
Appeal Decision

Site visit made on 4 April 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 20th April 2017

Appeal Ref: APP/C4615/W/16/3166069

Land at rear of 4 High Street, Lye DY9 8JT

- 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 Richard Homer against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/1347, dated 26 September 2016, was refused by notice dated 17 November 2016.
 - The development proposed is for erection of a steel container with canopy roof over to prepare and serve takeaway food.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. Since the application was determined by the local planning authority, the Council has adopted the Dudley Borough Development Strategy (DBDS), which has replaced policies of the Unitary Development Plan (UDP). As such there is now a suite of new policies relevant to the determination of this appeal. These are material changes in circumstances that are directly related to the appeal. The parties have been given the opportunity to comment on the relevance of new policies. Accordingly, I do not consider that either party has been prejudiced by this new information.
3. I carried out the site visit unaccompanied. However I was satisfied that I could see everything I needed from the adjoining car park and thus do not consider that the appellant has been prejudiced by this change of procedure.

Main Issues

4. The main issues in this appeal are the effects of the development firstly on the character and appearance of the area, including the setting of locally designated heritage assets and secondly, on the living conditions of occupiers of nearby residential properties.

Reasons

Character and appearance

5. The appeal site comprises a small rectangular area of hardstanding to the rear of 8-12 High Street that previously formed part of a parcel of unused vacant ground alongside No.4 High Street, a single storey former nail makers building
-

and locally designated heritage asset and a public car park. Immediately to the east is a modern three storey block of flats with its main aspect onto Jackson Street. Although this building offers up a blank brick façade onto the appeal site, there are 5no. roof lights within the roofscape that faces towards the site. The surrounding area forms part of the Lye High Street and Cross Area of High Historic Townscape Value (AHHTV), which itself forms part of the Regeneration Corridor 13 – Jewellery Line-Rowley Regis-Stourbridge Junction within the Black Country Core Strategy (BCCS).

6. The proposal involves the retention of a metal container structure that has been used in the recent past for the purposes of the cooking and sale of hot food for consumption both on and off the premises. Photographic evidence suggests that there were two such structures sited at one time together with timber shed like structures. These items have largely been removed leaving just the one container in situ together with a concrete hardstanding. The proposal would see the turning of the container on its axis so that its longer side would run alongside the rear wall of the adjoining residential flats. The container and the area immediately in front would be roofed over with a dark coloured monopitched metal canopy while the site would be fenced in a high quality galvanised weldmesh panel and posts with access gates. The area within the fencing will provide some seating for customers.
7. Paragraph 135 of the National Planning Policy Framework (the 'Framework') explains that the effect of an application on the significance of a non-designated heritage asset should be taken into account in its determination. In so doing, a balanced judgement will be necessary having regard to the scale of any harm or loss and the significance of the heritage asset. The significance of this area is derived from the concentration of largely two storey commercial and community buildings dating back to the early Victorian period and before that, which combine to give a market town ambience with shuts and former workshops leading from the High Street. The adjoining former nail makers building is of considerable local importance and contributes to the setting and significance of Lye as an AHHTV.
8. Although best endeavours have been made to improve the appearance of this site, the development overall would have a significantly harmful effect on the character of the area and undermine the heritage significance through use of modern materials that would cloak but not conceal what is essentially a utilitarian structure. Sited alongside a non-designated heritage asset of considerable local importance, the proposed development would also seriously undermine this building's form, its setting and the contribution it makes to the heritage significance of Lye AHHTV.
9. I note the Council's position in relation to the likely form of the ventilation and extractor system that would be necessary to serve this development and agree that the device would have the potential to further impinge and seriously harm the setting of the adjoining locally listed heritage asset as well as the AHHTV more widely.
10. Taking all the above into consideration, the proposed development would therefore be contrary to Policies CSP4, ENV 2 and ENV 3 of the BCCS and S11 and S12 of the DBDS. These policies seek amongst other things to protect the setting of locally listed heritage assets and ensure that developments make a positive contribution to the local character and distinctiveness of the Borough.

These policies are consistent with the advice contained in paragraph 126 of the Framework.

Living conditions

11. Although the facility would be located alongside the blank rear wall of the adjoining block of residential flats, it would be located in close proximity to windows in the side elevation and underneath rooflights within the roof of this building. Given the position of the facility adjacent to a public car park and the introduction of outside seating enabling customers to eat their food while on the premises, there will be opportunities for customers to congregate in the vicinity of the appeal premises for longer periods. Given the close proximity of neighbouring properties and the mixed commercial and residential character of the area, this would inevitably result in significant levels of noise and disturbance for local residents. This would be at a time in the evening when nearby residents might reasonably expect a quieter environment.
12. Given the location of the appeal premises alongside a busy car park, which itself lies off the Lye by-pass, I also consider that the proposal will be likely to generate significant additional passing trade. I consider that the parking spaces within the car park closest to the facility and thus close to the residential flats would be likely to be extensively used. The increase in customers visiting the premises by car during the evening together with their comings and goings, including the slamming of car doors and revving of engines, would result in significant levels of noise and disturbance particularly for the occupiers of the immediate neighbouring properties who would be living cheek by jowl to this potentially intensive activity. I do not accept that a restriction on opening hours would be of sufficient mitigation in this case. Neither do I consider that the Council's allocation of the car park as an area for mixed use, community facilities, supermarket and peripheral housing has a significant bearing on the unneighbourly use proposed at this time.
13. Accordingly, I conclude that the proposal would result in significant harm to the living conditions of nearby residents with particular regard to noise, disturbance and odours. This would be contrary to Policy D2 of the DBDS that seeks to prevent incompatible uses from being located where this causes undue harm to the amenity of occupiers of dwellings.

Conclusion

14. For the reasons given above and, having considered all other matters raised, I conclude that the appeal should not succeed.

Gareth W Thomas

INSPECTOR