



Appeal Decision

Site visit made on 27 October 2020

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2020

Appeal Ref: APP/P1615/C/20/3253659

Land at Churcham Garage, Main Road, Churcham, Gloucester GL2 8AA

- 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 1990 Act)
 - The appeal is made by E G Group Ltd against an enforcement notice issued by Forest of Dean District Council.
 - The enforcement notice, numbered EN/0328/17(1), was issued on 30 April 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the site through the expansion of the shop and intensification of the overall use of the garage.
 - The requirements of the notice are 1. Cease the unauthorised use of the part of the building as marked with a blue hatched area on the attached site plan (1) as a shop. 2. Solely use the site (the sale of goods to the public and delivery of goods to the site) during the hours of 07:00 to 22:00pm Monday - Friday, and 07:00 am to 21:00pm on weekends. 3. Return the use of the part of the building as marked with a blue hatched area on the attached site location plan (1) to a vehicular a repair workshop. 4. Construct an internal sub dividing wall in the location as marked with the blue line on the attached site location plan (2). 5. Remove all resultant materials generated from compliance with steps 1, 3 and 4 above.
 - The period for compliance with the requirements is Step 2: Within 3 months from the date the notice takes effect. Steps 1, 3 - 5: Within 9 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the following:
 - 1) The deletion of the steps required to comply with the notice and substitution therefor by the following text:
 - i. Cease the use of the part of the building marked with a hatched area on the attached site location plan (1) as a shop.
 - ii. Construct an internal subdividing wall in the location as marked with a blue line on the attached site location plan (2).
 - iii. Remove all resultant materials generated from compliance with the requirements.
2. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the material change of use of the site through the

expansion of the shop and intensification of the overall use of the garage, at Churcham Garage, Main Road, Churcham, Gloucester GL2 8AA, as shown on the plans attached to the notice, subject to the following conditions:

- 1) The petrol station and associated retail shop shall only open between the hours of:

07:00 to 22:00 Monday to Saturday

07:00 to 21:00 Sundays, public and bank holidays.

There shall be no deliveries to or sales from the petrol station, and no public vehicles shall be permitted to enter the site outside of these hours.

- 2) The development hereby permitted shall cease within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this permission, full details of external lighting shall have been submitted for the written approval of the local planning authority. The details shall clearly demonstrate that lighting will not cause excessive light pollution which would disturb the amenity of the area and nocturnal species. Within 2 months of these details being approved, the external lighting shall be installed in accordance with the specifications and locations set out in the approved details. These shall be retained thereafter in accordance with the approved details.

The details shall include:

- i. A drawing showing sensitive areas and/or dark corridor safeguarding areas;
 - ii. Description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate;
 - iii. A description of the luminosity of lights and their light colour;
 - iv. A drawing(s) showing the location and elevation of the light fixings; and
 - v. Methods to control lighting control (e.g timer operation, passive infrared sensor (PIR)).
- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Matters concerning the notice

3. The notice requires the use of the site to be contained within the hours as stated within Step 2). The requirement does not flow from the 'matters which appear to constitute a breach of planning control' and should be deleted. Furthermore, Step 3) should be deleted as a notice cannot require a former use be revived. It follows that Step 5) should be modified accordingly.
4. It is open for me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act. As such, I consider that the notice can be corrected without causing injustice to either party.

The appeal on ground (d)

5. In an appeal on ground (d), the onus is on the appellant to demonstrate, on the balance of probabilities, that at the time the notice was issued, it was too late to take enforcement action in respect of the alleged breach of planning control. Section 171B(1) of the 1990 Act sets out the relevant time period for taking enforcement action. In the case of a breach involving a change of use, it is ten years. For the development to be immune from enforcement action, it is necessary for the appellant to demonstrate that the expansion of the shop into the workshop and intensification of the use of the whole site had taken place at least ten years before the date the notice was issued. In this instance, that date is the 30 April 2010.
6. It seems to me that the site, as identified by the enforcement notice plan, was made up of two planning units; the petrol filling station and its associated shop; and the vehicle repair workshop. The appellant's case appears to rest on the use of the site as one planning unit; a petrol filling station with ancillary shop, which, according to the appellant, began in 2009 and being more than 10 years from the date of the notice and immune from enforcement action.
7. However, the appellant's evidence, according to the planning history, provides that the garage workshop building was granted permission in 1968 and the site "by the end of the 1980's the appeal site maintained the characteristics of both a repair garage and a petrol filling station". In my opinion, the site accommodated two separate planning units that were operated independently and were physically divided. The use of the site remained as such until the petrol filling station shop use expanded into the former workshop building, which, according to the appellant's evidence, occurred "between 2011-2017".
8. Furthermore, the submission of planning application P2140/10/COU on 12 November 2010, which sought to convert the former workshop to a café/restaurant, provides that "*The building is currently unoccupied and subsequently is unused*". The accompanying existing and proposed plan showed the workshop area in place. It did not indicate that a change of use had already occurred. The Council has provided photographs taken on site on 25 November 2010 as part of their site visit, in relation to the application for the café/restaurant. The photographs show the workshop to be empty.

9. The change in the use of the site from a vehicle repair workshop/petrol filling station, comprising 2 separate planning units, to a single planning unit comprising a petrol filling station with ancillary shop, falls within the definition of development, being a material change of use. Having regard to the evidence and without further supporting evidence to the contrary, I conclude that, on the balance of probabilities, the alleged change of use of the site through the extension of the shop into the workshop had not occurred by 30 April 2010.
10. Thus, the notice was issued within the 10 year period and the breach of planning control is not immune from enforcement action. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed planning permission

Main Issue

11. This is the effect of the development on the living conditions of the occupiers of nearby residential properties and the natural environment, with particular regard to noise and disturbance.

Reasons

12. The appeal site is a petrol filling station with an associated shop which also provides a selection of food, drink and sundry goods. The petrol filling station is situated on the south side of the A40, a busy main road which I noted, during my mid-morning site visit, has a near constant flow of traffic which generates a level of noise consistent with its status. Located close to the appeal site, on the opposite side, is Beauchamp Cottage, a two-storey residential dwelling. Beauchamp Cottage is situated behind a close-board timber fence and line of high evergreen trees. Beyond the dwelling is dense ancient woodland and the Higham Woods Nature Reserve. The surrounding area is predominantly countryside.
13. The Council's main reason for issuing the notice was that the change of use of the whole site through the expansion of the "shop services" and the "extension of hours of operation", has given rise to unacceptable levels of noise and disturbance, detrimental to the living conditions of nearby residents. The Council considered this to outweigh the identified small economic benefit of the expansion of the business.
14. The appellant's case provides that the re-use of the building represents the most efficient use of the redundant building with the modest expansion of the retail side of the business. The appellant explains that the expansion has allowed the petrol filling station to modernise to meet demand and provide a better service for motorists. It is strongly believed that the re-use of the vacant building achieves a significant economic benefit which represents a form of sustainable development.
15. The previous appeal¹ against the Council's refusal of P1648/18/FUL², dated 5 October 2018, explored the effect of the proposed extension of the hours of operation. The Inspector concluded that "what very small economic benefits

¹ APP/P1615/W/19/3230628

² The hours of opening of Petrol Filling Station to be 24 hrs, 7 days a week including Bank Holidays. refused by notice dated 1 November 2018

- there would be, would not be outweighed by the serious adverse impact on health, well-being and living conditions that the appeal proposal would cause”.
16. The Inspector found that typical background noise levels varied greatly across a 24-hour period, with the lowest recorded background noise during the late evening and early hours of the morning; that is, noise-sensitive times when nearby residents are likely to be asleep. Noise from traffic entering and leaving the station forecourt; the slamming of car doors; engines idling; customers’ voices; music from vehicles parked on the site; delivery cages rattling; roller shutters opening and closing and reversing beeps could all reasonably be considered to affect ambient noise levels in the area.
 17. I concur with the Inspector that the noise which emanates from the comings and goings at the appeal site would be masked to a large degree by the noise of passing traffic. However, given the proximity of Beauchamp Cottage to the appeal site, and the relative tranquillity to be expected of a nature reserve, there would be significant potential for noise to transmit across to the first-floor bedrooms on the road-facing elevation when the local acoustic climate is quiet.
 18. However, what is before me is the change of use of the site through the re-use of the former vehicle workshop building to form one planning unit as a petrol filling station. The re-use of the former workshop would support the expansion and growth of the business operating at the site through utilising a redundant building on previously developed land. The development within a rural location would likely support the local economy to a degree and would represent a form of sustainable development in accordance with economic objectives of the National Planning Policy Framework (the Framework) and Policy AP.1 of the Allocations Plan 2006-2026. Nevertheless, the Framework establishes that planning policies and decisions should create places that, amongst other things, promote health and well-being, with a high standard of amenity for existing and future users. Policy CSP.1 of the Forest of Dean District Council Core Strategy, 2012 requires new development to conserve, preserve or otherwise respect important characteristics of the environment.
 19. Fundamentally, a balance must be struck between supporting businesses and the convenience of road users and safeguarding the living conditions of nearby residents and the natural environment. The evidence provides that the extended hours of operation has a significant adverse effect on a level which causes material harm to the living conditions of the occupiers of Beauchamp Cottage, through unacceptable noise and disturbance. Therefore, I conclude that allowing the use of the former vehicle workshop to be incorporated into the petrol filling station use would be acceptable and would accord with the development plan, if it was operating within appropriate hours.

Conditions

20. A condition to limit the hours of operation during the week and including Saturdays, which is a working day for many, is considered necessary in the interests of safeguarding the tranquillity of the surrounding countryside and occupiers of nearby residential properties from adverse harm, through noise and disturbance. The slightly reduced hours of operation on Sundays and public/bank holidays are considered appropriate for the use of the site in this countryside location on what are generally considered to be quieter days of the week. Longer hours in this location would likely be more harmful to nearby

residents through increased levels of noise and disturbance to the detriment of their well-being.

21. A condition requiring the details of external lighting is necessary to safeguard the rural character from increased light pollution, visual amenity and to maintain the existing value of biodiversity on and adjacent to the site. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the outstanding matters before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

22. For the reasons given above, I conclude that the appeal should succeed on ground (a). The enforcement notice will be quashed, and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

S A Hanson

INSPECTOR