

Planning Committee

Application Address	18 Seamoor Road, Bournemouth, BH4 9AR
Proposal	Alterations and use of restaurant garden storage area for outdoor seating
Application Number	7-2020-19161-E
Applicant	Ms E Fernandez
Agent	ECA Architecture & Planning
Date Application Valid	9 December 2020
Decision Due Date	2 February 2021
Extension of Time date (if applicable)	23 March 2021
Ward	Westbourne & West Cliff
Report Status	Public
Meeting Date	22 April 2021
Recommendation	GRANT with conditions
Reason for Referral to Planning Committee	This application is brought before the committee at the request of Councillor Beesley, due to concerns about the impact on neighbouring properties, particularly in terms of noise and disturbance and difficulty enforcing conditions, and impact on the visual amenities of the Westbourne Conservation Area.
Case Officer	Caroline Whiteman

Description of Development

1. Planning consent is sought for alterations and the use of the restaurant garden storage area for outdoor seating.
2. The applicant has provided the following information:
 - Site location plan
 - Proposed site plan/floor plan
 - Existing and proposed elevations and sections
 - Design and Access Statement (including heritage assessment)
 - Tree Report

	Existing	Proposed
Use	Established restaurant Class E(b)	No change
Parking	None	No change
Main building	Restaurant	No change
Rear Garden	Garden storage and waste	Outdoor seating area for three tables and 12 covers
Side passage	Bin storage Four tables and 13 covers	Provide access to rear garden area Bin storage Two tables and chairs

Key Issues

3. The main considerations involved with this application are:
 - Impact on character and appearance of the area
 - Impact on residential amenities
 - Impact on trees
 - Parking/traffic/highway safety considerations
4. These points will be discussed as well as other material considerations below.

Planning Policies

5. **Core Strategy (2012)**
Policy CS4 – Surface Water Flooding
Policy CS16 – Parking Standards
Policy CS18 – Cycling
Policy CS38 – Minimising pollution
Policy CS39 – Heritage Assets
Policy CS41 – Quality Design
6. **District Wide Local Plan**
Policy 4.4 – Development in conservation areas
Policy 4.25 – Trees/landscaping
Policy 5.19 – Core Shopping Areas
7. **National Planning Policy Framework**
The National Planning Policy Framework (NPPF) sets out the government strategy to achieve sustainable development. The framework is relevant to the current application and issues relating to the economy, ensuring the vitality of town centres, sustainable transport, high quality communications, housing, flooding/climate change, good design, promoting healthy communities, protecting green belt land, and conserving the natural and historic environment will be dealt with in the report where relevant.

In particular, Paragraph 11 states:

“Plans and decisions should apply a presumption in favour of sustainable development...”

For decision-taking this means:

(c) approving development proposals that accord with an up-to-date development plan without delay; or

- (d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
- (i) *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - (ii) *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework taken as a whole."*

8. In the Bournemouth area the Core Strategy is greater than five years old and the Council is also unable to demonstrate a five year housing supply, meaning that the 'tilted balance' of Paragraph 11 applies to this proposal. The site is located within a conservation area (outlined in footnote 6 to Paragraph 11), so if there is sufficient harm identified to the conservation area then in terms of the 'tilted balance' the harm caused by any proposal must be sufficient to provide a clear reason for refusal.

9. **Other**

Sustainable Urban Drainage Systems (SUDS) - PGN
Bournemouth Parking SPD

Relevant Planning Applications and Appeals:

- 10. 7-2020-19161-D – Formation of outside seating area at rear of premises: Refused due to "Insufficient information regarding built form, proposed use, highway impacts, waste. Noise detrimental to residents of Seamoor Road and R L Stevenson Avenue"
- 11. 7-2009-19192-B – Formation of outside seating area for four tables and twelve chairs down the side passageway of the property: Granted with the condition that the seating area would not be available outside the hours of 09:00-21:00 hrs
- 12. 7-2006-19161-B – Change of use of residential garden to outside seating area for cafe use (Existing - Unauthorised use): Refuse (noise and disturbance to neighbouring residents)
- 13. 7-2001-19161-A – Alterations and single storey extension to Coffee Lounge - Renewal of application 7/99/19161: Grant
- 14. 7-1999-19161 – Alterations and single storey extension to Coffee Lounge - Existing Unauthorised Structure: Grant

Representations

- 15. Site notices were posted in the vicinity of the site on 6/1/2021 with an expiry date for consultation of 29/1/2021.
- 16. 23 representations have been received, 17 raising objections and 6 in support of the business.
- 17. The objections raise the following planning issues:

Out of keeping with the character of the Westbourne area

Noise and disturbance to rear gardens and properties

This is considered in the relevant section of the report below (paragraphs 35-37).

Anti-social behaviour concerns

This is considered in the relevant section of the report below (paragraphs 35-42).

Comments about the existing use of the property including Increase in pests/vermin, odour concerns, and waste/refuse concerns, noise from opening front windows

These issues do not all relate the current planning application proposals for a rear outside seating area. Issues would be covered to an extent by other legislation including Environmental Health and/or Enforcement.

Potential use as a bar

The property has established use as a restaurant within Class E of the Use Classes Order. Some ancillary drinking would be allowed under this use, but if predominantly a drinking establishment then a change of use would be required. This is not under consideration here.

Access to the garden area not clear

Access appears to be from the front of the property and along the side pathway.

Loss of residential garden amenity space

This is considered at paragraph 41. The proportion of remaining garden has been increased during the application process.

18. Comments in support include the following:

Need to support the economy/local businesses

Use until 7pm will not create a harmful impact on neighbouring residents

19. Issues regarding the devaluing of property values and matters controlled under other legislation such as drainage or licences, are not material planning considerations.

Consultations

20. **Tree Officer** - No objections to the revised proposal subject to a condition requiring compliance with the submitted arboricultural method statement.

21. **Environmental Health Officer –**

Confirmation that there have been some complaints about the business, with regard to noise from people in the outside (front) seating areas.

Use of the rear garden until late at night will cause noise nuisance to local residents.

We should allow some flexibility for businesses to operate in the pandemic so there may be some scope to open the rear area but without this becoming detrimental to local residents.

Preference for a one year temporary consent with later opening hours (8pm) to assess the situation, and for the submission of detailed management information.

Constraints

22. The site is subject to the following constraints:

- Westbourne Conservation Area
- Core Shopping Frontage

Planning Assessment

Site and Surroundings

Location and Proposal:

23. No.18 is a small restaurant fronting north onto Seamoor Road, with a residential flat above. It is located within the Westbourne Conservation Area as well as being classified as Core Shopping Frontage. The area is mixed in character with a number of retail uses, banks, cafes, estate agents and restaurants.
24. The website gives the description of the Lazy Fox as a Burger Bar & Cocktails. The rear garden is shown in pictures supplied as part of the application submission and is bordered on three sides by other gardens. The garden was used by previous occupiers for growing vegetables in association with the business whilst the current restaurant uses the land for storage. This current proposal is to use part of the garden storage area as an outdoor seating area for the use of restaurant customers.
25. No change in the nature of the business itself is proposed, nor any shopfront or internal alterations. The applicants propose the change of use of the existing rear residential garden space as an area for tabled seating for the consumption of food/drinks purchased from the restaurant/bar. Due to the current Covid situation the number of covers in the restaurant has been reduced and the proposed new seating area outside would go some way to mitigate the impact of this.
26. The original proposal proposed nine tables and chairs to provide 36 covers, however this has been reduced during the application process through negotiation to three tables, which would be located near to the rear of the property and physically separated from the rear part of the garden by a 1.8m close board fence. This would help to limit the amount of garden area available to customers. The garden will also be bounded by hedging to a height of 1.8m to help diffuse the noise and a condition will be included to limit the hours of garden use to between 09:00-19:00 hrs.
27. Previously, applications for the change of use of the residential garden for an outdoor café seating use were refused in 2020 and 2006 on noise grounds affecting adjoining residents. The 2006 application proposed six tables with up to 20 covers and followed on from an enforcement investigation for unauthorised use, whilst the 2020 application did not specify numbers or give any relevant details of proposed seating arrangements.

Key Issues

Impact on character and appearance of the conservation area

28. The proposed change of use of the garden area is at the rear of the property and since no physical alterations are proposed on the building itself, the proposal would not have any impact on the character and appearance of the street scene. Physical alterations are limited to temporary structures such as the benches and umbrellas, and the provision of a standard close-board fence to subdivide the garden area. The garden is currently untidy and overgrown so any proposal which would tidy it up and maintain its appearance is considered to be of benefit both in terms of visual amenity and in helping to prevent further pest infestations, which have been of concern to neighbours.

29. The character of the area is one of mixed uses and the Lazy Fox is one of a number of eating establishments within the area. Due to the current Covid pandemic the number of covers within the restaurant has been reduced and the new seating area outside will go some way to help mitigate the impact on this. The proposal will also generate the provision of an extra one or two full-time positions at the restaurant and help to facilitate the growth of the business in the long term.
30. Although no physical alterations are proposed to the shop front, it is noticed that the shop front has been altered and there is now an opening window on the front elevation. An informative note has been added to inform the applicant that planning permission needs to be applied for in relation to this alteration, but it is not considered under this application.
31. The side entrance will be used for access to the rear and also for bin collection. Existing fixed outdoor bars will be removed to allow for clear access which will help to tidy up the passageway and will be of benefit to the appearance of the area.
32. It is considered that the proposal has been designed to enhance the character and setting of the original building, it would help retain an active ground floor commercial use and would tidy up the side passageway and rear garden which would maintain the character and appearance of the street scene and Conservation Area as a whole. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out a general duty for the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area (S72). In this case, having regard to paragraphs 193-196 of the NPPF it is not considered in this case that there would be any harm to the conservation area, since only temporary structures are proposed within this application. The proposed development would therefore accord with the aims of relevant policies, including CS41 and 4.4, as well as the statutory duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Impact on residential amenity

33. The application property is within a predominantly commercial area but there are also residential properties at upper floors within the vicinity of the site, as well as residential properties to the side and rear with gardens adjoining the site. Those that are most likely to be affected by this proposal are 16a Seamoor Road, as well as numbers 8, 10 and 12 RL Stevenson Avenue. Other residential properties within the vicinity are considered a sufficient distance from the proposal to not be unreasonably affected. The rear facing first floor windows of the nearest properties along Robert Louis Stevenson Avenue are about 14.5m in distance from the rear garden.
34. No 16 Seamoor Road is located to the east of the application site and appears to be a single dwelling house with a shop to the front. Its residential garden runs parallel to the application property with hedging and fencing along its boundary. Numbers 8, 10 and 12 RL Stevenson Ave are located to the west of the site and their rear gardens all back onto or are adjacent to the rear garden of 18 Seamoor Road.
35. It is considered that when living in such close proximity to a busy high street, some noise and disturbance has to be expected from the surrounding area. However, due to the close proximity of residential rear gardens within the vicinity, the possibility of seating for up to 36 people, eating and drinking in what is mainly a residential area, would be detrimental to these neighbours, resulting in an unacceptable increase in noise and disturbance. The proposal has therefore been revised during the application process to reduce this impact

and it is considered that on balance the lesser number of 3 tables and 12 covers would be acceptable, along with a physical barrier to limit use of the garden area to only the area immediately to the rear of the property, and reduced hours of use of the external area.

36. It is considered that the level of daytime activity in the Westbourne area during the day would mean that a small amount of external seating would not be materially harmful in terms of noise and disturbance but, due to the proximity of residential properties, later evening and night time open would be more likely to be harmful. The Environmental Health Officer has suggested a time limit of 20:00 hrs but, taking other applications such as 19 Seamoor Rd into consideration, it has been agreed to limit the hours of use of the garden seating area to 19:00 hrs. The Planning Statement refers to the opening hours as currently 12:00-22:00 hrs, although the application form states 12:00 – 23:00hrs, however the applicant is in agreement to restrict the use of the garden to 19:00 hrs to help overcome any concerns.
37. There have been previous refusals for the garden to be turned into an outdoor dining area for reasons of noise and the impact on residential amenity. However, this revised application has also reduced the seating area to just three tables and this small area will be enclosed by a timber fence and the garden as a whole bounded by tall hedging in order to help lessen the noise and disturbance issues.
38. The Planning Statement confirms that no cooking is proposed to be undertaken outside, nor will music be played. Suitable conditions to control the use and area, and limit music have been added to the recommendation.
39. There have been comments from neighbouring residents regarding problems of noise, smells, pests and anti-social behaviour in general. In order to try and overcome these concerns, the Environmental Health Officer's recommendation is that a temporary one year permission should be included so that the use can be closely monitored if complaints are received.
40. Other nearby planning applications have been referred to in order to support the change of use of the garden, however the application at 19 Seamoor Road opposite is not considered applicable since the rear yard area is very small, and it is surrounded by commercial properties on the ground floors with residential above. However, to overcome noise and disturbance concerns because of its close proximity to residential properties, the use was limited to 1900hrs which was considered on balance to be acceptable.
41. The physical separation will ensure that an acceptable and useable proportion of the original garden remains for first floor flat occupants as amenity space.
42. The proposal has led to a number of objections from concerned local residents. There are some concerns about how the premises has been run in the last year, but the consent relates to the land rather than the particular applicant/owner. The objections received were in relation to the original proposals which have since been significantly amended and reduced to overcome concerns. Overall it is considered that the proposals with the package of changes and conditions, including reduction to just three tables in a small portion of the garden area which will be physically separated from the remaining area, hedge planting to each side, and hours of use until 7pm to prevent evening and late night noise and disturbance, mean that the development is acceptable in this regard and would not be materially harmful to the living conditions of neighbouring residents. The proposal would accord with the provisions of the relevant policies including CS38 and CS41, and the NPPF.

Impact on trees

43. There is an Ash tree in the rear garden of the property which benefits from protection under the Conservation Area status. A Tree Report and Arboricultural Method Statement have been provided, which demonstrate that the proposals would not impact on this tree. The proposed fence has been moved away from the root protection area of this tree. The proposed development therefore accords with the aims of Policies 4.4, 4.25 and CS41.

Parking/traffic/highway safety

44. The property is an existing commercial use in an established district centre. There is no on-site parking and none will be lost as a result of the proposal. The use would be slightly more intensive but parking in this area is accommodated on street and in public car parks. There are no parking, traffic or highway safety implications of the proposal.

Summary

45. It is considered that:
- The proposed development would not be harmful to the character and appearance of the Westbourne Conservation Area.
 - The proposed development, taking account of the amendments and planning conditions, would not be harmful to the living conditions of neighbouring residents.
 - The proposal would not be harmful to existing trees on or near the site.
 - There are no parking, traffic or highway safety implications of the proposals.

Planning Balance

46. The proposal relates to the rear garden of the property and as such a balance has been made in weighing up the proposal in terms of its impact on the conservation area, trees and residential amenity. Taking para 193 of the NPPF into consideration, it is considered that the character and appearance of the conservation area will be preserved, since no permanent structures are proposed.
47. Whilst the proposed development of the rear garden would potentially give rise to noise and disturbance to local residents, the issue has been carefully considered and amended so as not to have a harmful impact. The proposed development would not be harmful to the character and appearance of the area and would help to maintain the viability and vitality of the high street. Accordingly, to help balance the proposal and make it more acceptable, conditions have been included in order to help limit the impact on residential amenity and a temporary one year consent added.
48. Therefore, having considered the appropriate development plan policy and other material considerations, including the NPPF, it is considered that subject to compliance with the conditions attached to this permission, the development would be in accordance with the Development Plan, would not materially harm the character or appearance of the area or the amenities of neighbouring and proposed occupiers and would be acceptable in terms of traffic safety and convenience. The Development Plan Policies considered in reaching this decision are set out above. Subject to conditions the proposal is acceptable, and according to NPPF paragraph 11(c) development should be approved without delay.

Recommendation

49. **GRANT permission with the following conditions, which are subject to alteration/addition by the Head of Planning Services provided any alteration/addition does not go to the core of the decision:**

1. Development to be carried out in accordance with plans as listed

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

287_2_001

287_2_100

287_2_101C

287_2_200

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

2. Temporary use expiring in one year

This permission is limited to the period expiring one year after the date of the decision notice. Immediately on the expiry of that period the use of the rear external area hereby permitted shall be discontinued.

Reason: To enable the Local Planning Authority to review the situation at the end of the period and in accordance with Policy CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

3. Hours of Use for external garden area

The external area to the rear of the premises hereby approved shall not be used by customers for any purpose outside the following times: 12.00 hours and 19.00 hours. The access gate shall remain closed after 19:00 hours and shall not be used except in the case of emergency.

Reason: In order to protect the environmental amenities of the immediate locality and in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

4. Installation of fencing and hedging prior to use

Prior to first use of the external seating area hereby approved the 1.8m fence shall be installed and the proposed hedges to the boundaries shall be planted as shown on the approved plan(s). The fence and hedging shall be retained and maintained in perpetuity for the duration of the use hereby approved.

Reason: In order to protect the environmental amenities of the immediate locality and in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

5. Limit of external seating use

The use by customers of the external rear area shall be confined to the area shown on the approved plan between the rear of the property and the new fence line and should not extend into the southern section of the 'rear garden' area beyond the fence line or within any other part of the curtilage at any time.

Reason: In order to protect the environmental amenities of the immediate locality and in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

6. No Amplified Music

No amplified music shall be played nor any public address system be used in the outside seating areas of the premises or within any other part of the curtilage of the premises.

Reason: To safeguard the interests of occupiers of adjoining and nearby residential properties in accordance with Policies CS38 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012).

7. Implementation of the approved Arboricultural Method Statement

The tree protection measures as detailed in the arboricultural method statement dated 1 March 2021 and prepared by Mark Hinsley Arboricultural Consultants Ltd shall be implemented in full and in accordance with the approved timetable and maintained and supervised until completion of the development.

Reason: To ensure that trees and other vegetation to be retained are not damaged during construction works and to accord with Policy 4.25 of the Bournemouth District Wide Local Plan (February 2002).

8. Informative Note: No storage of materials on footway/highway

INFORMATIVE NOTE: The applicant is advised that there should be no storage of any equipment, machinery or materials on the footway/highway this includes verges and/or shrub borders or beneath the crown spread of Council owned trees.

9. Informative Note: Planning Permission required for alterations to shop front

INFORMATIVE NOTE: In addition to this change of use it would appear from the alterations made to the shopfront that you may also require planning permission. You may apply for a formal determination whether permission is required, under Section 64 of the Town & Country Planning Act 1990, and / or submit an application for planning permission on forms which will be supplied on request.