatham Kent ME4 4TZ

Ward Rochester East

Case Officer Chris Butler

Contact Number 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 10 May 2017.

Recommendation - Refusal

- 1 The variation of condition(s) 03 (Hand Car Wash Only and No Use of Pressure Washers) and 06 (Hours of Operation), thus allowing the use of pressure washers on this site and extending the hours of operation of the site, would be in breach of one of the twelve core principles of The Framework which states that planning should: "always seek to secure... a good standard of amenity for all existing and future occupants of land and buildings". By varying these conditions, as sought by the applicant, the development would fail to secure the amenities enjoyed by nearby and adjacent residential properties by failing to have regard to the activity levels occurring at this commercial premises and the resultant impact arising from the noise and spray generated from the use of pressure washers on this site and the extended hours sought. The development would therefore adversely impact on the level of residential amenity occupiers of adjoining and nearby properties could reasonably expect to be able to continue to enjoy. For these reasons this development is also considered to be contrary to saved policy BNE2 of the Medway Local Plan 2003.

Recommendation

Proposal

This proposal seeks the variation of planning conditions 03 (restriction on the use of pressure washers) and 06 (Hours of Operation) of MC/15/1234, which allowed the change of use from a car sales forecourt to a hand car wash facility. By varying these conditions the applicant is seeking to allow the use of pressure washers within a building on site and to extend the opening hours from: 09:00 to 18:00 hours Monday to Friday; and 10:00 to 16:00 hours on Saturdays, Sundays and Public / Bank Holidays to 08:00 to 18:00 hours Monday to Friday (inclusive); 09:00 to 16:00 hours on Saturdays, Sundays and Public / Bank Holidays.

Relevant Planning History

MC/15/1234	Retrospective application for change of use from car sales forecourt to car wash. Decision Approval With Conditions Decided 22 September, 2015
MC/06/2034	Retrospective application for the change of use of rear yard/garden to car parking for car sales Decision Approval with Conditions Decided 11/01/2007

Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties.

The **Environment Agency** has also been consulted, but has not responded.

A petition, of 26 signatures from 17 separate addresses, has been received **objecting** to this proposal stating "...we do not want Delce Car Wash to get permission to use Pressure Washers... and we don't (sic) want longer opening hours."

In addition to the above, **four letters of objection from local residents** have been received raising objection to the proposed variation of these conditions on the following summarised grounds:

- Residential properties back onto the site with less than 1 metre between the site and the boundary of the closest dwelling;
- Noise and disturbance, which is intrusive to local residents and prevents them from sitting in their gardens or opening windows at the rear of their properties. The jet wash wakes residents at 8am on a Sunday morning and such disturbance has been ongoing for almost a year.
- Considerable water mist is generated and prevailing winds blow the water mist into residents' back gardens creating excessively damp conditions. Indeed pedestrians on the public footpath are offered no protection from this water spray which could potentially be contaminated with dirt, bacteria, etc.

- The operators of the site regularly use a pressure washer in contempt and contravention of the planning restrictions previously imposed;
- Longer hours should not be allowed;

In terms of all other issues / comments realised these are considered to be non material planning considerations, including the alleged abusive nature of the site operator. the claim that residents and passers by are afraid of the site operator and the claim that the Police have been called several times.

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003. The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework, 2012 (The Framework) and are considered to conform.

Planning Appraisal

Background

Planning Permission was granted in 2015 for retrospective planning consent for a change of use from car sales forecourt, a sui-generis use as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to a car wash facility, also a sui-generis use as defined by the UCO. In granting that consent the Local Planning Authority imposed six planning conditions. Two of those conditions are subject to this application which seeks to vary those conditions, as set out in the Proposal section above.

This application has arisen as a result of an enforcement investigation being undertaken by the Council, which resulted in Breach of Condition Notices (BCN) being served on the owner/operator of the car wash facility. There is no right of appeal against a BCN and the only two ways to resolve the matter is either: A) Comply with the terms of the BCN; or B) apply to vary the conditions, which are subject to the BCN. Should the application be successful the BCN would then fall away. However, should the application be unsuccessful then the applicant would be able to appeal in the usual way.

The conditions, which are the subject of this submission are condition 03, which limited the use to a hand car wash only and prevented the use of pressure washers, and condition 06 that was imposed to restrict the hours of operation. The wording of Planning Condition 03 is: *"The use hereby approved shall be for a hand car wash only. Pressure washers shall not be used at any time on site for the washing of vehicles."*

The reason for the imposition of that condition was given as: *"In the interests of amenity, in accordance with Policy BNE2 of the Local Plan."*

In terms of Planning Condition 06 the wording of that Condition is: *"The use hereby permitted shall only operate between the hours of 09:00 to 18:00 Mondays to Fridays inclusive and between the hours of 10:00 to 16:00 on Saturdays, Sundays and, Public Holidays unless otherwise agreed in writing by the Local Planning Authority."*

The reason for the imposition of condition 6 was given as: *"To regulate and control the permitted development in the interests of amenity in accordance with Policy BNE2 of the Medway Local Plan 2003."*

Site Description.

This application site is a former car sales site, located within a mixed retail and residential area. The site faces a grass bank located to the east whilst to the west the site is higher than the ground level of the residential properties located to its rear (west side of the application site). To the south is a retail shop, whilst to the north is a retail shop with a residential unit above. The premises to the north is located some 2 metres from the common boundary whilst the facade of the closest residential dwelling located to the rear is some 5 metres from the common boundary.

Planning Condition 03 (Hand Car Washing Only and No Use of Pressure Washers Permitted)

In terms of planning condition 03, which limits the use and seeks to prevent the use of pressure washers, the applicants state that the use of pressure washers are an essential part of the business. They go on to advise that there is a small building on the site and that it is *"...possible to house the washers inside this building during their operation so there is negligible noise impact to surrounding amenities through their (sic) use."*

The applicant refers to the use of pressure washers being an essential part of the business. However, in this submission no assessment of the mechanisms for washing vehicles has been made. There are examples of other car washes within Medway where pressure washers are not used and this leads into question the applicants statement that they are essential to the business. No evidence as to their essential nature to the business operation has been provided.

The building the applicant refers to is only small and not capable of containing a motor car. This being the case, it is clearly not possible to house the whole of the pressure washer within the building during their use, as the hose and pressure washers nozzle/wand has to be located external to the building to enable their use in the operation of washing motor cars. When site visits were undertaken by the Council's Enforcement and Planning Officers, and subsequently by the Council's Environmental Protection Officers it was clear that the hose and nozzle/wand to the pressure washers are being used external to the building and that only the pressure washers pumps are contained within the building. Additionally during the site visit related to this planning application, the door to the building that housed the pressure washer pumps was open and the noise of the pump and the jet of water emanating from the nozzle/wand were clearly audible externally.

Indeed the Council's Environmental Protection Officer in his advise states *"...I observed the existing use of pressure washers, and the enclosed vacuum cleaners. The noise from both the pressure washing and vacuum cleaning was very prominent in comparison to the existing background noise levels. When this is considered in combination with other factors such as intermittency and tonality; this is likely to result*

in a higher noise rating level when considered in accordance with BS4142." The Environmental Protection Officer also advised "For the pressure washers, the noise created is from water striking the vehicles, and from the jet washer nozzles which cannot be mitigated" and "...Given what I witnessed during my visit I object to the variation of conditions 3... as there will still be significant levels of noise created, regardless of whether or not the actual jet washing equipment is located internally, because the jet washing will take place externally."

A noise assessment was sought by the Council, post submission of this planning application. However, there are a number of issues with the assessment that lead to concerns regarding the conclusions reached within it.

Firstly, the acoustic report makes no attempt to assess the use of pressure washers on site, rather it focuses on the use of the vacuum cleaners and their housing.

Secondly, the report authors have not demonstrated how they have established the report represents a "representative period" for noise measurement.

Thirdly, the report was undertaken on a weekday when the carwash was less likely to be busy, as opposed to a weekend period when residential occupiers are more likely to be home and people more likely to take their vehicles to a car wash to be cleaned as they more likely to be home from work, have more free time, etc.;

Fourthly, the report claims that the measurement is "free field", however, this cannot possibly be the case especially in the light of the fact that the sample location is positioned so close to the adjoining building and a fence is positioned between it and the noise generating source.

Finally, BS4142:2014 (The British Standard for methods of rating and assessing industrial noise and commercial sound) gives a method for rating sound from industrial and commercial sources affecting people inside or outside dwellings or premises used for residential purposes. An initial estimate of the significance of the sound from the industrial/commercial nature can be assessed by subtracting the measured background noise level from the rating level (this is the specific sound level of the source with any corrections or penalties for distinctive acoustic characteristics). Typically, the greater the difference, the greater the magnitude of the impact. The Council in its assessment of impact of noise from commercial premises on residential occupiers would, in normal circumstances, look for a difference of at least 10dB below background noise levels. However, even without questioning the validity of the acoustic report submitted by the applicants, as set out above, the table in Section 6 of that acoustic report clearly demonstrates the noise levels only to be 1dB below background noise level is achieved in the current circumstances with the pressure washers partially housed in the small building on site.

Bearing in mind the above it is considered that to vary condition 03, thus allowing the use of pressure washers on this site would be in breach of one of the twelve core principles of The Framework (See Paragraph 17) which states that planning should: always seek to secure... a good standard of amenity for all existing and future occupants of land and buildings. Furthermore the development would fail to secure the amenities enjoyed by nearby and adjacent properties by failing to have regard to the

activity levels occurring at this commercial premises and the resultant impact arising from the noise and spray generated from the use of pressure washers on this site. For these reasons this development is also considered to be contrary to saved policy BNE2 of the Medway Local Plan 2003.

Condition 06 (Hours of Operation)

Planning condition 06 relates to the hours of operation. The original application sought 08:00 until 18:00 hours, 7 days a week including public / bank holidays. However, following consideration of the application and in the light of the advice from the Council's Environmental Protection Section the hours were varied to those specified in condition 06 of MC/15/1234, as detailed above. The reason for this variation in the hours of use was given on the basis that the premises is located in a residential area.

The applicant is seeking to vary the hours by commencing 1 hour earlier each day. This means that on a Monday to Friday operations would commence at 8:00 hours and finish at 18:00 hours, whilst on a Saturday, Sunday or Bank Holiday the use would commence at 09:00 hours and finish at 16:00 hours.

The immediately adjoining businesses operate from 07:15 Hours on a Monday to Saturday, whilst on Sundays and Bank Holidays these uses are either closed or operated at reduced hours. The Delce is also a designated bus route with buses commencing at 06:36 hours and finishing at 22:30 hours on a Monday to Saturday*. However, the bus service is much more restricted on a Sunday or Bank Holidays Service. The Council's Environmental Protection Officer has advised that given what he witnessed during his visit *"...it is my opinion that the current permitted hours are needed to protect the amenity of adjacent residential dwellings."*

*Please note that the 145 bus service, the hours for which are quoted above, is currently suspended in the Delce due to a route diversion.

Bearing the above in mind, whilst, the additional hour in the weekday or Saturday mornings is acceptable due to the other commercial operation working in the vicinity at that time and the fact that the buses are already passing the site at the hours sought for the commencement of the car wash operations, the additional hour on a Sunday and Bank Holiday period is unacceptable. Such extended hours on a Sunday are likely to result in an adverse impact on the amenities of adjoining occupiers, when they are more likely to be at home and impacted by the development in the early hours of a Sunday morning. The potential increase in activity on a Sunday and Bank Holiday would adversely effect the level of residential amenity adjoining occupiers could reasonable expect to be able to continue to enjoy at those times of a Sunday or Bank Holiday periods. This being the case, the variation of condition 06 to the hours sought by the applicant, would be in breach of one of the twelve core principles of The Framework (See Paragraph 17) which states that planning should: *"...always seek to secure... a good standard of amenity for all existing and future occupants of land and buildings."* Furthermore the development would fail to secure the amenities enjoyed by nearby and adjacent properties by failing to have regard to the resultant impact arising from the development on the amenities adjoining residential occupier could reasonably expect to be able to continue to enjoy. For these reasons this development is also considered to be contrary to saved policy BNE2 of the Medway Local Plan

2003.

Local Finance Considerations

None

Conclusions and Reasons for Recommendation

It is considered that to vary conditions 03 and 06, thus allowing the use of pressure washers on this site and extending the hours of operation of the site, would be in breach of one of the twelve core principles of The Framework (See Paragraph 17) which states that planning should: "always seek to secure... a good standard of amenity for all existing and future occupants of land and buildings". Furthermore the development would fail to secure the amenities enjoyed by nearby and adjacent properties by failing to have regard to the activity levels occurring at this commercial premises and the resultant impact arising from the noise and spray generated from the use of pressure washers on this site and the extended hours sought. The development would therefore adversely impact on the level of residential amenity occupiers of adjoining and nearby properties could reasonably expect to be able to enjoy. For these reasons this development is considered to be contrary to saved policy BNE2 of the Medway Local Plan 2003.

The application would normally fall to be determined under delegated powers but has been referred to Committee at the request of the Head of Planning.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>