



Appeal Decision

Site visit made on 22 May 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2020

Appeal Ref: APP/R3705/C/20/3244350

2 Tamworth Road, Polesworth, Tamworth, B78 1JH

- 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 Darren Gammage against an enforcement notice issued by North Warwickshire Borough Council.
 - The enforcement notice PAP/2019/0411 was issued on 5 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a residential use (C3) to a mixed use of residential use and storage of motor home vehicles (*sui-genris*)¹ and the unauthorised creation of a hardstanding marked blue on the plan.
 - The requirements of the notice are to: Cease using any part of "the land" as a motor storage business and remove all unauthorised mobile motor vehicles off "the land". Remove all hard-core brought onto "the land" in cessation with the business use as motor vehicle storage.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by: the deletion of the word "cessation" and its replacement with the word "association" in the requirements. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The enforcement notice requirements contain an obvious error, the word 'cessation' should be 'association'. The correction of this error causes no injustice to the parties

Ground (a) and the deemed application for planning permission

Main Issues

3. The appeal on ground (a) seeks planning permission for the breach of planning control which may be constituted by the matters stated in the notice i.e. a material change of use from a residential use to a mixed use of residential use

¹ sic

and storage of motor home vehicles and the creation of the hardstanding marked blue on the plan.

4. The main issues in the ground (a) appeal are the effects of the development on:
 - the character and appearance of the surrounding areas including the Polesworth Conservation Area ("the CA") in which it lies;
 - highway safety; and
 - flood risk.
5. The development plan policies relevant in this appeal and referenced in the enforcement notice are contained in the North Warwickshire Core Strategy adopted in 2014 ("the Core Strategy"). These policies are consistent with the National Planning Policy Framework February 2019 ("the Framework").

Character and appearance

6. The property is located within the CA which is a heritage asset and which covers most of the village centre on either side of the River Anker. Its significance is due in part to "the geography of its setting and its history"² which is predominantly influenced by its location on the river. The Designation Report describes Polesworth being as a homogenous mix of buildings of all ages which evolved with newer buildings filling the gaps between the original scattering of cottages but with a retained open greenness along the river.
7. On the day that I undertook my site visit there were no vehicles parked on the appeal site. The trees and vegetation along parts of the site boundaries were in leaf as it was late Spring. However, it was clear that there would still be views into the site and that any vehicles parked on the hardstanding and, in particular, large, light-coloured vehicles such as motor homes, would be visible from various points outside of the site. There would be some limited views of parked vehicles when coming south over Polesworth Bridge with clearer views from the edge of the junction with Market Road to the east and an unobstructed view through the wide gated entrance to the property from Tamworth Road. The storage of motor homes on the site would add an element of development which would be visually inappropriate in that location and the associated hardstanding is also discordant with the rural character of the surrounding area. Whilst it is lawful to park vehicles associated with the residential use on the site, it is a matter of fact and degree as to whether the level of that use is incidental to the enjoyment of the dwellinghouse, and therefore not classed as development. The level of parking in this case goes well beyond what would reasonably be considered as incidental to the residential use.
8. The general character and appearance of the riverbanks on either side of the bridge is verdant and open. The stretch of the riverbank that includes the property appears to be in various private ownerships (and is not open to the public) and is significantly planted with trees and vegetation, but it still contributes to the green corridor that exists on both riverbanks and on either side of the bridge. I am satisfied that the material change of use to include the

² Polesworth Conservation Area - Designation Report 14 November 1995 ("the Designation Report")

storage of motor homes and the associated large area of hardstanding are urbanising features that harm the significance of the CA.

9. There is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In Framework terms the harm in this case is categorised as “less than substantial” which requires that the harm be weighed against the public benefits. I accept that the site provides secure vehicle storage space, but this is not a public benefit to be weighed against the less than substantial harm being caused to the significance of the CA. And whilst I accept that there is a public element in the economic benefits of the development this is not enough to outweigh the great weight that should be given to the asset’s preservation.
10. I conclude that the development would fail to preserve the character or appearance of the Polesworth Conservation Area (and the area more generally) and would cause less than substantial harm to its significance as a designated asset. In the absence of any public benefits sufficient to outweigh this harm it would be in conflict with the design and historic environment Policies NW12 and NW14 of the North Warwickshire Core Strategy 2014 and guidance in Section 16 of the Framework.

Highway safety

11. The access from the property connects directly onto Tamworth Road across the footway and has a restricted view in both directions. Tamworth Road is a busy road with a 30 mile per hour limit which is the main route to the Polesworth Bridge and centre of the village. The change of use to include the storage of motor homes involves by its very nature more vehicular movements on and off the site than the residential use alone.
12. The visibility to the east of the site access is restricted by a telegraph pole and dense vegetation and to the west of the site by the building at 4 Tamworth Road (No.4) which is built to the rear edge of the footway. Pedestrians walking in either direction will have a restricted view of the site access which would not be safe. There are double yellow lines in front of the site access but these do not continue outside No. 4 or the commercial property further along and this section appears, from my site visit and the photos supplied by the Appellant, to be well used for on-street parking. The on-street parking further restricts both the view when exiting the property and the view of the site access for drivers coming in an easterly direction along Tamworth Road. Whilst I accept that drivers exiting the site would be aware of the configuration the same would not necessarily be true of the road users and pedestrians. Being at a raised level in a larger vehicle such as a motor home may give an improved view over any parked cars but this would not be the case if there were larger vehicles such as vans or lorries parked and would also have no impact on the view afforded of pedestrians using the footway. The Highway Authority has identified that the visibility splays on both sides of the access are below the appropriate standard and the site visit confirmed to me that this would have an unacceptable impact on highway safety for vehicles and pedestrians.
13. The Appellant has submitted that vehicles are able to manoeuvre on site and therefore use the access in a forward gear. However, this would depend on how many vehicles were parked on the site (both motor homes and any other vehicles associated with the residential use), the size of those vehicles and the way in which they were parked, so this is not guaranteed (and I have not been

provided with vehicle tracking diagrams to demonstrate this in any event). Clearly the safety concerns that I have set out in the previous paragraph would be increased if vehicles were exiting the site in reverse.

14. In light of the reasons set out above, the development causes an unacceptable impact on highway safety with regard to vehicular traffic and pedestrians contrary to Policy NW10 of the North Warwickshire Core Strategy and Section 9 of the Framework.

Flood risk

15. The appeal site is located in Flood Zone 3 and the Framework therefore requires that a site-specific flood risk assessment should be provided and this should demonstrate how flood risks from all sources of flooding to the development itself and flood risk to others will be managed, taking climate change into account. The Environment Agency has objected to the development on the basis that no such risk-assessment was submitted. I have considered the information submitted in the appeal but this does not include detailed information about the flood risk to the development, other than accepting that it does lie with Flood Zone 3, or how flood risk to others will be managed, other than to state that the vehicles could be removed if there was a flood warning. I accept that a flood risk assessment should be proportionate and appropriate to the scale and nature of the development but the site location next to the river within Flood Zone 3 requires more information than has been submitted to enable me to reach an informed decision. As insufficient information has been provided regarding how the flood risk from all sources to the development itself and how flood risk to others will be managed taking climate change into account I cannot conclude that the development would not increase flood risk elsewhere.
16. I therefore conclude that the development is in conflict with Policies NW10 and NW12 of the North Warwickshire Core Strategy 2014 and guidance in Section 14 of the Framework which are intended to manage flood risk.

Conclusion on Ground (a)

17. For the reasons given above I conclude that the appeal on ground (a) does not succeed and I refuse to grant planning permission on the deemed application.

Ground (f)

18. For the appeal to succeed on this ground I need to be satisfied that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or as the case may be, to remedy any injury to amenity.
19. The appellant's case is that the requirement in the notice to remove the hardstanding is excessive and that if the use was to cease the hardstanding could remain. However, no alternative purpose incidental to the enjoyment of the dwellinghouse has been put forward for the use of the hardstanding which is a discordant feature and as such causes some harm to the CA.
20. It is clear from the requirements of the notice that its purpose was to remedy the breach of planning control, that breach being the material change of use of

the land from a residential use to a mixed use of residential use and storage of motor home vehicles and unauthorised creation of a hardstanding. I am satisfied that the hardstanding is works associated with the material change of use and that the requirement to remove it does not exceed what is necessary to remedy the breach of planning control. The appeal on ground (f) does not succeed and the appeal is dismissed.

Zoë Franks

INSPECTOR