
Appeal Decision

Site visit made on 13 November 2017

by K Ford BSocSc (Hons) MSc MRTPI

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

Decision date: 5th January 2018

Appeal Ref: APP/V4630/W/17/3181619

Mario Car Wash, Sutton Road, Walsall, WS5 3AX

- 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 Mario Car Wash against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 16/1925, dated 1 February 2017, was refused by notice dated 12 May 2017.
 - The development proposed is retention of car wash for 2 years temporary permission.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The use and structures which are the subject of the appeal are already in place. I have dealt with the appeal on this basis.
3. The Council note the valeting, washing and parking areas, the car washing equipment and metal storage container on the site along with an 'A' board positioned on the grass verge to the front of the site and signs on the pub building, all of which I witnessed on my site visit. The Council also identify that a caravan has been brought onto the site as living accommodation for the workforce of the car wash and it is referenced in the reasons for refusal. The use of the caravan in connection with the operation has not been disputed by the appellant and so I have treated it as part of the development.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, having regard to the National Planning Policy Framework and any relevant development plan policies.
 - The effect on the openness of the Green Belt
 - The effect of the development on the character and appearance of the area.
 - Whether the development provides satisfactory living conditions for the employees.
 - Whether the development comprises 'intentional development'.

- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development and Openness

5. The appeal site forms part of an existing hard surfaced car park attached to a vacant pub on Sutton Road. The site is located in the Green Belt.
6. Paragraph 87 of the National Planning Policy Framework (NPPF) states inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Local policy ENV2 of the Walsall Unitary Development Plan (UDP) also seeks to protect the Green Belt from inappropriate development.
7. Paragraph 90 of the NPPF identifies that certain forms of development are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. The development does not fall within the list of exceptions cited and is therefore inappropriate development.
8. Paragraph 79 of the NPPF says 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence'. Whilst the impact on openness of cars entering and parking on the site to be washed would be akin to patrons parking to visit the pub if it were still open, the storage container and caravan are more permanent fixtures. This in addition to the equipment, paraphernalia and activity whilst the car wash is in operation harms the openness of the Green Belt and therefore contrary to Policy ENV2 of the UDP and the NPPF.

Character and Appearance

9. The site is close to residential development but is surrounded by green open land which creates an open character and appearance to the area. The large expanse of the carpark contributes to the openness and the position of the site on the edge of a more built up area gives it prominence. Whilst the proposal provides a use for the vacant site, the activity and associated clutter is very visible and appears out of place. It is consequently harmful to the character and appearance of the area.
10. The development therefore conflicts with paragraph 79 of the NPPF and the part of UDP Policy ENV32 which seeks to ensure development takes account of its surroundings, particularly in the Green Belt. It also conflicts with Policy GP2 of the UDP which expects development to make a positive contribution to the effect on the Green Belt.

Living Conditions

11. Policy H3 of the UDP requires development to create a satisfactory residential environment and Policy GP2 does not permit development that would have an adverse effect on the environment taking into account amongst other things the storage and use of hazardous substances. Although the appellant has submitted safety data sheets for the materials used and provided other

information about the safety of the operation there is insufficient evidence to enable me to be satisfied that the policy requirements with regards the living conditions of the workforce have been met. The proposal therefore conflicts with policy in this regard.

Intentional Development

12. On 31 August 2015 the Department for Communities and Local Government published a policy statement on Green Belt protection and intentional unauthorised development. The statement made intentional unauthorised development a material consideration to be weighed in the determination of planning applications and appeals.
13. The policy statement states that Government is concerned about the harm caused where the development of land is undertaken in advance of obtaining planning permission. Government is particularly concerned about the harm caused by intentional unauthorised development in the Green Belt. It is also noted that such development can lead to the Local Planning Authority having to take expensive and time consuming enforcement action.
14. The Council say temporary consent for the use of the site as a car wash lapsed in December 2016. Continued use of the site for this purpose is therefore unauthorised. Having had previous temporary permissions it is reasonable to presume that the appellant would have known that planning permission for the continued use of the site as a car wash would be required. The proposal is causing harm to the Green Belt and is requiring the Council to take enforcement action which will be at some time and expense. I conclude that the development is intentional development in the context of the 31 August planning policy statement and is a material consideration that weighs against granting planning permission.

Other Considerations

15. Paragraph 88 of the NPPF states substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I have taken into account the jobs created by the proposal along with the economic gains of an operating business and given this moderate weight.
16. Past temporary consents for the operation of the car wash on the site were granted on the basis that it would provide security against vandalism for the vacant site. The appellant says previous problems with anti-social behaviour have stopped with the presence of the car wash which provides justification for an ongoing presence. The appellant also cites cases of arson attacks on other pubs as an example of risk. Nevertheless, I have little quantified detail on either instances or risk of vandalism at the appeal site or information related to the examples identified in which to draw comparisons. This, along with the availability of alternative means with which to secure the site means I give this consideration limited weight.
17. A car wash use on the site is considered a temporary measure until the redevelopment of the site, in part or full, is brought forward with delays to date caused by the economic climate, says the appellant. Whilst in the absence of tangible evidence I give limited weight to the Council's concerns that the car

wash is prohibiting the site coming forward for development, there is nothing to indicate that redevelopment of the site is forthcoming since a planning permission for flats on the site lapsed. Whilst I note that pre-application discussions took place in January 2017, the absence of details on the redevelopment means that the continued inappropriate use of the site cannot be justified. It should also be noted that the Planning Practice Guidance advises that 'it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission should be granted permanently'. I therefore give little weight to this consideration.

18. The appellant asserts conformity of the development to planning policy. There is however a requirement to consider the Plan as a whole and as the essential issue is the consideration of harm to the Green Belt this includes Green Belt policy both in the UDP and NPPF. Although there is a presumption in favour of development, it is a presumption in favour of sustainable development. In light of the provisions in footnote 9 of paragraph 14 of the NPPF which indicate that development in the Green Belt should be restricted, the presumption is not engaged.
19. Whilst I give moderate weight to the economic gain accruing from the proposal I give limited weight to the security considerations and little weight to the temporary nature of the proposal in the context of an absence of clear redevelopment plans for the site. I consequently conclude that the very special circumstances required to justify granting planning permission has not been demonstrated.

Conclusion

20. The proposal would have harmful implications for the Green Belt in terms of inappropriate development and the erosion of the openness of the Green Belt. In accordance with national policy, such harm carries substantial weight which other considerations put forward by the appellant do not clearly outweigh. The proposal would also harm the character and appearance of the area and it has not been demonstrated that the living conditions of the workforce are satisfactory. The very special circumstances necessary to justify development do not exist. The proposal is also intentional unauthorised development. For the reasons identified above I conclude that the appeal should be dismissed.

K Ford

INSPECTOR