



Appeal Decision

Site visit made on 31 March 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2021

Appeal Ref: APP/G4240/W/20/3266035

189 Kings Road, Ashton-Under-Lyne OL6 8HD

- 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 Karim Amin against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 20/00841/FUL, dated 27 August 2020, was refused by notice dated 28 October 2020.
 - The application sought planning permission for change of use from rear yard into hand car wash & valeting service without complying with a condition attached to planning permission Ref 19/00879/FUL, dated 13 March 2020.
 - The condition in dispute is No 5 which states that: *The use hereby approved shall not operate outside of the hours of between 1000 to 1600 Monday to Friday and shall not operate at all on Saturdays, Sundays or Bank/Public Holidays.*
 - The reason given for the condition is: *To protect the amenities of occupants of nearby properties/dwelling houses in accordance with UDP policies 1.12 and E6.*
-

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal relates to an area of land to the rear of commercial premises at 187-193 Kings Road. Permission was granted in March 2020 for the use of the site as a hand car wash and valeting service. Condition 5 restricts its hours of operation to between 1000 and 1600 hours Monday to Friday. The reason given for the condition, on the decision notice granting permission for the use, was 'to protect the amenities of occupants of nearby properties/dwelling houses'.
3. The appellant now seeks to vary the wording of Condition 5 to extend the permitted operating hours to 0900 to 1800 hours Monday to Sunday inclusive. The Council's reason for refusing to permit the extended operating hours refers to concerns relating to highway safety.
4. Notwithstanding the differences in the Council's reasons for imposing Condition 5 and those given for refusing to vary it, I must have regard to all relevant material planning considerations. Accordingly, I consider the main issues to be the effects of the proposed change in operating hours on:
 - the safety and convenience of vehicles and pedestrians within the site and its vicinity; and

- the living conditions of the occupants of nearby residential properties with regard to noise and disturbance.

Reasons

Safety and convenience of vehicles and pedestrians within the site and its vicinity

5. Permission was granted in January 2018 for works to 187-193 Kings Road, including a first floor extension to create four flats above the ground floor retail unit¹. The approved layout drawing² shows the provision of 4 parking spaces for those residential units in the north eastern corner of the building's rear yard, close to the junction of Andrew Street and Surrey Street. Those spaces are within the red line site boundary for the subsequently permitted car wash and valeting use which forms the subject of this appeal.
6. The approved site plan for the car wash and valeting use³ shows the provision of two 'car in wash' bays and four 'valeting car park' bays in the western part of the site. The permission for the car wash and valeting use is subject to a condition requiring those car parking spaces to be laid out and retained.
7. The approved car wash and valet parking bays shown on that approved site plan are in a different part of the site to the parking spaces for the flats permitted in January 2018. However, the site is relatively constrained in its size and layout and, based on the drawings before me and my own observations of the site, I cannot be certain that there would be adequate space between the two sets of parking bays for residents of the flats to easily manoeuvre into or out of their parking spaces if the car wash and/or valeting bays were in use.
8. Consequently, based on the evidence before me and my own observations, I consider it likely that residents of the flats may need to carry out complex and potentially hazardous turning manoeuvres to get into or out of their parking spaces if the car wash and/or valeting bays were occupied. Alternatively, it is possible that residents may be unable to gain access to their parking spaces because of vehicles parked in, or manoeuvring into or out of, the car wash and valet bays. In such circumstances, residents may have to wait in their vehicles at the site entrance or on Andrew Street for vehicles to leave the car wash or valet bays before they could access their parking spaces, potentially causing an obstruction at the site entrance and leading to queues on Andrew Street.
9. Whilst I note the size of the flats and the site's proximity to public transport routes, the possibility of their residents having vehicles cannot be ruled out. Although only a few additional opening hours are proposed on weekdays, those extended periods would include the times of day when residents of the flats would be most likely to be entering or leaving the parking spaces within the site, particularly during the late afternoon when they would be likely to be returning from work. The extended opening hours would also include weekends when residents would be likely to be coming and going.
10. The extended opening times would also include the periods when the car wash and valeting uses would be likely to be at their busiest, including after working hours on a weekday and during weekends. I have had regard to customer

¹ Planning permission reference: 17/00625/FUL

² Drawing number: 499.02A

³ Proposed Layout drawing number: 1565 Page 2/3, listed on the decision notice for application 19/00879/FUL as 'Proposed site plan, mobile acoustic screens detail and staff room and machinery details plan (drawing no. 1565 Page 2/3 (received 12 March 2020))'.

counts recorded on two days when the car wash was open in the summer of 2020. However, as those counts did not include those peak weekday hours or weekend times I cannot be certain that they accurately reflect likely customer numbers during the extended operating periods proposed, thus limiting the weight I afford to those figures.

11. Given the above, I consider that extending the operating hours of the car wash and valet service to include those peak weekday times and weekends would lead to an increased risk of conflict between the use of the commercial and residential parking areas within the site. Given its constrained size, there would thus be an unacceptable likelihood of hazardous vehicle movements occurring within the site, to the detriment of the safety of drivers and pedestrians using the site including staff and customers of the car wash and valet business and residents of the flats.
12. As the extended operating hours would be likely to encompass some of the car wash and valet business's busiest periods, there is also a greater chance that residents returning home during those times would have to wait at the site entrance or on Andrew Street for customers to leave before they could access their parking spaces. Extending the operating hours to include those periods would therefore also increase the likelihood of vehicles queuing on Andrew Street to access the site. Such instances may be of limited duration. However, as well as providing access to and from nearby Kings Road, Andrew Street also provides access to a number of parking bays opposite the site, close to the nearby children's nursery and commercial units. Even a relatively small number of vehicles queuing on Andrew Street during those peak periods could potentially lead to hazard or inconvenience to other road users on that adjacent street, including pedestrians.
13. The site entrance on Andrew Street is quite near the junction of Andrew Street and Kings Road, which itself is very close to the signalised junction of Kings Road and Queens Road (the B6194). I have no details before me regarding the operation of those junctions or existing traffic flows through them. However, in the absence of compelling evidence to indicate otherwise, I cannot rule out the possibility that even a small number of additional vehicles waiting on Andrew Street to access the site at peak times could also have implications for the free and safe movement of vehicles through and around those nearby junctions.
14. Surrounding streets could also experience relatively high levels of traffic when matches or other events were taking place at Ashton United football ground to the rear of the site. Queuing traffic on Andrew Street could therefore also present a hazard or obstacle to the free and safe movement of vehicles or pedestrians at such times, including on a weekend.
15. Therefore, even if sufficient parking was provided within the site for both the residential and commercial uses, from the evidence before me and having regard to the size and layout of the site and the practicalities of accessing those spaces, I find that the extended opening hours would unacceptably increase the risk of harm to vehicle and pedestrian safety or obstruction to the free and safe flow of traffic.
16. I therefore conclude that the proposed change in operating hours would have an adverse effect on the safety and convenience of vehicles and pedestrians within the site and its vicinity. It would conflict with Policy E6 of the Tameside

Unitary Development Plan Written Statement (the UDP) which requires employment development to have suitable arrangements for parking and access to and from the highway with no unacceptable impact on the surrounding highway network. It would also conflict with the National Planning Policy Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Condition 5 is therefore reasonable and necessary having regard to the safety and convenience of vehicles and pedestrians within the site and its vicinity.

Living conditions

17. The extended operating hours would not include periods very early in the morning or late in the evening. The site is near a busy main road and other commercial properties. Levels of vehicle and pedestrian activity in the vicinity are therefore likely to be relatively high during the day, including during those periods when the extended operating hours are proposed. In that context, the extended operating hours would not lead to a significant or adverse increase in the levels of noise or disturbance experienced by nearby residents.
18. Consequently, the proposed change in opening hours would not have an adverse effect on the living conditions of the occupants of nearby residential properties with regard to noise or disturbance. It would therefore not conflict with Policies 1.12 or E6 of the UDP insofar as they seek to ensure that employment developments have no unacceptable impact on residential amenity.

Other Matters

19. The extended operating hours proposed may not be unusual for a car wash and valet business. However, the specific circumstances in this case are such that the extended hours would present an unacceptable risk to highway safety for the reasons given.
20. The car wash and valet business would provide a source of employment and a service for local residents. I have been advised that the permitted opening hours present a constraint to the appellant's business, and recognise the effects that the Covid-19 pandemic is likely to have had on its establishment and operation. However, those matters do not alter or outweigh my conclusions regarding the harm that I have identified, based on the evidence before me.

Conclusion

21. The extended operating hours proposed would not have adverse implications for the living conditions of nearby residents. However, for the reasons given I conclude that the extended hours would have an unacceptable impact on highway safety. Condition 5 is therefore necessary and reasonable and I conclude that the appeal should be dismissed.

Jillian Rann
INSPECTOR