

Appeal Decision

Site visit made on 5 September 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/Q3305/C/16/3144955

Former Petrol Pumps Site, west of The Shrubbery, Commercial Road, Shepton Mallet

- 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 Ramazan Ibrahim against an enforcement notice issued by Mendip District Council.
 - The Council's reference is ENF/2015/0367.
 - The notice was issued on 22 January 2016.
 - The breach of planning control as alleged in the notice is '*Without planning permission the change of use of land from a (former) petrol filling station to Class A5 (stationing of a mobile unit for hot-food takeaway)*'.
 - The requirements of the notice are to '*Cease the use of the land for a use within Class A5 and remove the mobile unit*'.
 - The period for compliance with the requirements is 1 month from the date the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the Enforcement Notice ("the EN") is upheld. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (e)

2. An appeal on ground (e) is that the EN was not properly served on everyone with an interest in the land. The appellant contends that the EN dated 22 January 2016 was not served on the landowner.
 3. Section 172(2)(a) of the 1990 Act requires a copy of an EN to be served on the owner and occupier of the land to which it relates.
 4. The Council issued a Planning Contravention Notice in December 2015. The appellant responded by letter on 6 January 2016, identifying the landowner. The Council sent two letters which included copies of the EN; one was sent to the landowner and the other to the appellant as the occupier of the land.
 5. There is no substantive evidence before me that either the landowner or the appellant did not receive a copy of the EN. Neither is there a suggestion that
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there is any other person with an interest in the land materially affected by the EN¹.

6. The appellant was able to make an appeal against the EN and, in my view, neither the appellant nor the landowner has been disadvantaged in any way. The appeal on ground (e) therefore fails.

The appeal on ground (a) / deemed planning application

Main Issues

7. The main issues are :

- Whether the development preserves or enhances the character or appearance of the Shepton Mallet Conservation Area (CA)²;
- Whether the development preserves the setting of the adjacent listed building³;
- The effect of the development on highway safety; and
- The effect of the development on the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance.

Reasons

Whether the development would preserve or enhance the character or appearance of the CA or the setting of the Grade II Listed Building

8. The land the subject of the appeal consists of a former petrol pump site, upon which a mobile unit for hot food takeaway has been sited. It lies within the Shepton Mallet CA.
9. Although the Council has not provided me with a map of the CA, its evidence includes an extract from the Council's adopted '*Conservation Area Character Appraisal and Management Proposals*', which identifies the appeal site as a negative feature in this part of the CA. However, the Council has otherwise provided little substantive evidence as to the character of the CA or the special features it possesses.
10. I observed that the character of this part of the CA is defined predominantly by a close urban grain and a mix of residential and commercial uses reflected in the scale, form and design of the surrounding built form. It includes several large and imposing, traditional, dressed stone buildings which make a significant contribution to this part of the CA.
11. I note that the vacant building opposite the appeal site makes little contribution to the character and appearance of the CA. I also do not dispute the appellant's contention that the site was fenced and in a poor condition prior to being brought into use. Be that as it may, whilst these elements may have diluted the quality of this part of the CA, this matter does not negate the need to protect the special interest that remains overall.

¹ As required by s172(2)(b) of the Act.

² Section 72(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990.

³ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

12. The catering unit has a modern, utilitarian and uncompromising appearance. The mobile nature of the unit is such that it appears as a temporary, makeshift structure. Its appearance contrasts greatly with the substantial, stone buildings to which it most closely relates. Occupying a prominent position on one of the main thoroughfares through the town, it has a functional and unattractive appearance at odds with the otherwise high quality design and finishes of the buildings in its surroundings.
13. Consequently, the development detracts significantly from the character and appearance of the CA contrary to the requirements of the Act. It also conflicts with Policies DP3 and DP7 of the adopted Mendip District Local Plan 2014 (LP) which seek to ensure that new development preserves heritage assets and is of a form appropriate to the local context.
14. The Council also takes issue with the effect of the development on the setting of the adjacent Grade II Listed Building at 21-23 Commercial Road. However, it has not provided me with its listing description nor described the particular characteristics of its setting which it considers the development offends.
15. I observed that the Listed former police station, which is a detached masonry building of considerable size, is sited at the back edge of the footway. Its setting comprises the surrounding built form, open areas of land to the rear and south and the highway to the front. In particular, it is seen in the context of the flat roof garages to the rear of the building as well as the gap between it and the closest neighbouring property to the south. The appeal site lies in this gap but is separated by an access to the car parking area. Given the separation distance and the scale and nature of the development, it does not compromise the appreciation of the detailing on the prominent side and front elevations of the building or the understanding of its relationship with its surroundings when viewed from the approach along the main road.
16. In light of the relationship that I have described, and that an intervening area of land would be retained between the site and the listed building, I find that the setting of the listed building would be preserved, consistent with the requirements of the Act and LP Policies DP3 and DP7.
17. Be that as it may, the failure of the development to preserve the character and appearance of the CA would also result in conflict with the overarching sustainability principles of the National Planning Policy Framework (NPPF) which regards good design as a key theme.
18. Specifically regarding heritage assets, the NPPF states that where a proposed development will lead to substantial harm to a designated heritage asset, consent should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss. Where a development proposal will lead to less than substantial harm to the significance of an asset, this harm should be weighed against the public benefits of the proposal including securing its optimum viable use.
19. In the context of the test outlined in the NPPF, and weighing in the balance the importance of the asset, I find the harm to be less than substantial. As such, it must be weighed against the public benefits of the development including securing its optimum viable use.

20. In this respect I have had regard to the appellant's assertion that the development brings back into use a vacant and poorly maintained site and that it is his intention to continue to maintain the site to a high standard. I also do not dispute the public benefits in terms of providing employment and attracting trade.
21. Nevertheless, I am not persuaded that the development before me is the most appropriate solution for the re-use of the site or that the benefits outlined by the appellant could not be met by a less harmful intervention.

Highway safety

22. The appellant states that parking is provided on the site and, as a result, there is no need for customers to park on the road. Whilst the Council states that there is no mechanism for securing such a provision, it seems to me that this matter could be addressed by condition if planning permission were to be granted. In any event, I am also aware that there are existing public parking facilities in close proximity.
23. There is no substantive evidence before me that the development results in indiscriminate parking on the highway or that customers do not use the public parking facilities. Hence, I have no reason to conclude that the development generates additional vehicle parking on the highway such that it results in the obstruction to the free flow of traffic in the vicinity of the site, to the detriment of highway safety.
24. Whilst I do not find conflict with LP Policies DP9 and DP10, the Council's Countrywide Parking Strategy or Chapter 4 of the NPPF in this regard, this matter does not outweigh the harm that I have identified for other reasons.

Living conditions

25. I observed that the site lies adjacent to a mix of commercial and residential properties. The appellant has submitted a noise assessment of the current operations, which involved undertaking noise surveys on two separate occasions during night time hours. The results of the assessment show that noise from the unit has a low impact on the nearby residential properties and that no additional noise mitigation is required, albeit advice is given as to ways in which noise from the unit can be further reduced.
26. However, impulse noise can be created by *inter alia* customers arriving to collect orders, including the turning over of engines, slamming of car doors and raised voices. I note the concerns of interested parties in this regard. The Council has suggested that a condition could be attached in the event of planning permission being granted limiting the hours of opening in order to overcome any concerns in respect of noise and disturbance and its effect on the living conditions of neighbours. Given the mixed commercial and residential character of the surrounding area, and thus the reduced expectation of a quieter living environment, I do not disagree. There is no compelling evidence before me that leads me to any other conclusions in respect of this matter.
27. Subject to a condition to this effect therefore, I do not find conflict with LP Policies DP7 and DP8 or with Chapter 11 of the NPPF. However, this matter does not outweigh the harm to the character and appearance of the CA in the balance of acceptability.

Other matters

28. Although land contamination matters have not been cited in the Council's EN, I have been provided with a Contamination Report. As I understand it, the site was previously used as a petrol station, with the tanks decommissioned some 20-25 years ago and subsequently filled with concrete. The report concludes that there is little or no risk to the development.
29. I do not have before me the Council's response to this submission. However, as the appeal is dismissed for other reasons, I have taken this matter no further.

Conclusions on the ground (a) appeal

30. In conclusion, therefore, the development detracts from the character and appearance of the CA, and would harm the significance of the heritage asset. The harmful impact would result in less than substantial harm to its significance. There would be some benefits in terms of bringing the site back into use and providing employment opportunities. However, it has not been shown that the significant degree of harm inherent in the development is necessary to secure those benefits. On that basis, the proposal falls contrary to the Act, the development plan, and the NPPF.

The appeal on ground (f)

31. An appeal on ground (f) is that the steps required to comply with the requirements of the EN are excessive and lesser steps would overcome the objections.
32. The purpose of the EN is to remedy the breach of planning control by discontinuing the use of the land and removing the mobile unit. In my view the requirements are entirely appropriate to achieve the objective of preserving the character and appearance of the CA and are necessary to remedy the breach.
33. Thus, the requirements of the EN are not excessive and there are no lesser steps put forward by the appellant that would remedy the breach of planning control or the injury to amenity that has been caused by the breach. The appeal on ground (f) must therefore fail.

Conclusion

34. For the reasons I have given, and having regard to all matters raised, I conclude that the appeal shall not succeed. I shall uphold the EN and refuse to grant planning permission on the deemed application.

Melissa Hall

Inspector