
Appeal Decision

Site visit made on 25 August 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 5 October 2016

Appeal Ref : APP/A2280/C/16/3145818

The Railway Hand Car Wash, 2 Railway Street, Gillingham, Kent, ME7 1XL.

- 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 M. Bajrami against an enforcement notice issued by Medway Council.
- The notice was issued on 28 January 2016.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the change of use of the land to a hand car wash and without the benefit of planning permission the erection of a canopy structure.
- The requirements of the notice are (i) cease the use of the land as a hand car wash, (ii) demolish the canopy structure and (iii) remove from the site all resultant materials from the unauthorised use including from the demolition of the canopy.
- The period for compliance with the requirements is one month.
- 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 allowed, the enforcement notice is quashed and planning permission is granted subject to conditions as set out below in the Formal Decision.

Ground (a) appeal and deemed application

Main issues

1. The allegation in the notice the subject of this appeal is twofold – a change of use to a hand car wash and operational development comprising the erection of a canopy structure. The main issue in the determination of this appeal in respect of the change of use is the effect of the development on ground water conditions. The main issue in the appeal in respect of the canopy is the effect of the development on the character and appearance of the site and surrounding area.

Use - Public water supply

2. The development plan (including saved policies in the Medway Local Plan) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development does not contribute to risks of unacceptable levels of water pollution. Policy BNE23 of the Local Plan states that development on land known or likely to be contaminated or affected by adjacent or related contamination must be accompanied by the findings of a detailed site examination to identify contaminants and the risks that these might present to human health and the wider environment. Appropriate

measures must be agreed and satisfactorily implemented before the development is occupied.

3. The appeal site is situated next to an existing car sales business and parking for Gillingham Railway Station. Nearby is a public car park and industrial estate. The surrounding area is predominantly commercial. The Council confirms that the site lies within a principle aquifer. The former use of the site as railway sidings and coal yard means that it is likely that there has been some contamination of the ground.
4. Planning permission was granted on appeal (Ref APP/A2280/A/11/2161369) (the Permission) for change of use from car sales to hand car wash at the site subject to conditions. The conditions provide that the use permitted by the Permission shall cease if certain specified requirements are not met within stated timetables. A drainage scheme as required by the Permission was subsequently submitted to the Council but this was not agreed and the Council refused to discharge the condition by notice dated 9 July 2012. A further retrospective application for the change of use was refused in June 2015 in the absence of adequate measures to demonstrate that the risk of pollution had mitigated.
5. In the course of this appeal the Appellant has submitted a site drainage and permeability report dated 16 March 2016 which contains a number of recommendations, including the fitting of an interceptor to ensure the extraction of any chemical akin to domestic cleaning liquid. The Council has consulted the Environment Agency on this report. Their response welcomes some of the suggested recommendations but also raises questions, including whether an interceptor is a practical solution in the circumstances of this site and they suggest the provision of large trapped gullies with an oil filter and spill kits as an alternative. There is therefore no agreed drainage scheme before me.
6. The appeal site is hardsurfaced and I saw at my site visit that water from the car wash appeared to run into drains within the site. On the evidence before me it is realistic to expect it to be practicable to implement measures that would address the risks to ground water and avoid run off mobilising any contamination in the ground. I agree with the previous Inspector that whilst agreed measures would not satisfy the letter of policy BNE23 they would provide an appropriate balance between protecting ground water and facilitating the effective use of an otherwise unobjectionable purpose and comprise a sensible interpretation of development plan policy.
7. I have considered the Planning Policy Guidance concerning conditions. The Council suggests a condition in the event that the appeal is allowed. The proposed condition requires that within a month of the decision a plan and details shall be submitted showing the provision of large trapped gullies with an oil filter and the approved details to be installed within one month of the Council's written approval. It also required the making good of tarmac and the fitting of new drain pipes and gullies. No specific comments are before me from the Appellant on this proposed condition.
8. There is insufficient evidence before me to enable me to conclude with any certainty that gullies with an oil filter and spill kits as proposed by the Environment Agency is a reasonable and necessary proposed alternative to interceptors as proposed by the Appellant. Further the proposed condition is

not sufficiently precise in that it refers to the site drainage and permeability report without any date or authorship to identify it and does not set out the consequence of non compliance by the Appellant or the position in the event the Council does not give a timely decision on the submitted plans and details. It also does not set out that the approved drainage scheme is to be retained as long as the site is being used as a car wash.

9. In contrast I consider that the conditions attached to the Permission would address the identified harm and satisfy the Guidance. The requirement for an approved scheme would provide precision and ensure that the identified harm is remedied.
10. For the reasons given above I conclude that the appeal should succeed on ground (a) in respect of the change of use and planning permission should be granted subject to conditions.

Canopy

11. I saw at my site visit that a canopy structure covers the car washing area. There is no dispute between the parties that this is operational development requiring planning permission. I have no reason to conclude otherwise.
12. No mention is made of the canopy in the submissions before me from the Council or the Appellant. I wrote to the parties in the course of the appeal seeking comment. The Council replied that the canopy facilitates the change of use and that as the use is unacceptable the structure should not remain on site. The Appellant responded that the absence of reasons for issuing the notice in respect of the canopy means that the Council accepts that the canopy accords with the development plan.
13. It is established law that a notice concerning a change of use can seek to require the removal of works that facilitate that change regardless of whether those works require planning permission in themselves. But I have found the change of use to be unobjectionable (subject to satisfying conditions). Moreover, I do not find that the canopy causes undue harm to the character and appearance of the commercial area in which it sits. It is in keeping with the surrounding area. There is no submission before me that it fails to accord with the development plan.
14. I therefore conclude that the appeal should succeed on ground (a) in respect of the canopy and planning permission should be granted.

Conclusion

15. For the reasons given above I conclude that the appeal should succeed. Accordingly the enforcement notice will be quashed. In these circumstances the appeal under ground (g) does not therefore need to be considered.

Formal Decision

16. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a canopy and the use of land at 2 Railway Street, Gillingham, Kent, ME7 1XL, as shown on the plan attached to the notice, as a hand car wash subject to the following conditions:

- (1) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purpose of such use, including the canopy structure, shall be removed within one month of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i. Within 3 months of the date of this decision a scheme setting out the measures to be implemented to ensure that the impact on ground water conditions of surface or other water draining from the site is no greater than that of the previous authorised use shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;
 - ii. If within 11 months of the date of this decision the local planning authority refuse to approved the scheme or fail to give a decision with the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State;
 - iii. If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State;
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- (2) The measures included in the approved scheme shall be retained in working order for so long as the use hereby permitted continues on the site.

S. Prail

Inspector