

<b>2.3 REFERENCE NO - 17/504813/FULL</b>		
<b>APPLICATION PROPOSAL</b> Part change of use from car wash to residential for one studio flat within the main building.		
<b>ADDRESS</b> Car Wash 67 High Street Newington Sittingbourne Kent ME9 7JJ		
<b>RECOMMENDATION</b> Grant subject to conditions and the further views of Environmental Services and amended plans showing amenity space		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> Proposal would not harm residential or visual amenity or harm highway safety or convenience and would not materially affect the Newington AQMA		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection		
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Newington	<b>APPLICANT</b> Acorn Car Wash <b>AGENT</b> Kent Drawing
<b>DECISION DUE DATE</b> 08/12/17	<b>PUBLICITY EXPIRY DATE</b> 17/11/17	

**PLANNING HISTORY**

15/509335/FULL

Use of land for the storage of 2x touring caravans.  
Approved Decision Date: 16.06.2017

SW/12/0088

Retrospective application for Car wash canopy.  
Approved Decision Date: 19.03.2012

SW/11/0975

Retrospective change of use of part of site to hand car wash  
Approved Decision Date: 15.09.2011

**1. DESCRIPTION OF SITE**

1.1 This site is the former garage on High Street, Newington, at the centre of the village. It is in use as a hand car wash, granted under the reference above, and has a large canopy to the front of the building. The building is set back from the highway behind the forecourt, where the car washing takes place. It is a single storey, white rendered building, with a former yard area to the rear. Beyond this to the rear is the Council car park. To the east is the access to the car park and to the west is no.67 High Street, a dwelling in separate ownership to this site.

**2. PROPOSAL**

2.1 The proposal seeks planning permission for the change of use of eastern part of the main building to a studio flat, although the plans show a one bedroom flat with lounge/kitchen/diner and separate bedroom.

2.2 Access to the flat would be via the existing office at the site or a door to the rear. All windows serving the flat would face the former yard area to the rear.

2.3 The application includes supporting information relating to the necessity of providing accommodation on site, including the late working hours of employees at the site, and the need for on site security.

### 3. PLANNING CONSTRAINTS

The site abuts the Newington AQMA

### 4. POLICY AND CONSIDERATIONS

NPPF - Para 170:

*Planning policies and decisions should contribute to and enhance the natural and local environment by:*

*e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans.*

Development Plan: Bearing Fruits 2031 –Swale Borough Local Plan 2018 .Relevant policies include:-

CP1 – Building a Strong, Competitive Economy

DM7 – Vehicle Parking

DM14 – General Development Criteria

### 5. LOCAL REPRESENTATIONS

Two objections have been received from local residents, which are summarised as follows:

- It is against the law to live in a commercial building and would set a precedent for all other carwashes and commercial building in the UK
- The site is covered by security cameras and a (currently inoperative) security light;
- The business should be insured against theft and damage;
- Staff normally leave by 7:30pm and many of them live across the road;

### 6. Consultations

6.1 Newington Parish Council raise objection and comment as follows:

*Councillors have considered the application and have agreed unanimously to object to the proposal as there is no business necessity for the proposal and the site is not suitable for residential use.*

6.2 I am awaiting further comments from the Environmental Services Manager and will update Members at the Meeting.

### 7. BACKGROUND PAPERS AND PLANS

Application papers and correspondence for applications 15/509335/FULL, SW/12/0088 and SW/11/0975

## **8. APPRAISAL**

### **Principle of Development**

- 8.1 The site lies within the built up area of Newington, where residential development is acceptable as a matter of principle. In this instance, the proposal would result in the loss of an area of floorspace which could be used for commercial purposes. However – it is my view that the area, which is not in use at present, is unlikely to be put to office use, nor to any commercial use not associated with the car wash. The use of the wider site can cause noise and disturbance and it seems unlikely to me that the building could be successfully marketed for alternative uses. I therefore consider the loss of commercial floorspace acceptable in this instance, and accordingly, the proposal is acceptable as a matter of principle. I discuss the impact of the car wash on residential amenity below.

### **Visual Impact**

- 8.2 The external alterations to the building amount to the insertion of two windows to the rear. I do not consider that this would give rise to harm in this respect.

### **Residential Amenity**

- 8.3 The proposed flat would not overlook any dwellings, and is well removed from neighbours. I do not envisage harm to the amenities of nearby residents.
- 8.4 As a one bed flat, the Council would not normally expect the significant provision of amenity space. Nonetheless, there is an opportunity for an area to be provided to the rear of the dwelling, and I have requested that the plans be amended to show this. I will update Members at the Meeting.
- 8.5 There is of course significant potential for harm to residential amenity by virtue of noise and disturbance to occupiers of the flat due to its very close proximity to the car wash. In this respect, I note that the openings at the flat would all face away from the car wash. I also note that it is intended that the occupier would be an employee at the car wash, and would therefore be at work at the site during the times when the use is taking place. Given this, I am satisfied that, subject to the condition below regarding occupancy of the flat, there would be limited harm to residential amenity.

### **Highways**

- 8.6 The site benefits from a well established access to the highway, and there is substantial space for vehicle parking at the site. I do not envisage harm to highway safety or convenience.

### **Other Matters**

- 8.7 The site fronts on to the Newington Air Quality Management Area. I await further comments from the Environmental Services Manager, but note that the building is set well back from the highway, and that all the openings for the proposed flat would face away from the AQMA. Furthermore, I do not envisage that the vehicle movements

associated with a single dwelling here would give rise to a material worsening of the air quality in Newington.

8.8 I note the arguments made with regards security and working hours, and the comments of the objectors in these respects. In my view a persuasive argument has not been made on either grounds. Nonetheless, given the above, and subject to the comments of the Environmental Services Manager, I find the proposal otherwise acceptable.

8.9 An appropriate assessment is set out below.

## **9. CONCLUSION**

9.1 The proposal is in my view acceptable and, subject to the receipt of amended plans and the further comments of the Environmental Services Manager, I recommend approval.

## **10. RECOMMENDATION - GRANT** Subject to the following conditions:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The occupation of the dwelling shall be limited to a person solely or mainly employed, at the application site for the purposes of car washing and valeting, and any dependent of such a person residing with him (but including a widow or widower of such a person).

Reason: Having regard to the specific circumstances at the site and the potential for noise and disturbance and harm to residential amenity arising from the use of the site.

### **The Council's approach to this application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwellings are occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement would cost substantially more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed. **However, the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and there are questions relating to the cumulated impacts on schemes of 10 or less that will need to be addressed in on-going discussions with NE.** Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA – I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on

single dwellings upwards will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and what is acceptable to officers as a common route forward. Swale Council has adopted a formal policy of seeking developer contributions for larger schemes (those of more than 9 dwellings), and that tariff amount takes account of and compensates for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. **Swale Council is of the opinion that the agreed tariff mitigates for the individual and cumulative impacts of this scheme.**


Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



17/504813/FULL - Car Wash 67 High Street  
Scale: 1:700  
Printed on: 29/10/2018 at 11:50 AM by JosephM



© Astun Technology Ltd