
Appeal Decisions

Site visit made on 30 August 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 September 2016

Appeal A: APP/L1765/C/16/3141998

**Molly's Den, Wessex Gate, Moorside Road, Winchester, Hampshire
SO23 7SS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dean Souter against an enforcement notice issued by Winchester City Council.
- The notice was issued on 30 November 2016.
- The breaches of planning control as alleged in the notice are
 - A. Without planning permission the carrying out of operational development comprising: (i) the erection of a fibreboard structure and the joining of shipping containers to form a building on the western elevation of the existing building (shown hatched in blue on the plan attached to the notice)
 - (ii) the joining of three shipping containers (shown hatched in blue on the plan attached to the notice) to form two separate buildings joined by corrugated plastic/tarpaulin (shown coloured yellow on the plan attached to the notice) to form a covered area on the northern elevation of the existing building.
 - B. Without planning permission the material change of use of the Land from use falling within Class B2 (general industrial) of the Schedule to the Town and Country Planning (use Classes) Order 1987 ("the order") with ancillary office and use for storage to: a mixed use as a café/restaurant on the first floor, for the retail sale of goods and for the display of goods for sale and the use of the part of the Land (shown hatched red on the plan attached to the notice) as children's play area.
- The requirements of the notice are:
 - i) Dismantle all containers and remove the containers and all resultant materials from the Land.
 - ii) Dismantle the fibreboard building affixed externally to the fire exit closest to the south west corner of the western elevation and remove all resultant materials from the Land.
 - iii) Cease the use of the land for retail, as a café/restaurant and children's play area.
 - iv) Cease the use of the land as a café/restaurant and remove all catering equipment and associated paraphernalia from the Land.
 - v) Dismantle all play equipment and remove all resultant materials from the Land.
 - vi) Remove all retail stock from the Land.
- The periods for compliance with the requirements are as follows:
 - Steps i) and ii) Four months
 - Steps iii), iv) & v) Two months
 - Step vi) Three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Appeal B: APP/L1765/W/15/3138117

**Molly's Den, Wessex Gate, Moorside Road, Winchester, Hampshire
SO23 7SS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Dean Souter against the decision of Winchester City Council.
- The application Ref 14/02133/FUL, dated 12 September 2014, was refused by notice dated 7 May 2015.
- The development proposed is change of use from B1, B2 and B8 to a use comprising A1/A3/B1/B8.

Summary of Decision: The appeal is dismissed.

Procedural matter and background

1. The Council refused the application subject of Appeal B on the following grounds which can be summarised as: 1. impact on town centre, 2. inappropriate location, 3. unsustainable construction, 4. cluttered appearance, 5. safe flow of traffic and 6. parking. Following the refusal and receipt of additional information the Council says that it does not intend to pursue refusal reason No. 3 and in addition reasons for refusal Nos 5 and 6 can be overcome by appropriate conditions. I see no reason to disagree and do not consider these matters any further in my decision.
2. Appeals A and B are the subject of the same development so that I consider them together in my decision.
3. The appeal site comprises a brick built single storey industrial building with a shallow corrugated roof, which it appears was built in about 1970. Along the frontage is a two storey section which may have historically been used for offices in conjunction with the main use. The site lies at the northern extremity of Moorside Road within Winnall Industrial Estate. There are car parks to the rear and also to the south of the building.
4. The main building has been divided by informal partitions into a large number of separate stalls which are used as a display area for antiques and craft items, ranging from jewellery and small ornaments to larger items of furniture. More stalls are located in a series of linked metal containers both to the rear and to the north of the main building. External areas are also used for outside seating and a play area. The two-storey flat roofed section at the front provides offices and the pay stations, toilets, more display space and a café on part of the upper floor.

Appeal A: Ground (a), the deemed application for planning permission and Appeal B.

Main issues

5. The main issues in these appeals are the effects of the development, firstly on the availability of land and buildings for industrial development and secondly, on the vitality and viability of the town centre.

Availability of land for industrial development

6. Policy WTI of the *Winchester Local Plan Part 1-Joint Core Strategy 2013* (LPP1) supports, amongst other matters, the retention of existing employment land and premises. However it also says that there is support for diversification of

the economic base including tourism, creative opportunities and start-up premises.

7. In turn emerging Policy WIN11 of the *Winchester Local Plan Part 2-Joint Core Strategy* (LPP2)¹ says that Winnall is the main employment area in Winchester. The industrial estate is divided into four sub-areas, of which Moorside Road, including the site subject of these appeals is the core employment area for Class B uses². In sub area 2 along Easton Lane a more flexible approach to employment uses is adopted and I saw that in this area there are a significant number of retail outlets, particularly those selling bulky goods. To the south of this, two areas provide for start up businesses and other non-Class B use.
8. From what I saw the northern end of Moorside Road is almost exclusively in industrial or other uses within Class B of the *Town and Country Planning (Use Classes) Order 1987* (The UCO). Hence the description of the area in emerging LPP2 Policy WIN11 as the core employment area of Winchester appears apt.
9. The appellant says that prior to the occupation by 'Molly's Den', the site and building was advertised for both sale and let between February 2012 and June 2014 and remained unoccupied. Whilst I have no reason to doubt that statement I note that there now appear to be relatively few vacant premises in the vicinity. It also appears that there is an extant planning permission for the redevelopment of the site for UCO Class B1(c)/B2/B8 uses.
10. The aim of LLP1 Policy CP9 is to retain a mix of employment land and premises and in particular to resist the loss, other than in specified circumstances, of existing or allocated employment land and floorspace within Use Classes B1, B2 or B8. One such circumstance is the benefits of the proposed use compared to the benefits of retaining the existing use. The appellant's summary of the number of employees is inconsistent. Whilst the planning statement says that Molly's Den has 3 full-time members of staff and 2 part time staff, the retail sequential test statement says there are 14 full time members of staff. The latter report also says there are 141 stall holders whereas the planning statement notes 80 individual stall holders. These stall holders appear to absent for significant periods and thus are not full time employees. Indeed it is suggested that some only use the premises for storage. In these circumstances the number of full time equivalent employees is likely to be relatively few in number
11. The appellant claims that Molly's Den provides economic benefits particularly as the site was vacant for over 2 years and Government policy supports a more relaxed approach in relation to changes of use. But whilst Molly's Den has resulted in some employment and business benefit this has also prevented a more intensive use of the site now and in the future. Moreover, given the appellant's inconsistent evidence I afford this suggested economic benefit less weight. In any event the evidence contains little or no justification for locating the enterprise within the core Class B employment area other than simply the availability of premises. The emerging policy does acknowledge that some retail use could be acceptable at Winnall but not in Moorside Road which is the core Class B employment sub-area and which remains in almost completely industrial use.

¹ The LLP2 has been submitted for examination and has some weight.

² As defined by the *Town and Country Planning (Use Classes) Order 1987* (The UCO)

12. The appellant has suggested that the premises include an element of B8 storage use. But I give this little weight because as a matter of fact and degree the primary use of the premise is retail, albeit some goods are sold to the other traders. The premises are almost entirely taken up with retail displays (other than the ancillary play area, restaurant and offices) and from what I have seen the claimed B8 use is limited and ancillary to the sales area.
13. Consequently I find that the effect of the current use seriously harms the availability of land and buildings for industrial development and conflicts with the aims of LLP1 Policies WT1 and CP9 and emerging LPP2 Policy WIN11. For similar reasons it conflicts with the National Planning Policy Framework (the Framework) which supports the identification of strategic sites to meet anticipated needs. My observations on site also suggest there appear to be few vacant premises hereabouts, and in the absence of any other evidence, there is a reasonable probability that the site will be used or redeveloped as premises for a Class B use in the future.
14. Consequently this first issue weighs heavily against permission.

Vitality and viability of the town centre

15. The appeal has been supported by a sequential test assessment. This says that Molly's Den has a minimum size requirement of 1000 sq m and a maximum requirement of 1,800 sq m. The appeal premises have a sales area of 1,384 sq m, (also described as 1,191sq m). Following a web based search four alternative sites were considered; 1. Moorside Road, 2 Chilcomb Park, 3. Four Dells Farm and 4. Trafalgar House. Of these, Moorside Road is in a similar position to the appeal site, Nos 2 and 3 are outside Winchester, and the city centre Grade II listed Trafalgar House was discounted on the grounds of impracticality and because there was policy objection to the loss of centrally located office space. Thus the appellant says there is no sequentially preferable site.
16. However I consider that the search was somewhat limited and inflexible in terms of the criteria employed and this view is supported by the Council's evidence that there are other sites close to the centre. In these circumstances, I find that the Secretary of State appeal decision³ relied upon by the appellant is not helpful to him because he has not demonstrated flexibility with regard to format and scale. Neither does he appear to have considered whether the appeal site is suitable for the proposed development. Thirdly, because Unit B, Moorside Road was discounted on the grounds of being out of centre, that conclusion must logically apply to the appeal site which is close by.
17. The appellant says variously that the site is 1 mile away from the town centre, 1.3 miles away from the town centre boundary and 1.6 miles away from the primary shopping area. In all cases it seems to me improbable that trips to Molly's Den would be linked with a trip to the town centre by reason of the distance and because much of that journey would be through the industrial estate with a return leg up a steady hill. National Planning Practice Guidance (PPG) says that for retail purposes, a location that is well connected is up to 300 metres from the primary shopping area.

³ Appeal reference APP/G2815/V/12/2190175 dated 11 June 2014

18. In these circumstances it is likely that any customers to the appeal site travel to the site by private car and this is not part of a linked trip to the Town Centre. I saw that Molly's Den offers many goods, such as ornaments, antiques and jewellery, that are also available in the town centre and thus the premises have the potential to undermine the vitality and viability of the centre. In the absence of any sales or turnover figures this cannot be quantified but as the goods sold replicate many of those in town centre premises it is probably that it is having some adverse impact.
19. Nor do I accept that the use boosts tourism, because most visitors to Winchester, especially holiday makers who are said to be a mainstay of trade for Molly's Den tend to visit the main historic centre, Guildhall and cathedral. Hence the suggestion that there would be or are linked trips, on foot, to Molly's Den lacks cogency. The submitted petition does not identify where customers live or whether they are visiting Molly's Den as part of a linked trip. Thus there is no evidence to support the suggestion that the emporium is a tourist attraction. Moreover the purpose of an industrial estate is not to enhance tourism and such uses are incompatible.
20. Notwithstanding this, I acknowledge that in itself Molly's Den and its associated restaurant and play area does provide a destination which is attractive to some consumers and this is a view shared by its clientele. But the location within an industrial estate does not enhance the viability of the town centre
21. Consequently I find by reason of its unsustainable location, distance from the town centre and retail offer that Molly's Den undermines the vitality and viability of the town centre. Whilst the sequential test may have discounted other sites, there is no cogent justification for this location on the edge of the city within an area identified as the core employment area of the Winchester. It appears to have been selected purely because there was a building available.
22. Accordingly there is conflict with LLP1 Policy WTI which promotes Winchester town centre as the preferred location for new retail development. It is also inconsistent with the National Planning Policy Framework (the Framework) which says that town centres are the heart of their communities and policies should support their viability and vitality. The Framework also says that where a site is not available in an existing centre preference should be given to accessible sites that are well connected to the town centre, but this site does not meet that aim.
23. Consequently this second main issue also weighs against permission.

Other matters

24. The Council refused the application and issued the notice on the grounds that the effect of the development by reason of the 'make shift' appearance and outside storage are harmful to the attractive and well planned industrial area. However, industrial containers are not an unusual element of industrial estates and most of these are set back behind the building or back from the frontage. Moreover exterior storage and design matters could be the subject of planning conditions. In these circumstances this is a neutral matter in this appeal.
25. I have taken account of the supporting letter from 'Toasted' and the petition in favour of the development. I also acknowledge that Molly's Den offers an opportunity for antique dealers and others to display their goods and

supplement their income. But nothing I have seen or read alters my conclusion on the two main issues that the location in a core industrial area seriously harms the employment base of the Winchester and undermines the viability of the Town Centre.

26. In coming to this conclusion I have taken account of the appeal decisions in respect of a similar development in Ramsgate⁴. But that case appears to be in a position well connected to the town centre, on a bus route and does not seem to be within the core employment area of the town⁵. Moreover weight was given to the beneficial re-use of a heritage asset. Thus the circumstances are not comparable to this subject appeal. In any event an appeal has to be considered in the light of the particular planning merits and material factors applicable to that development.
27. Consequently, Appeal A: Ground (a), the deemed application for planning permission and Appeal B do not succeed.

Appeal A: Appeal on ground (g)

28. The notice gives various periods, for compliance for each of the requirements and the longest of these is 4 months. The appellant has requested an increase to 6 months but, other than a statement to say that this would be a reasonable period, no justification is given. Neither does he say that the compliance period is impractical.
29. Notwithstanding this, I consider that the compliance period for all the steps could be varied to 4 months. This is because the site would not be available for Class B purposes until the development is cleared in its entirety and this would give the appellant a reasonable period, including taking into account seasonal factors, to secure an alternative venue.
30. I consider that varying the compliance period so that all steps are 4 months would strike the appropriate balance between competing public and private interest. To this limited extent the appeal on ground (g) succeeds.

Decisions

Appeal A: APP/L1765/C/16/3141998

31. It is directed that the compliance period is varied as follows:
- a) the substitution in Section 5 of the words "four (4) months" as the time for the compliance with the requirements i)-iv).
32. Subject to this variation the appeal is dismissed, the enforcement notice as varied is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/L1765/W/15/3138117

33. The appeal is dismissed.

Sukie Tamplin

INSPECTOR

⁴ Appeal decisions APP/L2250/C/15/3106036 & 3106037 dated 17 February 2016

⁵ I have no information before me that says this appeal site is on a bus route.