Application Number: ADC/0404/08 Recommendation - REFUSE

Site: Empire Club, 20 Penhill Road, Lancing BN15 8HJ

Proposal: Retention of existing rear smoking shelter and new disabled access ramp

The Application

This is a revised application subsequent to the refusal of a previous application (which included a much larger outside rear seating platform) and a resolution by the Committee to issue an enforcement notice.

These long-established club premises are situated on the south side of the road, with Gardner & Scardifield Ltd builders' merchants yard on the west side and a block of 12 flats on the east side (Pendene Court). The rear part of the site consists of the Club's car park (with spaces for 20 cars) accessed by a 50m long driveway on the east side.
To the rear, the premises back directly onto the end of the very long rear garden of No.11 Roberts Road and also onto 'The Annexe' (No.13) which is very close to the boundary wall, occupying a 'backland' position to the rear of the bungalow at No.12 Roberts Road. To the southwest is the garage compound at the rear of Roberts Lodge flats. To the southeast, is a semi-detached bungalow (No.4 The Grovelands).

On the west side of the rear car park, attached to the rear elevation of the club building, was an enclosed store with roof, accessed only internally from the main club building. In June-July 2007, this was largely demolished, retaining the west side wall and most of the lower halves of the east and south walls, and was converted into an unauthorised smoking shelter (4.2m by 4.4m), with a roof on timber posts (2.7m high). This shelter is open on two sides (above the retained walls about 1m high) and is accessed via a timber ramp from the car park and via the existing (formerly internal) door in the rear wall of the club building. Currently, there is a plastic table and 4 chairs in it, plus a CCTV camera. It is this shelter to which the present application relates.

In December 2007 a previous retrospective application was refused for this rear shelter plus an enlarged seating area (7.4 metres by 4.4 metres) with 5 table benches on raised decking (ADC/0615/07). The ground of refusal was:-

> *"1. The existing covered seating area generates a level of activity and noise disturbance which is detrimental to the residential amenities and quiet enjoyment of the existing properties in the locality, contrary to the policies of the West Sussex Structure Plan (DEV1) and the Adur District Local Plan (AG1, AE16), and the proposed addition of a decked open seating area would further increase disturbance from this site."*

In June 2008, it was resolved to issue an Enforcement Notice requiring the removal of the roof and supporting posts constituting the shelter/covered seating area and also the removal of the seats and substandard access ramp and the cessation of the use of the rear door (formerly an internal door but now external) for access to and from the club building other than for purposes of emergency escape from the building and/or access to and from the building by disabled persons.

e of the notice was delayed as a result of a request by the Club for time to be given ubmit an amended application incorporating a replacement disabled ramp to meet uilding Regulations requirements. The Club Chairperson states that, with the management measures they have implemented (including CCTV) to comply with the Abatement Notice from Environmental Health, disturbance is no longer caused to nearby residents from the use of the shelter (and surprise is expressed about the objections now received in response to notification of the application). She adds that the initial noise problems were largely caused by younger people but this has been dealt with since the shelter was re-opened for use in July 2008. She states that the shelter, which is specifically intended for smoking, is mainly used by senior members and only has 4 plastic chairs and a table. Drinking no longer takes place in it and bar staff can constantly keep watch on its use with the CCTV now installed. Normally, the shelter is not used after 8pm and the rear door is locked, ensuring no late-night noise.
With regard to relocating the shelter to the front, the site is less sheltered and there are still flats in the vicinity, and disabled parking spaces would be lost. There is currently a step and only a portable ramp at the front door.
The application was received in August but could not be registered owing to their agent not having sent a Design & Access Statement. This has now been received.

There are no planning conditions restricting the opening hours of the Empire Club premises but the separate licence restricts the sale of alcohol to 12 noon to 10.30pm on Sundays, to 11pm on Mon-Thurs and to 12 midnight on Fridays and Saturdays (with an additional 20 minutes to finish drinking). It also restricts live music to 8pm-10.30pm Sundays and to 11.30pm on Fridays and Saturdays.

Consultations and Representations

Adur District Council: The Environmental Health Officer does not object but, because of the risk of disturbance to residents at the rear, comments that it is preferred that there should be no areas at the rear of the premises where patrons can congregate comfortably. If permission is granted recommends the imposition of conditions reflecting those in the Abatement Notice served in respect of the smoking shelter (under the Environmental Protection Act 1990) the limitations being:-

- No use of the shelter for drinking, only for smoking;
- No more than 4 seats to be provided at any one time in the shelter;
- No use of the rear door for access to/from the car park unless it is for disabled access or an emergency;
- Provision of management measures to enforce these rules including CCTV and routine staff inspections.

ancing Parish Council: To be reported.

hird Parties: 6 letters have been received from or on behalf of the residents of Flat 3 oberts Lodge (No.8) and No's 10, 11, 12 & 13 Roberts Road (one letter being from lanning consultants DMH Stallard). No's 10 & 11 state no objection.

he others object mainly on grounds of:-

- Noise disturbance including late at night;
- Use of foul and abusive language by some club patrons;
- Large gatherings of people in the car park;
- Smoke pollution from the smokers' cigarettes;
- Loss of privacy.

, letter from DMH (on behalf of the residents of No.13 Roberts Road), which also ncloses a DVD with recordings made between October 2007 and January 2008, states that they have had to endure consistent and unacceptable levels of noise, disturbance and pollution generated by the use of the unauthorised smoking shelter for approaching 18 months. Action must be taken to secure its removal for the future protection of the residential amenities of No.13 and other residents living in close proximity to the site. The delay in serving the enforcement notice is unacceptable.

Prior to the creation of the smoking shelter, the rear of the site had the sole function of a parking area for 20 cars and the only noise was intermittently from patrons going to and from their cars when leaving or arriving. Entry to the building was solely from the front and the outside seating facilities were solely at the front. The source of noise was therefore very limited in duration and not continual throughout the opening hours of the club. On Fridays and Saturdays, patrons can now be and are outside the club until 12.20am which causes an unacceptably harmful impact on residents.

The shelter provides an external social space for patrons to smoke and congregate at the rear, with a covered area large enough for over 15 people.

Also, by allowing rear access to the facilities, far more people could be present in the car park, causing significant noise, pollution and disturbance to the severe detriment of residents, particularly those of No.13. This is clearly the case at present with many patrons and children using the rear car park as an additional outside amenity area and the acoustics of its hard surface cause noise to reverberate, including the raised voices and foul language of users of the shelter. Reference is made to planning policies protecting residential amenity and to an appeal decision elsewhere where the inspector refused to allow a smoking shelter because of the level of noise disturbance, made worse by its reflection off hard surfaces.

The letter states that it also causes unacceptable levels of smoke to drift over No.13; as non-smokers they find a smoke-filled environment intolerable.

The new rear access door will encourage patrons to use it to enter/exit the building because it is the quickest route to the rear car park, also encouraging the external congregation of parties leaving the premises. The Council's requirement for cessation of use of this rear door but only insofar as it would still be allowed to be used for disabled access and emergency escape, is considered to defy commonsense and be unenforceable - access will always be available by reason of smokers having permanent access to the unauthorised smoking shelter (and any such restriction would not meet the tests in Circular 11/95 for it to be a valid planning condition).

The letter expresses the view that the requirement prohibiting patrons from taking drinks into the shelter is also unenforceable, as they would be unwilling to leave their drinks unattended in the building whilst going into the shelter to smoke.

The letter concludes that the present application should be refused and the club advised to apply for a smoking shelter at the front. Enforcement action should be taken requiring complete removal of the rear shelter and closure of the rear access door to the car park, giving one month for compliance.

[NB. The residents of No.13 and/or their agent have requested to speak at the Committee meeting]

Relevant Planning Policies and Guidance

Adopted West Sussex Structure Plan 2001-2016 (WSCC 2005) (saved policies): NE12, DEV1

Adopted Adur District Local Plan 1993-2006 (ADC 1996) (saved policies): AG1, AE16

'Delivering Sustainable Development' (ODPM 2005)
G24 'Planning and Noise' (DoE 1994)
Circular 11/95 'The Use of Conditions in Planning Permissions' (DoE 1995)

Planning Assessment

Policies

The main concern is the effect on the residential amenities of the locality, having regard to relevant policies.
Structure Plan policy DEV1 requires development to be of high quality taking account of the need to integrate with adjoining land uses and minimise potential conflicts between land uses and activities. It also requires high priority to be given to pedestrians and those with impaired mobility and the creation of a high quality, socially-inclusive, adaptable, safe and well-cared for environment meeting long-term needs and where opportunities for anti-social behaviour are minimised. NE12 supports the provision and improvement of leisure facilities, with priority given to centrally-located sites.
Local Plan policy AG1 states that development within the built-up area will normally be permitted subject to other policies and to it not detracting from the existing local urban environment. As the site comprises recreational club rather than business premises per se, AE16 is only indirectly applicable but is of some relevance. It allows for alterations or improvements to existing businesses in residential areas providing they meet access and parking standards and will cause no significant adverse effects on the amenity of nearby residents.
PPG24 'Planning and Noise' states that Local Authorities "must ensure that development does not cause an unacceptable degree of disturbance', particularly to residential areas" and it is "important that new development involving noisy activities should, if possible, be sited away from noise sensitive land uses".

Visual amenity

The rear and western boundaries of the club's rear car park have tall block walls and fencing (approximately 2.1 metres high) which provide visual screening. The eastern boundary is only low chainlink fencing but there is only the car park to the Pendene Court block of flats beyond. The unauthorized structure is consequently not readily visible from neighbouring dwellings and has no significant effect on the appearance of the locality.

If it were to be relocated to the front of the site, it would be prominent, given the open appearance of the forecourt, and have some adverse effect on the appearance of the club building and the streetscene.

Effect of shelter on residential amenity

The main concern is with regard to the impact of the use of the shelter on neighbouring dwellings, in particular 'The Annexe' (No.13 Roberts Road). The Empire Club previously only had its entrance doors at the front (with fire escape doors on the east side) and only had a limited outside seating area at the front, adjoining the roadside boundary. The rear of the Club was solely a car park (20 car spaces). There was no access to the building from the rear and no facility to sit outside at the rear or any form of rear shelter.

The unauthorised shelter, although modest in size, has changed this and provides a facility for patrons to sit or stand at the rear in order to smoke, the door (which has now become

external) providing access to it. Given that the premises are understood to typically attract about 100 persons on Friday and Saturday evenings, and have a capacity for up to about 250 persons (when functions are held), the number of people using the smoking shelter could be considerable. In addition, as the sale of alcohol can take place under the licence until as late as 12 midnight on Fridays and Saturdays, when background noise is low and residents have a reasonable expectation of being able to sleep, the risk of disturbance from use of the smoking shelter is increased.

Residents of 3 properties have raised objection on the basis that the noise generated in the car park has been noticeably greater since the construction of the shelter. 'The Annexe' (No.13) Roberts Road to the south, is a bungalow 17 metres from the smoking shelter, and only 1.8m away from the 2.5 metre high block wall on the common boundary. The other objectors dwellings (No's 8 & 12) are much further away (50m) and they are no closer than No's 10 & 11, the residents of which have stated that the shelter causes no problems for them.

It is considered that 'The Annexe' No.13, despite the tall boundary wall, is in such close proximity as to be at undue risk of disturbance from the use of the smoking shelter. The residents complain that they have experienced excessive noise and disturbance from the shelter until late at night and that the level of noise is exacerbated by the acoustics of the car park, and compounded by the frequent use of bad language and children running about. This is shown on the recordings contained on the DVD they have submitted, although it should be noted that these recordings are in the period October 2007-January 2008 and do not include the period since the Abatement Notice was served, the shelter having not been re-used until July 2008. Although the situation has improved since the Abatement Notice was served, it is considered that there is insufficient reason to depart from the previous conclusion that the shelter, by reason of its location, has the propensity to cause unacceptable detriment to the amenities of the nearby residents, contrary to policies AG1, AE16 and DEV1.

The objectors have also stated that the smoking fumes generated by use of the shelter cause nuisance to them. However, the distance to the nearest dwelling is considered adequate for smoking fumes to have dispersed sufficiently, particularly given the prevailing wind direction.

One resident complains of loss of privacy but there is no evidence as to how this could occur, given the intervening screening.

Access considerations

As stated earlier, the demolition of the rear storage extension, resulted in an internal door becoming an external door. This gives direct access to the smoking shelter as well as to the rear car park, without having to walk round to the front of the building.

Although there would normally be no objection to allowing the shortest route of passage between the car park and the building, in this instance there is the problem that the rear door enables patrons of the club to use it in order to sit or stand at the rear of the building. With its south-facing aspect, this area at the rear is potentially more attractive than the front which is north-facing and adjacent to the road.

The Abatement Notice served by the Environmental Health section requires the rear door to cease to be used for access to and from the car park (except by disabled persons or in

an emergency) but does not prevent its use by smokers to access the shelter. Although the Abatement Notice requires provision of management measures to enforce these rules (including CCTV and routine staff inspections), the letter of objection from planning consultants DMH queries the enforceability of this by the Council and refers to the difficulty in keeping control over those using it, adding that in their view it would not meet the tests for a valid planning condition given in Circular 11/95.

It is considered that the need to discourage patrons from gathering at the rear of the premises in the interests of avoiding disturbance to the neighbouring residents in the bungalow to the rear, outweighs the need for there to be direct access to the building from the car park.
However, there is an important exception to this in respect of disabled persons. It is considered that it would be an unreasonable requirement for disabled persons to have to walk or use a wheelchair to travel the 70 metres distance from the rear car park to the main front entrance door of the building. Whilst disabled persons may be able to park or be dropped off at the front, the limited parking provision at the front is likely to mean that some at least would have to use the rear car park.

Consequently, it is not considered that there is a justifiable planning objection to the proposed new disabled ramp to the rear door. The existing ramp is substandard whereas the proposed new ramp is designed with a lower angle of gradient, etc, in order to meet Building Regulations requirements.

Recommendation

REFUSE on the ground that:-

1. The shelter, by reason of its proximity to the bungalow to the rear, has the potential to generate a level of activity and noise disturbance which is detrimental to the enjoyment of that property and thereby detrimental to the residential amenities of the locality, contrary to the policies of the West Sussex Structure Plan (DEV1) and the Adur District Local Plan (AG1, AE16).

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