

PLANNING COMMITTEE



Application Address	Avon Beach Cafe Mudeford Christchurch BH23 4AN
Proposal	To form terrace at first floor level.
Application Number	8/19/1296/FUL
Applicant	Avon Beach Limited
Agent	Barry J Mills Ltd
Date Application Valid	4 November 2019
Decision Due Date	30 December 2019
Extension of Time Date (if applicable)	31 January 2020
Ward	Mudeford, Stanpit & West Highcliffe
Report status	Public
Meeting date	20 February 2020
Recommendation	Grant, in accordance with the recommendation in the report and subject to the conditions specified.
Reason for Referral to Planning Committee	<p>The application has been called-in to the Committee at the request of Cllr Dedman for the following reasons;</p> <p>Town Council objection is to the noise generation from the new structure in a quiet residential area.</p> <p>This is an overbuild of this small café which already has many other areas of public and customer entertainment added on to the original building.</p> <p>It is now completely overbearing in the street/beach scene</p> <p>Parking and vehicle access is already at full capacity.</p> <p>Rubbish generated by customers is already a problem and this will add to it</p>

Case Officer	David Hodges

Description of Development

1. The proposals are to add a terrace at 1st floor level to this existing beachside restaurant/café. The dimensions and materials are as stated below. The plans indicate an additional 24 covers may per possible on the terrace. The terrace is uncovered so this would be seasonal/ weather-dependent.

Width	10.3m (max)
Depth	5.8m (max)
Height	4.35m (to top of balustrade)
Materials	Grey tinted glass with stainless steel pots and rails. Brick piers

2. Key Issues

- Principle of development
- Impact on heritage assets and the character of the area
- Noise and Impact to Neighbours' Living Conditions
- Impact upon Flood Risk
- Highway & Parking Matters

Planning Policies

3. Development Plan:

KS1	Presumption in favour of sustainable development
KS11	Transport and Development
KS12	Parking Provision
HE1	Valuing and Conserving our Historic Environment
HE2	Design of new development
HE3	Landscape Quality
ME6	Flood Management, Mitigation and Defence
BE 4	New Development in Conservation Area
ENV 3	Pollution and Existing Development
ENV 9	Development in the Coastal Zone
BE 16	Views and Vistas
PC6	Tourism

4. Supplementary Planning Documents

Mudford Quay Conservation Area Appraisal and Management Plan (Adopted May 2008)

Christchurch Borough-wide Character Assessment (2003)

5. National Guidance

The guidance contained in the National Planning Policy Framework (NPPF) is a material consideration.

Part 1 – Building a strong competitive economy

Part 7 – Requiring good design

Part 8 – Promoting healthy communities

Part 10 – Meeting the challenge of climate change, flooding and coastal change

Part 11 – Conserving and enhancing the natural environment

Part 12 – Conserving and enhancing the historic environment

6. Relevant Planning Applications and Appeals

8/18/1747/FUL	Avon Beach Cafe, Mudford, Christchurch, Dorset, BH23 4AN	Extend existing refuse store	Granted	13/11/18
8/18/1123/CON DR	Avon Beach Cafe, Mudford, Christchurch, Dorset, BH23 4AN	Variation of condition 4 of Application No. 8/17/3034/FUL to allow natural ventilation to the first floor	Granted	23/08/18
8/17/3034/FUL	Avon Beach Cafe, Mudford, Christchurch, Dorset, BH23 4AN	Construct first floor extension along with internal alterations to ground and first floors	Granted	21/02/18
8/15/0568	Avon Beach Cafe, Avon Beach (Mudford Quay Conservation Area)	Erection of first floor extension to existing cafe to include external balcony	Withdrawn	27/01/16

7. Representations

46 responses objecting the proposals have been received. These raise the following issues;

- Noise and disturbance to residents from terrace.
- Additional traffic, deliveries and parking
- Additional people using the building
- Out of character with area
- Cooking smells
- Visual impact/dominance
- Overdevelopment of site
- Approval will encourage further proposals/incremental growth at site
- Impact on tranquillity of site
- Additional refuse/waste/litter

- Impact to Conservation Area
- No requirement for expansion of café
- Will lead to a proposal for overnight sleeping
- Consideration needs to be given to those participating in watersports, walkers, families using the beach, beach hut users and dog walkers

23 responses have also been received in support of the proposals. These make the following comments;

- Great addition which will not adversely affect beach users or local residents
- Fully support work which has been done at the restaurant.
- Local residents action group is unrepresentative of local opinion
- Need to encourage visitors to area
- Job opportunities for local area
- Business gives back to the community (e.g. litter picking)
- Local family run business deserves support
- Important part of community
- Brings investment/revenue into the area
- Terrace will be an asset to existing business & customers, makes operation more appealing
- Site provides excellent facility for locals and visitors
- Will not lead to additional noise
- Will not detract from existing views
- View of the sea is for the many and not the few who live nearby
- Will provide another viewpoint over the attractive coastline

Consultations

8. Christchurch Town Council

- Some Members felt that they could not support this planning application as noise and traffic issues would be increased and especially late at night.
- Other members felt that it was good to provide a restaurant in Christchurch and that noise would not be a problem.
- RESOLVED that objection be raised due to the noise that shall be generated by the scheme to the detriment of the neighbours, contrary to policy HE2 of the Christchurch and East Dorset Local Plan.

9. BCP Environmental Health

The previous application, and previous noise assessment, agreed that if music was played upstairs the windows would be closed. The windows could be opened for ventilation if no music was being played.

I have looked at the previous noise assessment and the Terrace Noise Assessment dated 30/10/2019. There is some concern that noise from the terrace (people and music) would impact on local residents.

I agree with the conclusions of the Terrace Noise Assessment and propose the following condition

"Live or amplified music should not be permitted on the terrace. The doors of the terrace should be kept closed if music is to be played on the first floor. Staff should supervise the terrace area to ensure that users are not shouting / using raised voices/or behaving in a boisterous manner, so as not to impact on neighbours."

10. BCP Trees & Landscaping

The nearest significant trees to the proposed are situated behind the café, on its northwest side. These trees sit within the Conservation Area and are a prominent feature within the local landscape. The proposal will impact on the front of the building and so away from these trees. Therefore, there is no arboricultural or landscape objection to the proposal.

11. BCP Highways

No objections

12. Constraints

- Conservation Area
- Special Protection Area
- SSSI Impact Risk Zone
- Flood Zone 2
- Flood zone 3
- Contaminated Land
- Highways Inspected Network
- Heathland 5km Consultation Area
- Rights of Way
- Airport Safeguarding
- Coastal Area (Policy)
- Wessex Water Sewer Flooding
- Coastal Area (Open Spaces)
- Dorset Minerals Consultation Area
- Tree Preservation Order

Site and Surroundings

13. The site is an existing restaurant located on the beachfront at Mudeford. The application site is occupied by a detached 2-storey building which is located on the beachfront at Avon Beach, directly adjacent the Avon Beach public car park and located within the Mudeford Quay Conservation Area. Directly to the front of the café is a pedestrian promenade which links to the beach. Currently the building is operated as a café/restaurant at over two storeys following the erection of a 1st floor extension granted under App. No.8/17/3034/FUL

14. It is the only two storey building visible from the promenade and it is sited within a prominent beachfront position. The building has benefitted from a number of other extensions over time, including the provision of a kitchen to the east, a raised terrace to the front of the toilet block, a fish and chip takeaway within the existing shop, and a detached timber hut and decking for the sale of hot and cold food and drinks.
15. Further along the sea front to the east is a long length of beach huts. There is a public footpath directly to the rear of the café which is located on a raised bank and which provides panoramic views across to the Isle of Wight in between the belt of Holm Oak trees which lie directly to the rear of the site. Directly to the rear of the site is an additional sunken public car park, and beyond this are the residential properties of Avon Run Road which are sited around 100 metres to the west and north.

Planning Assessment

Key Issues

16. Principle of development

17. The site lies within the urban area as identified in the adopted Local Plan. The settlement hierarchy in Policy KS2 of the Local Plan identifies Christchurch as a Main Settlement which will provide the major focus for community, cultural, leisure, retail, utility, employment and residential development. Paragraph 16.18 of the Local Plan notes that tourism is a key part of the local economy which employs 1,700 people and is a growing sector which plays an important role in creating jobs and sustaining the local economy. Policy PC6 on Tourism seeks to attract visitors to the area and encourage investment through the protection of the beaches, river front and Christchurch Harbour and supporting appropriate sustainable tourist related development.
18. Saved Policy ENV9 permits development within the identified Coastal Area subject to the criteria in the Policy. Paragraph 3.22 of the 2001 plan advises that the Council recognises the importance of its coastline in terms of landscape, nature conservation, leisure and recreational value and the wider economic impact.
19. The site is an existing facility in a location important to tourism and thereby jobs and investment in the area. The proposals will facilitate the expansion and retention of the existing economic benefit from the site in a sustainable and accessible public part of the beachfront. The proposals are acceptable in principle.

20. Impact on heritage assets and the character of the area

21. The site lies within the designated Mudeford Quay Conservation Area. A Conservation Area Appraisal (CAA) was adopted by the preceding Christchurch Borough Council in 2008. The Townscape Appraisal accompanying the CAA identifies the mature trees along Avon Run Road above the promenade as

Important Trees. No important buildings, landmarks, views or spaces are identified in the CAA in the vicinity of the site.

22. In the conclusion section of the CAA it is recommended that the Conservation Area boundary be redrawn to reflect recent development and in recognition of where the local authority's resources should be focused. The document concludes the areas proposed for removal have no historic buildings and very little evidence of historic development that relates directly to Mudeford or Mudeford Quay (p.40).
23. The adopted CAA recommends that the trees along Avon Run Road be protected via a Tree Preservation Order (TPO) as a better form of protection and concludes *"This would then permit the removal of Avon Run Road and the promenade from the conservation area, the current purpose of which seems only to protect these trees."*
24. Notwithstanding this, the site remains within the conservation area. There is not considered to have been any material changes in the contribution of the area around the site to the Conservation Area since the adoption of the CAA. The site remains a commercialised area of the beachfront with a large open car park, promenade and modern buildings which does not contribute to the historic character of the CA.
25. The proposed external terrace would be a moderate addition to the front of the premises and is considered to be suitably in keeping with its scale and character. The proposals utilise materials which match or are sympathetic to the recently constructed 1st floor extension. The proposals would not be visible in wider views due to the siting of the building on the beachfront which is at a lower level than much of the surrounding development behind the cliffs. The terrace would be viewed in the context of this commercialised section of the beachfront.
26. The proposals will preserve the character of the Conservation Area. The proposals comply with the criteria in ENV9 and also have an acceptable impact on the wider character and appearance of the area. The scheme results in less than substantial harm to the heritage asset. Applying the guidance in paragraph 196 of the National Planning Policy Framework (2019), this impact must be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The scheme will facilitate the ongoing use of the property as a restaurant/cafe, which is considered to be its optimum viable use. The proposals provide economic benefit to the area in promoting tourism and sustaining existing jobs. The public benefits in this case are considered to significantly and demonstrably outweigh any impact to the heritage asset.

27. Noise and Impact to Neighbours' Living Conditions

28. The application is accompanied by a noise report in respect of the proposed external seating area. The site is a public beach where levels of activity and noise associated with the public use of this are to be expected. Furthermore, the site is an existing developed and commercialised area of the beach with a car

park and various other visitor facilities as noted above and again, there will be levels of existing activity associated with this which is entirely to be expected.

29. The nearest residential properties are approximately 110m distant from the proposed terrace and elevated above it. The report notes that the terrace, being on the seaward-facing side (that is projecting away from the nearest dwellings) will benefit from screening provided by the 1st floor of the building. Due to the distances involved and the attenuation from buildings, the report concludes that noise from the terrace will in effect be inaudible from within the nearest residential property, even with their windows open. The report notes that impacts could be greater from loud music or shouting and recommends controls over the use of the balcony.
30. The report has been considered by the Council's Environmental Health officer who concurs with the conclusions and recommends the condition above. Officers have given due consideration to the proposed condition and whilst a condition can be imposed, the wording will need to be amended in order to comply with the Six Tests for imposing a planning condition.
31. It is noted that the planning permission for the use of the 1st floor of the restaurant (8/18/1123/CONDR above) restricts live or amplified music at the 1st floor of the premises and requires 1st floor openings to be shut when live and /or amplified music is played at ground floor (Condition #4). This permission has been enacted and thereby this condition remains in force irrespective of the decision on this application. There is therefore no requirement for doors to be closed if music is to be played on the first floor as this is prevented by the earlier condition.
32. It is agreed that live and/or amplified music should be restricted on the terrace itself and this is proposed as part of condition #3 below. With regards to the remainder of the proposed condition, this would fail to meet the test of precision in establishing a breach in relation to the terms used (shouting, boisterous). It would also thereby fail the test of enforceability.
33. Central Government advice on conditions in the National Planning Practice Guidance states that conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate. Impacts from noise are more appropriately controlled through Environmental Health legislation as a potential statutory nuisance than through planning legislation.
34. The terrace is uncovered and thereby its use will be weather-dependent and largely seasonal. Consequently, its times or periods of greatest use would likely coincide with the periods of greatest activity on the beachfront. In this context, noise from the terrace would likely be tricky to distinguish in practice from entirely commonplace public activity on the beach. Consequently, the condition has been amended to comply with the Six Tests as set out in Condition 3 below.

35. It should be noted that contrary to a number of the 3rd party responses received, the appeal decision back in 2017 was not dismissed on the basis of a detrimental impact to neighbouring properties. The Inspector dismissed the proposals on the basis of the impact on the character of the area and the loss of a particular vista. The previous LPA did not refuse the 2016 application on the basis of a detrimental impact to neighbouring properties. It is noted that the Inspector did not raise this as an issue in dismissing the scheme and did not raise objections with regards to the noise, activity, traffic movements and so on, which would result from the scheme.
36. No 1st floor terrace was proposed on the appeal scheme. A number of the 3rd party responses refer to an external terrace previously being refused by the preceding LPA (8/15/0568 above). However, the Council's records show this application to have been withdrawn. Matters have moved on since that time with the subsequent approval by the preceding Authority of a revised 1st floor extension which is now constructed.
37. Due to the number of additional covers proposed and the likely seasonal/weather-dependent nature of the facility, it is considered there is no evidence to support the position that there would either be a significant increase in activity, additional traffic movements, or congestion, as a result of the scheme. Furthermore, there is no evidence to support the position that any additional activity associated with the proposals would be sufficiently harmful to neighbours' living conditions to warrant refusal of the scheme.

38. Impact upon Flood Risk

39. The existing building falls partly within present day Flood Zone 2 of the Strategic Flood Risk assessment (medium probability of flooding) and part within the future Flood Zone 3a (high probability). Part of the building lies outside of the area of flood risk. The development type is classified as 'less vulnerable' in Table 2 of the NPPF Technical Guidance and is therefore considered to be appropriate development within flood zones 2 and 3a.
40. As the proposed terrace is located at first floor level, and floor levels in the remainder of the building will be unchanged, it is considered that the development will not be at increased risk of flooding in relation to the existing built form and the application of the sequential and exception tests is not necessary. The scheme does not introduce additional assets at risk, to the site, over and above the existing lawful use.
41. Furthermore, by reason of its design it is considered that the proposal would be unlikely to affect water flow or result in an increase flood risk elsewhere and as such the development complies with Policy ME6.

42. Highway & Parking Matters

43. Policy KS12 requires adequate parking provision to serve the needs of the proposed development. The site adjoins the Avon Beach car park at the seafront (99 spaces) and directly above the site are a further 221 spaces in the Avon Run

Road car park. Noting the additional capacity at the restaurant created by the proposals is weather-dependent and seasonal, the increase in traffic movements by the development is considered to be minor. There is no evidence that any such increase in traffic movements could not be safely accommodated within the existing capacity on the highway network. The advice in the NPPF is clear that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The proposals clearly do not fail that test.

44. There is a considerable amount of public car parking in the direct vicinity of the site. Any additional parking demand created by the proposals would be limited and would likely be closely correlated to trips to the beach to enjoy the seafront. There is no evidence that any additional car parking demand could not be accommodated within the existing car parks in the vicinity of the site.

45. The Highways Authority have no objections to the proposals.

46. Other matters

47. The proposals are on the seaward side of the building. Consequently, the terrace projects away from the mature trees above the building on Avon Run Road and these are not considered to be a constraint on development.

Summary

48. The site lies within the urban area. The proposals are a minor addition to this existing established business in a commercialised area of the beachfront served by existing public car parks. The proposals will facilitate increased capacity at the restaurant.

Planning Balance

49. The proposals support an existing business providing jobs and bringing income into the area. The proposals provide a facility for visitors and local residents visiting the seafront and supports tourism and visitor spend in the area, a key element of the local economy. The economic and social factors relating to the proposals are therefore positive.

50. The scheme has acceptable impacts on the character of this commercialised part of the beachfront. It preserves the character of the Mudeford Quay Conservation Area. The scheme has acceptable impacts in terms of noise and disturbance from the proposed use of the terrace and does not result in unacceptable impacts from traffic movements or parking demand. The scheme has acceptable impacts in terms of flood risk and on mature trees.

51. Overall, the environmental impacts are thereby neutral. As the social and economic benefits of the scheme are positive, the proposals are considered to represent sustainable development, complying with Policy KS1 and are recommended for approval.

52. In reaching this decision the Council has had due regard to the statutory duty in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states that “*with respect to any buildings or other land in a conservation area, ... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*”

RECOMMENDATION

Grant, with the conditions below, which are subject to alterations/additions by the Head of Planning provided any alteration/addition does not go to the core of the decision

Conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: This condition is required to be imposed by Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Drwg. No. J.41.2019-01

Drwg. No. J.41.2019-03

Reason: For the avoidance of doubt and in the interests of proper planning.

3. There shall be no live and /or amplified music played on the approved terrace. At all times that live and /or amplified music is played at ground floor all the first floor level windows and external doors, including the fire door shall be kept shut.

Reason: In order to preserve the amenities of nearby residential properties.

4. The development hereby permitted shall be constructed entirely of the materials details of which are shown on plan No. J.41.2019-03 unless otherwise agreed in writing by the Local Planning Authority.

Reason: This is required to ensure the satisfactory visual relationship of the new development to the existing

Informatives:

1. No approval is hereby given for the alterations shown to the ground floor terrace on the South Elevation plan on Drwg. No. J.41.2019-03 as they do not form part of the description of development on the application form.

Background Papers

