

## **OFFICER REPORT FOR COMMITTEE**

**DATE: 16/09/2020**

**P/20/0656/VC  
MR A WELLS**

**PORTCHESTER EAST  
AGENT: MR ROBERT TUTTON**

**REMOVAL OF CONDITION 6: (LIMITING USE OF GARAGE) OF APPROVED  
PLANNING P/09/0797/FP – ERECTION OF DETACHED DOUBLE GARAGE**

**84 MERTON AVENUE, PORTCHESTER, FAREHAM, PO16 9NH**

### ***Report By***

Jon Snook – Direct Dial 01329 824703

#### **1.0 *Introduction***

- 1.1 The planning application is being brought before Planning Committee due to the Local Planning Authority receiving 35 letters of support which oppose the recommendation of the Planning Officer. In total there were 62 representations with regard to this planning application.
- 1.2 A separate planning application has been submitted for a change of use of part of this same property to allow a takeaway coffee shop to operate on a temporary basis for a year (reference P/20/0811/CU). That application is reported for consideration by Members elsewhere on this Planning Committee agenda.

#### **2.0 *Site Description***

- 2.1 The site consists of a semi-detached chalet bungalow set on the western side of Merton Avenue. The application site occupies a corner plot with the southern boundary adjoining Alton Grove. The property has a detached double garage which is located at the end of the rear garden. The detached garage is a distance of 1.1 metres from the western boundary which adjoins the neighbouring property of 5 Alton Grove. The detached garage has direct access onto Alton Grove with a partial dropped kerb providing access to the road. The garage does not benefit from a driveway.
- 2.2 The immediate area of Merton Avenue and Alton Grove is a pleasant residential area comprising of a mixture of both bungalows and chalet bungalows. A feature of Alton Grove is the large public open green space which lies to the south of the road and adjoins the Portchester foreshore. The public open space lies opposite 5 to 27 Alton Grove and the entrance to the detached double garage located at the rear of 84 Merton Avenue.

2.3 The public open green space in Alton Grove is used for recreational purposes and for access to the Portchester foreshore where there is a public footpath stretching along the coastline.

### **3.0 Description of Proposal**

3.1 The planning application has been made for the removal of Condition 6 imposed on planning permission P/09/0797/FP in November 2009.

3.2 That condition reads as follows:

*The use of the garage hereby permitted shall be limited to purposes incidental to the enjoyment of the dwelling house and shall not be used for any business, industrial or commercial purposes whatsoever.*

*REASON: To protect the residential amenities of occupiers of nearby residential properties; in the interests of highway safety; in accordance with Policy DG1 of the Fareham Borough Local Plan Review.*

3.3 The application for the removal of the condition has been made on the basis of two grounds: -

- That the Officer Report to the Planning Committee did not mention the requirement for Condition 6 and therefore the condition was not invited or recorded from the outset;
- That the applicants are minded to open a takeaway coffee shop. It is submitted that if the use of the permitted garage for a commercial purpose would constitute a material change that required planning permission under primary legislation, Condition 6 was not needed. Paragraph 55 of the National Planning Policy Framework 2019 asserts that “*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.*” The imposition of Condition 6 was unnecessary from the outset, so it is *ultra vires* and should be removed.

3.4 As noted in the introduction to this report, a separate planning application proposing a change of use of part of the garage to allow its temporary use as a takeaway coffee shop is included elsewhere on this Planning Committee agenda.

### **4.0 Policies**

4.1 The following policies apply to this application:

#### **Adopted Fareham Borough Core Strategy**

CS5 – Transport Strategy and Infrastructure  
CS17 – High Quality Design

**Adopted Development Sites and Policies**

DSP2 – Environmental Impact

DSP3 – Impact on Living Conditions

**5.0 Relevant Planning History**

5.1 The following planning history is relevant:

<b>P/09/0528/FP</b>	(A) ERECTION OF 1.8 METRE FENCE ALONG SOUTHERN BOUNDARY; AND (B) ERECTION OF DOUBLE GARAGE
PART PERMISSION	13/09/09
<b>P/09/0797/FP</b>	ERECTION OF DETACHED DOUBLE GARAGE
APPROVED	17/11/09
<b>P/10/0035/FP</b>	ERECTION OF TWO STOREY SIDE EXTENSION, SINGLE STOREY REAR EXTENSION AND PROVISION OF FRONT & REAR DORMERS
REFUSED	11/03/10
<b>P/10/0220/FP</b>	ERECTION OF SINGLE STOREY REAR EXTENSION, TWO STOREY SIDE EXTENSION WITH SIDE ROOFLIGHT AND ALTERATIONS TO ROOF INCLUDING FRONT AND REAR DORMERS
APPROVED	05/05/10
<b>P/17/0126/FP</b>	ADDITION OF A BARN-HIPPED ROOF OVER EXISTING GARAGE AND CHANGE OF USE TO A ONE BED DWELLING. PROVISION OF A DROPPED KERB.
WITHDRAWN	17/03/17
<b>P/17/0943/FP</b>	PROPOSED CONSTRUCTION OF A BARN-HIPPED PITCHED ROOF OVER DETACHED BUILDING
REFUSED	11/10/17
<b>P/20/0811/CU</b>	TEMPORARY CONSENT FOR A TAKEAWAY COFFEE SHOP
PENDING	

## **6.0 Representations**

6.1 There have been 62 representations about this planning application and a summary of the representations are as follows: -

Out of the 62 representations received:

- 35 were in favour of a coffee shop and removal of the condition;
- 27 were not in favour of the removal of the condition

Out of the 62 representations received:

- 18 representations were made from residents of Alton Grove with 9 residents in favour and 9 residents against removal of the condition;
- 3 residents of Grove Avenue made representations with 1 supporting and two against the removal of the condition;
- 6 residents of Merton Avenue made representations with 4 supporting the removal of the condition and 2 against the removal;
- 35 representations were made from individuals living outside of the immediate area, some as far as Banbury, Basingstoke and Portsmouth. Many of these representations were from individuals who identified themselves in their comments as dog walkers

The following is a summary of the material planning considerations raised in the comments that have been received: -

### Opposing the application

- The garage is adjacent to a neighbour's driveway, so queues for the kiosk could block the pavement and access to the neighbour's driveway.
- The road the garage is located on, only has a single pavement on one side which I envisage will be made difficult to navigate with patrons blocking it forcing people with buggies, wheelchairs, mobility scooters and children to walk in the road.
- There is no requirement for a coffee/ice cream kiosk within the immediate area as there are four other food and drink establishments along the shoreline.
- A cafe/food kiosk will certainly result in a significant rise in litter in an area where there are no public bins.
- The coffee machine within the garage/kiosk is particularly loud and can be heard from within our property, plus several local gardens and also from the edge of the shore itself.
- The additional noise of queuing customers, conversations between staff and customers will create excess noise pollution, again detracting from the quiet, residential road and preventing residents from enjoying their own gardens.

- The noise and physical disruption associated with granting the application will I believe have a significantly adverse impact on local residents.
- That a residential area should not be used for such a business.
- The business would be out of character of the area.
- That there will be an increase in traffic with additional vehicle movements and cause parking issues.
- The properties in the road have modest parking space and off-street parking is limited, the business will generate traffic and the requirement for additional parking.
- Alton Grove is a very narrow street and there will be an increase in anti-social behaviour.
- This could set a worrying precedent for anyone with a garage or spare land to convert it to a retail unit and then try and retrospectively seek permission.
- With a previous application being rejected to convert the garage into a residential dwelling, it is astonishing to think an application for conversion to a commercial property would fare any better.

#### Supporting the application

- The opening of a snack bar would be a welcome to all the different people that are now using the shoreline.
- The takeaway coffee shop will benefit the area.
- The opening of a takeaway coffee shop would be welcomed by walkers.
- It would be a welcome space for dog walkers to stop to get a coffee.
- It will be a boost to local tourism.
- No shortage of bins along the shore walk.
- It will support local businesses.
- I can't see it having any affect to the parking that Alton Grove already has to offer.

## **7.0 Consultations**

None

## **8.0 Planning Considerations**

8.1 The following matters represent the key material planning considerations which would need to be assessed to determine the suitability of the development proposal. The key issues comprise:

- a) Whether the planning condition is necessary
- b) Impact upon living conditions of neighbouring residents
- c) Highway safety

### **a) Whether the planning condition is necessary**

- 8.2 It is important from the outset to stress that this application for the removal of condition 6 (P/09/0797/FP) is not an application for the change of use of the detached double garage. However, the applicants have been clear in their intention to open a takeaway coffee shop. A separate planning application elsewhere on this Planning Committee agenda relates.
- 8.3 The existing planning condition 6 (P/09/0797/FP) restricts the use of the detached double garage to those purposes that are incidental to the enjoyment of the dwelling house at 84 Merton Avenue. Specifically, it does not permit the use of the garage for any business, industrial or commercial purposes whatsoever.
- 8.4 Paragraph 55 of the National Planning Policy Framework 2019 (NPPF) states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification. The Planning Practice Guidance re-enforces the approach that Local Authorities should follow when using planning conditions, making reference to the tests laid out within NPPF Paragraph 55.
- 8.5 The applicant's case is based on there being no need for the planning condition. They contend that, because they have been advised that their intended use of the garage as a takeaway coffee shop would be a material change of use which would require planning permission in any case, there is no need for the restrictions imposed by condition 6.
- 8.6 It is important to recognise that not all business uses require an application for a change of use as some operations are not considered to be a material change of use which would require such an application. Therefore, condition

6 (P/09/0797/FP) is considered to be necessary in order to maintain planning control upon the use of the garage.

- 8.7 The removal of condition 6 would provide the opportunity for the owner of the property to operate any business from the garage provided such a use was ancillary to the main use of the property as a dwellinghouse. Whilst the Local Planning Authority would still require a planning application for a business use which was considered to be a material change of use there would be no requirement for the householder to apply for planning permission for a business which was not considered to be a material change of use. The implication of the removal of this condition would therefore open up the use of the garage for a large variety of purposes such as, but not limited to, child minding, a hairdressing or beauty salon, a commercial workshop or a commercial office provided the use was ancillary in nature.
- 8.8 The immediate surrounding area of the application site is one used for residential purposes with a distinct style of properties consisting of mainly bungalows and chalet bungalows. It is considered that the area is a sought after location for homeowners to enjoy the benefits of a peaceful location, whilst sharing the wider recreational facilities with visitors to the green and Portchester shoreline. The following paragraphs consider two key considerations given in the reasons for imposing the condition, namely the impact on the living conditions of neighbours and highway safety.

**b) Impact upon living conditions of neighbouring residents**

- 8.9 The detached garage is located on the western boundary of the application site some 27 metres in distance away from the rear wall of the dwelling at 84 Merton Avenue. The garage is 1.1 metre away from the boundary with 5 Alton Grove with this property being separated by a further 2.4 metres from the boundary which is the width of the driveway. The driveway which leads to 5 Alton Grove is immediately adjacent to the Alton Grove access to the detached garage.
- 8.10 As stated above, the removal of condition 6 (P/09/0797/FP) would enable the ancillary use of the garage, including for any number of potential business uses. The impact of a business use could result in additional noise and disturbance to neighbouring properties from increased visitors on foot to the business, increased vehicle movements to the location of both visitors and deliveries to the detached garage. Due to the close proximity of 5 Alton Grove to the detached garage there is clear potential for a business use, even ancillary in nature, to have a significant detrimental effect on the living conditions of the neighbours. The occupants of other nearby residential properties may also be similarly affected.

8.11 This is not to say that any ancillary business use would be harmful, simply that Officers consider it is important to retain control over ancillary uses for those reasons. With this in mind it is considered that the planning condition serves an important purpose in preventing harm to the living conditions of neighbouring residents.

**c) Highway safety**

8.12 The impact of an ancillary business use may, without any control, be harmful to the safety and convenience of highway users.

8.13 The detached garage is situated on a narrow section of Alton Grove with a pavement on the northern side of the road. There is no pavement on the opposite side of Alton Grove (southern side) with the road immediately adjoining the public open green space. A number of bollards have been erected on the open space to prevent vehicles from mounting the verge. The removal of this condition may result in deliveries to any business operated in the detached garage. It is possible, that the vehicles used for deliveries could range from small vans to much larger lorries. Given this set of circumstances, it is clear that there is the potential for an ancillary use to have a significant detrimental effect on the safe operation of the highway immediately surrounding the application site.

8.14 In addition, the operation of any business from the detached garage may increase visitors and staff member movements to and from the property with an increased demand on the limited parking availability in the area which would thereby place further strain on ensuring the safety of pedestrians and other road users.

8.15 In summary therefore, whilst it cannot be said that all ancillary uses would have a harmful effect in terms of highway safety, the existing condition restricting such uses clearly serves an important purpose in controlling inappropriate and harmful uses from taking place.

**Conclusion**

8.16 Officers have considered the request by the applicant remove condition 6 of P/09/0797/FP. The condition has been assessed against the tests set out in the PPG and NPPF and it has been concluded that the condition complies with those tests. The condition is necessary in order to control inappropriate ancillary uses which might otherwise have unacceptable adverse impacts on the living conditions of neighbours and highway safety in the locality.

**9.0 *Recommendation***

9.1 REFUSE PLANNING PERMISSION



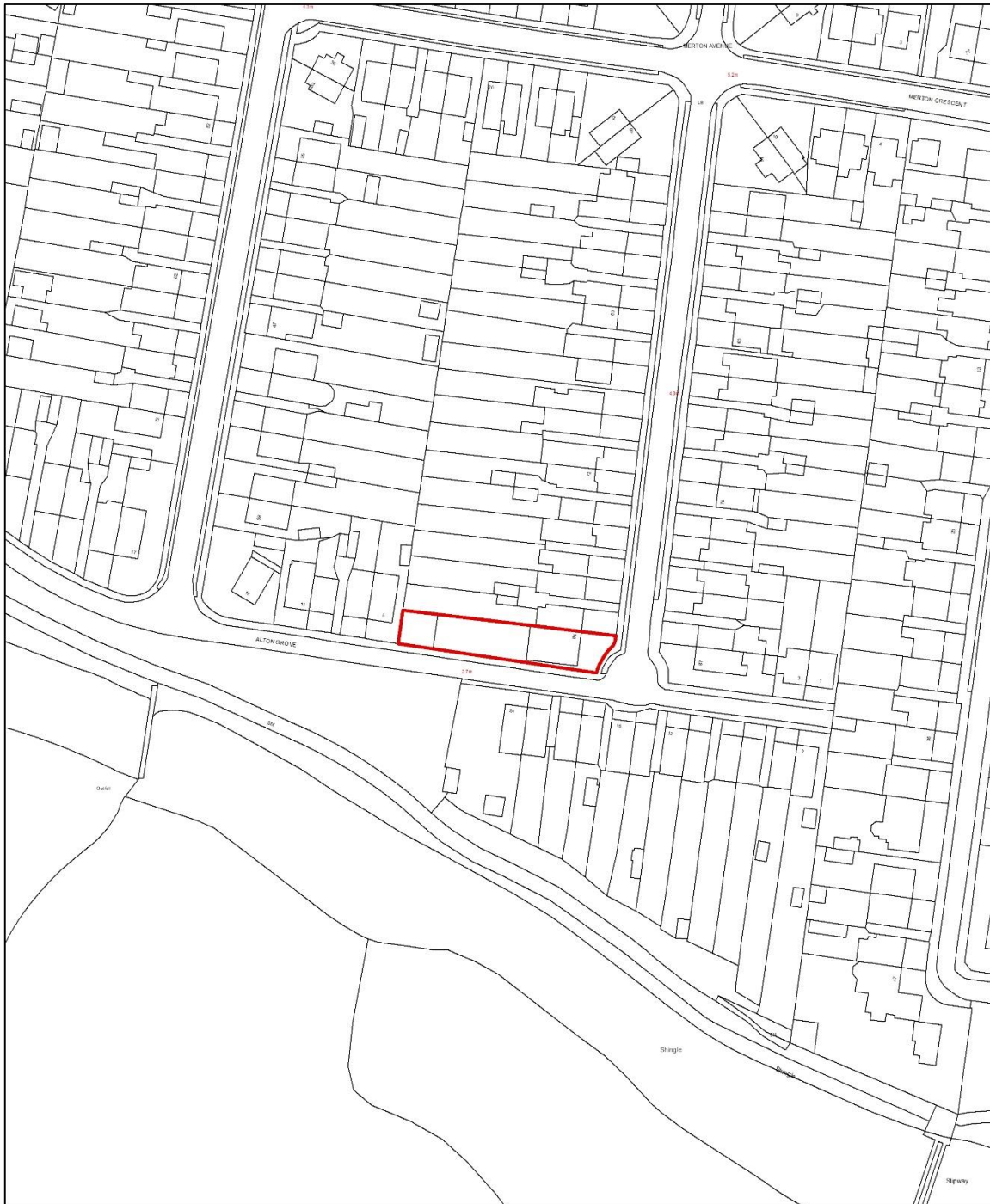
The proposal is contrary to Policies CS5 of the Adopted Fareham Borough Core Strategy 2011 and DSP2 of the Adopted Local Plan Part 2: Development Sites and Policies, and is unacceptable in that the removal of condition 6 of P/09/0797/FP may result in the garage being used for ancillary uses which in turn may harm the living conditions of occupants of nearby residential properties and the safety of highway users.

#### **10.0 *Background Papers***

P/20/0656/VC

# FAREHAM

BOROUGH COUNCIL



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Scale 1:1,250

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