



Appeal Decision

Site visit made on 18 May 2020

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2020

Appeal Ref: APP/J1860/W/20/3244718
333 Worcester Road, Malvern WR14 1AN

- 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 J Sandhar, on behalf of 'i-shine Express', against the decision of Malvern Hills District Council.
 - The application Ref 19/01039/FUL, dated 11 July 2019, was refused by notice dated 15 November 2019.
 - The development proposed is "the retention of car wash and canopies".
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Decision

1. The appeal is dismissed.

Procedural matters

2. The Council advised that it would be necessary to enter the site to make a full assessment. This was undertaken, while observing the Government's social distancing advice due to Coronavirus (Covid-19).

Main Issue

3. The main issues are:
 - Whether the proposed development would preserve or enhance the character and appearance of the Malvern Link Conservation Area (CA) and the identified designated and non-designated heritage assets, and
 - The effect of the proposal on the living conditions of adjacent residents in terms of noise and disturbance, especially with respect to occupiers of 331 and 331a Worcester Road (No's 331 and 331a).

Reasons

Character and appearance

4. The appeal site consists of an area of hardstanding to the side of a commercial garage and in front of a builder's yard. Its access is shared by No's 331 and 331a. The site is adjacent to the junction of Spring Lane and Worcester Road and is opposite a petrol filling station. The appeal site is an open plot with hardstanding and a small wall to the frontage. Therefore, notwithstanding the appearance of the structures and equipment associated with the proposal, the site itself makes a neutral contribution to the character of the CA.

5. The South Worcestershire Development Plan 2016 (DP) requires at Policy SWDP 6 for development to conserve and enhance heritage assets, including their setting. The National Planning Policy Framework (The Framework) considers the impact of a proposal on the significance of designated heritage assets. It requires that great weight is to be given to an asset's conservation¹. Furthermore, the statutory requirements² entail that special attention be paid to the desirability of preserving or enhancing the character and appearance of a conservation area.
6. The Framework identifies significance as 'the value of a heritage asset to this and future generations' and is derived 'not only from its physical presence, but also its setting'. It explains that elements of a setting may make a positive or negative contribution to its significance or may be neutral. Therefore, the question is whether change within their wider 'setting' would result in a loss of (or degrading to) their 'significance' as heritage assets.
7. The significance of the CA derives from its linear form, following the busy thoroughfare and principal shopping street of Worcester Road. Perpendicular streets are largely residential, and many contain modest terraced brick properties. Together these features and characteristics illustrate Malvern's gradual development as an important historic settlement and tourist destination. The appeal site is within the 'Worcester Road North' zone of the CA as defined by the Council's Character Appraisal³. This has characterised this area as being important as it includes a number of buildings of high architectural and historic quality. This therefore includes a diverse range of buildings that are unified by the semi-rural context.
8. The proposal includes the use of a small cabin, three canopies, signage and car washing equipment. These elements are largely located in the western corner of the site, adjacent to the garage. The canopies are wide and tall structures. They consist of blue canvas and include text related to the business. They are mounted on metal posts and are supported from the rear. Non-illuminated signage and equipment associated with the use are also arranged around the edge of the site. Although set back into the site the canopies are still relatively prominent and intrude into the established character of the area. These contemporary additions are especially visually intrusive being adjacent to a junction. Taking in the appearance of the canopies, the cabin, signage and all associated equipment into account, the site gives the impression of a utilitarian form of development.
9. The site is adjacent to a commercial garage and opposite a petrol station. These are recognised in the Council's Appraisal as making a negative contribution to the character of the area. These plots detract from the significance of the CA. Accordingly, these do not establish a quality of design to be replicated and do not encourage further harm to the area. Furthermore, the local area includes a range of other commercial buildings displaying signage and other material that is largely in keeping with the commercial setting. These elements are generally subdued and preserve the character of the area.
10. The Methodist Chapel, adjacent to the site, is a non-designated heritage asset. The Council's Appraisal identifies it as making a positive contribution to the CA.

¹ National Planning Policy Framework. Paragraph 193

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

³ Malvern Link Conservation Area- Appraisal and Management Strategy (2009)

The building is a decorative white-washed structure of architectural interest. It is visible from wide vantage points, especially being opposite Spring Lane, and being of two-storey scale. The space to its side of the building is important as it enhances the contribution it makes to the public realm. Accordingly, its features and prominence in the street are important characteristics in the local context. The proposal would have a negative impact on the significance of the non-designated heritage asset due to the sites proximity and the appearance of the proposal. Accordingly, the effect on the Methodist Church and wider area would be harmful and result in a loss of significance to the CA.

11. I also have a statutory duty⁴ to have special regard to the desirability to preserve the setting of a listed building. Townsend House and 218 Worcester Road (No 218) are Grade II Listed Buildings and opposite the appeal site. Townsend House is set back from Spring Lane and behind No 218. Its significance relates to its age from the late C18/early C19 and the extent of architectural detailing evident. This is a handsome two-storey residence. However, the impact of the proposal on the significance of Townsend House would be negligible due to its orientation, distance from the site and the presence of intervening buildings.
12. The significance of No 218 derives from its origins in the early C19 as a range of farm buildings and its historic relationship with Townsend House. The buildings consist of brick and include decorative dentil eaves cornice. The barns are adjacent to the junction and make a strong contribution to the local area due to their prominence in the street. The buildings have undergone some unsympathetic changes, but these have not substantially reduced the significance of the buildings. The impact of the proposal on the setting of the barns would be moderately harmful due to the proximity and visual impact of the appearance of the site. This would create views of the barns from local streets that would form a juxtaposition of contrasting built form. The prominence of the proposed canopies and associated material would be harmful modern interventions into this context. Consequently, the proposal would demonstrably harm the significance of the setting of the listed building.
13. Accordingly, the proposed development would be contrary to policies SWDP6, SWDP21 and SWDP24 of the DP. These policies include the requirement for development to conserve and enhance heritage assets, to integrate effectively with its surroundings and to be considered in accordance with the Framework. Also, the proposal would be contrary to policies MD1 and MD2 of the Malvern Town Neighbourhood Plan (NP) which seek development to integrate into the existing area and integrate into the public realm setting. These policies are in general conformity with the Framework which seeks development to make a positive contribution to local character and distinctiveness.
14. In terms of the advice in paragraph 196 of the Framework, the harm to the conservation area would be 'less than substantial' affecting only its immediate surroundings. The Framework sets out the need to address 'less than substantial harm' in a balanced manner against the public benefits associated with such schemes. The proposal provides a service to the public and generates some local low-skilled employment. In so far as these benefits constitute public benefits, these would be insufficient to outweigh the harm identified to the designated heritage assets.

⁴ Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

Living conditions

15. The proposal shares its access with dwellings at No's 331 and 331a. These are accessed through a gateway to the side of the appeal site. There are also further dwellings behind the builder's yard and along Worcester Road. The Framework identifies⁵ at paragraph 180 that new development should be appropriate for its location taking into account the likely effects on matters including living conditions. It also states that in doing so, development should mitigate and reduce to a minimum any adverse impacts resulting from noise, and to avoid significant adverse impacts.
16. The appellant's Noise Assessment⁶ has considered the effects of noise generated by the activity associated with the use. A sound level meter was placed adjacent to the boundary with No's 331 and 331a. This was compared to background noise level taken after the business was closed. This found that there was an adverse impact. It concluded that an acoustic screen of 2.3m high, would reduce levels to below that recognised as having an adverse impact.
17. During my visit I observed two cars being washed concurrently. I found the noise to be relatively loud and overt in this context. This view was taken despite recognising that road traffic noise would be likely to be lessened due to the effect of Coronavirus on population movement. The Council's Environmental Officer advised that no complaints had been received, the objection submitted in representations identifies a significant level of disturbance largely from noise and water spray. The officer advised⁷ that the noise and disturbance identified by the objector should be addressed if the use were to continue to avoid future disturbance and complaints.
18. Although intermittent, the noise impact of the water jets would be sustained over prolonged periods of the day. Accordingly, the noise effects of the proposed use would be likely to be substantially greater than the previous use as a car park which would also be unlikely to have been used at anti-social times. As such, the adverse noise effect of the use and the further disturbance in reference to the drift of water spray would amount to significant adverse effects which the Framework guards against.
19. Furthermore, the acoustic screen referenced within the Assessment, is not specified beyond a general description. However, such a screen would add to the visual impact of the proposal and this would therefore be likely to further harm the appearance of the conservation area. Sufficient mitigation would therefore be unlikely to be capable of being provided to satisfy paragraph 180 of the Framework. Moreover, the further screen outlined in evidence to reduce off-site water spray would be likely to further compound the visual harm identified. Consequently, the identified noise impact and wider general disturbance would result in a significant adverse effect and demonstrable harm to the living conditions of adjacent occupiers.
20. Accordingly, the proposal would be contrary to policies SWDP 8, SWDP 21 and SWDP 31 of the DP. These seek development that would support job creation to be of an appropriate scale for its location, to integrate effectively with its

⁵ National Planning Policy Framework, paragraph 180

⁶ Noise Impact Assessment, Joynes Nash January 2020

⁷ Worcestershire Regulatory Services – Nuisance - 2 September 2019

surroundings and to avoid significant adverse effects on the effective operation of neighbouring land uses. Also, the proposal would be contrary to policy MD1 of the NP, which seeks development to not adversely impact the amenity of neighbouring residents. The proposed development would also be contrary to the Framework which seeks development to mitigate adverse noise impacts.

Other matters

21. The site is subject to a temporary planning approval⁸ for use as a car wash facility in 2013. Furthermore, planning permission⁹ was given for canopies for the car wash to be installed in 2017. This was also for a temporary period and expired in 2019. I am therefore unconvinced that the principle of a permanent car wash on the site has been established.
22. The nearby garage and petrol station are identified, in the Council's Character Appraisal, as plots that make a negative contribution to the character of the conservation area. Furthermore, signage and the general commercial appearance of the high street consist of generally subdued features. These are therefore largely complementary of the significance of the CA. Accordingly, the local area does not create a context that would find the proposal in keeping with the local commercial character.
23. The appellant has also indicated that the petrol station is a source of noise throughout the night. However, the Noise Assessment rightly considered the noise impact of the proposal taking into account background noise levels during the daytime when it would be in use. Therefore, night-time noise disturbance from other premises would have no bearing on the merits of the proposal.
24. I have considered the use of planning conditions to possibly address the harm identified. However, a condition requiring noise attenuation would be unlikely to satisfy conservation interests. Also, a condition requiring all demountable materials to be removed every night would be unreasonable and would not negate their visual impact when the business was open in the daytime.

Planning balance and conclusion

25. The Framework seeks to support the productivity of rural economies. The proposal would provide employment, deliver a local service and contribute to the local economy. However, the proposal would result in moderate harm to the living conditions of adjacent occupiers and harm to the conservation area. These impacts are not outweighed by the limited merits of the case and would not therefore outweigh the conflict identified with the development plan. There are no other material considerations, including the Framework, that would outweigh this conflict.
26. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR

⁸ Planning Application Reference: 13/00368/FUL

⁹ Planning Application reference: 17/00111/FUL