
Appeal Decisions

Site visit made on 1 August 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 12 November 2019

Appeal A: APP/G1250/C/18/3211127

Land at former Punshon Church, Exeter Road, Bournemouth, Dorset

- 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 Britannia Parking Group Limited against an enforcement notice issued by Bournemouth Borough Council.
 - The enforcement notice was issued on 9 August 2018.
 - The breach of planning control as alleged in the notice is: without planning permission, the formation of a temporary car park.
 - The requirements of the notice are: Cease the use of the land as a car park and remove all associated car park machinery, equipment and signage, including the pay and display equipment and ANPR cameras and posts. Restore the land to the condition in which it was prior to the breach of planning control taking place and secure the site to prevent future unauthorised access.
 - The period for compliance with the requirements is 28 days after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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Appeal B: APP/G1250/W/18/3211125

Land at former Punshon Church, Exeter Road, Bournemouth, Dorset

- 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 Britannia Parking against the decision of Bournemouth Borough Council.
 - The application Ref 7-2018-643-V, dated 1 May 2018, was refused by notice dated 27 July 2018.
 - The development proposed is described as '*Temporary car park.*'
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Formal Decisions

Appeal A:

1. It is directed that the enforcement notice be corrected: by the deletion of the words "the formation of a temporary car park" and their substitution with the words "use of land as a car park". Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is thereby 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 use of the land as a car park, on land formerly that of Punshon Church, Exeter Road, Bournemouth, Dorset, subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period, being the period of 2 years from the date of this decision.
- 2) Unless within two months of the date of this decision a scheme for the installation of directional and instructive signage at the site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the site shall cease and all equipment brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within four months of the date of this decision, the use of the site shall cease and all equipment brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Appeal B:

2. The appeal is allowed and planning permission is granted for a temporary car park on land formerly that of Punshon Church, Exeter Road, Bournemouth, Dorset, in accordance with the terms of the application Ref 7-2018-643-V, dated 1 May 2018, and the plans submitted with it, subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision.
- 2) Unless within two months of the date of this decision a scheme for the installation of directional and instructive signage at the site is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the site shall cease and all equipment brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within four months of the date of this decision, the use of the site shall cease and all equipment brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Application for costs

3. An application for costs was made by Britannia Parking Group Limited against Bournemouth Borough Council. This application is the subject of a separate decision.

Procedural Matter

4. The enforcement notice describes the alleged breach as the formation of a temporary car park. In fact, the allegation should refer, instead, to the use of the land as a car park. As the appellant acknowledges this matter in the appeal papers and the notice requires to cease the use of the land as a car park I am satisfied that no injustice will be caused by this. I will therefore

correct the enforcement notice, accordingly, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended.

Background

5. The former church was demolished and, once cleared, the site was roughly laid over with compacted rubble and hardcore. Appearing as a piece of waste ground, I understand it has been used as a car park since. There are no marked bays and, as I witnessed at my site visit, some of the parking is rather haphazard. The site, originally accessed by vehicles directly off Exeter Road, is now accessed further along the street via a narrow spur off the driveway access to the neighbouring Park Central Hotel. This was the ingress created for vehicles involved in the church's demolition.
6. Vehicles, when leaving the site exit onto Exeter Park Road. This street, with a mixture of residential and hotel uses, has a junction at its western end close to the Bournemouth International Centre Roundabout (BICR). The road is crescent shaped at its eastern end and, as a cul-de-sac, traffic along it swings back round and climbs towards the main road junction.
7. Following retrospective planning permission for use as a temporary car park being refused in July 2018 the Council issued an enforcement notice requiring for the use's cessation. The use continues, and operates on a 24 hour basis, 7 days per week.
8. The land enjoys outline planning permission (ref 7-2016-643-U), granted in February 2017, for the erection of a building up to 7 storeys in height to accommodate a residential/commercial mixed use development involving 96 flats and with lower ground floor parking.
9. Also, a full planning application (ref 7-2018-643-W) submitted in December 2018 is currently under consideration by the Council. The proposal similarly involves the redevelopment of the site with a mixed use scheme comprising commercial and residential units, similarly up to 7 storey height.

Main Issues

10. The main issues in these appeals are:
 - 1) whether the use would be prejudicial to the objectives and implementation of the Council's Town Centre Area Action Plan and the associated town centre parking strategy;
 - 2) the use's effect on highway safety, with particular regard to whether resultant vehicular movements would be prejudicial to the safety of road users and the free flow of traffic; and
 - 3) the effect on the living conditions of neighbouring occupiers, with particular regard to any resultant noise and disturbance.

Reasons

Town Centre Area Action Plan and Parking Strategy

11. Policy T7 of the Council's Town Centre Area Action Plan (AAP), adopted in 2013, sets out the Council's overarching considerations for the town centre's

- parking strategy. This aims for fewer, but larger, high-quality car parks to provide for an even split across the town centre.
12. To achieve the above, AAP policy T8 lists a number of town centre public car parks where provision is to be increased and also highlights other car parks which are to be discontinued. However, the policy also says that redevelopment affecting any other public car parking spaces, whether publicly or privately owned, should replace any spaces lost either on site or in the vicinity of the site. Where it is proposed to provide spaces in the vicinity of the site the alternative location should not disadvantage car park users.
 13. Close to the appeal site, situated off the western side of the BICR, is the Winter Gardens public car park. This site was earmarked in the AAP for redevelopment for mixed use purposes and, as part of which, public parking there would increase to 400 spaces. Consistent with this, outline planning permission was granted in March 2019 (ref 7-2017-1273-AY) for the site's redevelopment for a substantial mixed use scheme. Although public parking space is to be provided as part of the development this will obviously not be available during the construction phase.
 14. Given the above I must treat the outline permission for the Winter Gardens as a clear intention to redevelop the site. Whilst the Council is satisfied that the AAP target figure of 6,400 town centre parking spaces will be achieved when completed the temporary loss of provision is likely to amount to a significant shortfall of available parking spaces in the immediate area due to the appeal site's close proximity. Accordingly, I consider that, in the short term, motorists would be disadvantaged, and the cessation of the use at the appeal site would only compound the issue. Notwithstanding the Council's objectives in this regard, on the basis of my findings it is likely that the demand for public parking space in this area of the town centre will remain, at least for the foreseeable future.
 15. The site is located on the Grand Garden Walk, a route identified in the AAP for walking, cycling and public realm improvements. I acknowledge that the use of this piece of land as an open air car park is inconsistent with the Council's long term objectives in this respect. However, if the use was subject to a time limitation condition, and with the apparent intention that the site be fully redeveloped with a mixed use scheme, it would mean that the AAP would not be ultimately compromised.
 16. In light of the above, along with the potential loss of spaces from other local car parks, and with the Council acknowledging that the AAP's aim of increasing provision at the West Hill site has yet to be realised, I conclude that the use, if permitted for a temporary period, would not prejudice the implementation of the Council's AAP and the associated town centre parking strategy. Accordingly, the particular circumstances mean that there is no material conflict with the long term objectives of AAP policies S1, T7 and T8.

Highway safety

17. To accompany the retrospective application the appellant produced a Transport Assessment (TA) which considered the transport related aspects associated with a temporary car park in this location. It concluded that there were no related reasons for not permitting the use. However, the local highway authority (LHA) takes issue with the TA's Traffic Count data, commenting that

it is insufficient to make a proper assessment of the impact of turning movements. Further, in stressing the status of Exeter Road as a County Distributor Road, the Council comments that there is a presumption against new junctions and additional turning movements at existing junctions.

18. The Council points out that Exeter Road is also a high frequency bus route and a key part of the town centre bus network. The LHA mentions that there has been some 18 personal injury collisions within 120m of the site between 2013 and 2017. Two of these, both involving pedestrians, have been classed as serious. However, the car park has apparently only been in use since early 2018 and I have not been provided with any updated accident statistics. None of the accidents cited can therefore be attributed to vehicles turning off Exeter Road to access the car park.
19. Paragraph 108 of the National Planning Policy Framework (the Framework) says that in assessing applications for development it should be ensured that, amongst other things, safe and suitable access to the site can be achieved by all users. Saved policy 8.1 of the Bournemouth District Wide Local Plan (LP) says that development will be permitted on Primary and County Distributor Routes where it will not result in direct access, parking and turning movement on these roads. In this particular instance the access, created for the church's demolition, is not direct, being instead via a spur off an established driveway to an adjacent hotel, and parking is prohibited on this stretch of Exeter Road. During my site visit I also noted that, due to the high volume of traffic and the nearby BICR, there is a relatively slow flow of traffic but generally a high volume.
20. The original access point from Exeter Road has been closed off, and is now marked by a pedestrian gate in the surrounding hoarding. Although the Council's case is that the car park introduces extra traffic onto Exeter Road, in the general context described and with the site's limited capacity, any increase would be largely negligible.
21. Turning off Exeter Road at the access point, which vehicles attending the hotel already do, is unlikely, therefore, to be prejudicial to highway safety. I acknowledge that the car park entrance requires vehicles to swing to the driveway's left close to the junction with the main road. However, the layout of the car park, which requires that vehicles then approach the parking area along a straight ridge within the site before dropping down via a ramp to the car park proper, is unlikely to mean that they would back up and unduly impede the free flow of traffic on Exeter Road. In this respect the separate exit onto Exeter Park Road aids the situation, lessening the possibility of any significant vehicular conflict.
22. The planning application was submitted indicating that the car park would accommodate 30 spaces but, as the car park is not formalised, the TA says that it can take up to 40 vehicles. The Council, in its observations, has counted more than 30 vehicles parked on occasions and I can confirm that this was the case at the time of my site visit. However, the fact that the car park is not properly surfaced and that there are no bays marked out is not necessarily a problem. All vehicles can enter and leave the car park in forward gears. The presence of signage in the car park would, though, be beneficial in directing that vehicles exiting the car park turn left onto Exeter Park Road, in the interests of highway safety. In this regard I understand that there have been

instances of cars turning right onto Exeter Park Road which would obviously be hazardous.

23. Although an 'exit only' sign is already affixed to the site's wall facing Exeter Park Road, more measures need to be taken in this respect. Accordingly, the appellant has produced an indicative mitigation plan in the above regard. Such an approach is consistent with the third bullet point in AAP policy T7, and full details of such can be required for the Council's subsequent approval, and can be the subject of a planning condition.
24. Paragraph 109 of the Framework says that planning permission should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. I have not been provided with any compelling evidence to suggest that this would be the case and I am satisfied that the use does not potentially endanger the safety of pedestrians, cyclists or motorists, nor unacceptably impede the free flow of traffic.
25. In the absence of compelling evidence otherwise I conclude that the use is not harmful to highway safety, and there would be no material conflict with the objectives and requirements of the policies most relevant to this main issue, namely policy CS15 of the Bournemouth Local Plan: Core Strategy (CS), LP Saved policy 8.1, and AAP policies T1 and T3.

Living conditions

26. There are a series of residential apartment blocks set off Exeter Park Road and, following the Council's consultation exercise on the planning application made, a total of four letters of objection were received in response. Taking the residents' comments into account the Council, in its assessment of the application, raised concerns that the car park use adversely affects neighbouring occupiers from Exeter Park Road by reason of undue noise and disturbance and pollution from additional traffic, especially given its 24 hour use, 7 days per week.
27. I have had regard to the residents' various comments, but I have also taken into account that this is a town centre location with the Bournemouth International Centre building visible to Exeter Park Road residents when looking upwards across the site. Given the location the majority of visitors, having parked their vehicles at the site, would depart on foot through the Exeter Road pedestrian gate before returning to the car park via the same route.
28. All vehicles leave the car park onto Exeter Park Road, which itself is heavily parked in parts, but this would also be the case should the site be redeveloped. An outline permission for a substantial mixed use scheme remains extant and a full planning application for a similar form of development has yet to be determined.
29. The subsequent appeals have given rise to only one further letter of objection which I consider to be significant as, if the use was causing particular problems, it would be expected that the degree of objection would be much greater. In the circumstances I have not been provided with any empirical evidence to illustrate that the use is giving rise to unacceptable degrees of disturbance.

30. Accordingly, on this main issue I conclude that the use is not unduly harmful to the living conditions of neighbouring occupiers and there would be no material conflict with the objectives and requirements of CS policies CS38 and CS41.

Conclusions and Conditions

31. Although the use of the site as a car park is contrary to the AAP's objectives, given the particular circumstances described I am satisfied that its temporary use for such would not prejudice the policies nor the plan's implementation, and it would not give rise to any significant harm in terms of highway safety or disturbance. Further, given the approved redevelopment of the Winter Gardens site and the apparent intention to redevelop the appeal site, its continued use as a car park, albeit temporarily, would satisfy a likely short term demand for public parking space and utilise the land on a stop-gap basis.
32. For the reasons given above, and having had regard to all matters raised, Appeal B is allowed. I also conclude that Appeal A should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.
33. In terms of conditions, although the appellant, in the papers for the s174 appeal, comments that there is no reason why the car park use should not be granted permission on a permanent basis, I have explained why it is both necessary and reasonable to impose a time limitation condition. The Council has suggested a maximum period of two years after which time the use shall cease. Given the current planning position and to allow for the site's redevelopment to be addressed I agree that this represents an appropriate period.
34. I am also imposing a condition requiring that details of the signage to be installed at the site is to be submitted to the Council for approval. I consider this condition necessary in the interests of informing the drivers of vehicles so as to guard against problems of highway safety. As to this condition's wording its purpose is to require the appellant to comply with a strict timetable for dealing with the installation of directional signage at the site. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Timothy C King

INSPECTOR