
Appeal Decisions

Site visit made on 14 January 2021

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 08 February 2021

Appeal A Ref: APP/D1265/C/20/3258307

Appeal B Ref: APP/D1265/C/20/3258308

Angola 76, Mustons Yard, Mustons Lane, Shaftesbury, Dorset SP7 8AD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mrs Sally and Mr Andrew Francis respectively against an enforcement notice issued by Dorset Council.
 - The enforcement notice, LPA case ref ENF/2016/0022, was issued on 10 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of: the building and adjacent yards shown edged red on the attached plan to a mixed use of A3 food and drink consumption on the premises and A4 drinking establishment, from an A1 retail use.
Together with the integral operational development consisting of: the construction of a stone porch entrance at the front on the northern elevation; wooden extension at the rear on the western elevation; removal of railings and gates that were set adjacent to the road at the front of the yard and their setting back and re-erection approximately 1.5 metres from the road; erection of a pergola in the rear yard (adjacent to the wooden extension); erection of a canopy over the front yard adjacent to the access from the building into the yard; and the siting of a container in the adjacent yard used as toilets for the premises.
 - The requirements of the notice are to permanently:
 - (i) Cease using the Land for A3 Café Restaurant and A4 Drinking Establishment, uses as defined under the Town and Country Planning (Use Classes) Order 1987 as amended
 - (ii) Remove the canopy erected over the front yard
 - (iii) Remove the container used as a toilet from the yard
 - (iv) Make good the surface of the yard returning it to its condition prior to the Unauthorised Development taking place so there are no holes left as a result of undertaking requirement (iii) above.
 - The period for compliance with the requirements is 2 months from the date the Notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on ground (f) only.
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Decision

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

2. The appellants point out that the recent changes to the Use Classes Order means that the former Class A3 use at the site (Use for the sale of food and drink for consumption on the premises or of hot food for consumption off the

premises) would no longer require permission because it falls within the new Class E Use of Schedule 2, Part A of the amended Order. That is partially correct since Class E includes (a) retail uses and (b) for the sale of food and drink mostly undertaken on the premises. The Notice cannot therefore prevent this aspect of the current mixed use, in other words its use as a café or restaurant. Consequently, there is no need to alter its wording. The notice still prevents the use of the site as a drinking establishment since that use has been purposely excluded from new Class E.

Ground (a)

3. Ground (a) is that planning permission ought to be granted.
4. Angola 76 is a bar/café/restaurant located in a stone building fronting Mustons Lane, located opposite the old Congregational Church which has been converted into an Italian restaurant. Mustons Lane lies on the eastern edge of Shaftesbury town centre. The appeal site is accurately delineated on the plan attached to the notice. It includes an open yard between the appeal building and a similar stone building to the north, which is in residential use and owned by the same freeholder, Mr John Morgan. The appellants are his tenants and business partners in Angola 76.
5. The canopy covers the whole of the front part of the yard, which is occupied by tables, benches and outdoor heaters and functions as the external part of the bar/café/restaurant. Immediately behind it, on the rear part of the yard, is the container building used as a male and disabled toilet for the facility. Despite some bamboo planting around it this building is clearly visible from the street between the bars of the metal gate and fencing. It is this canopy and toilet building that the notice requires removing, as well as the permanent cessation of the unauthorised use.
6. The appeal site lies in the heart of the Shaftesbury Conservation Area (CA). Opposite is the Grade II listed former Shaftesbury Congregational Church faced in Bath ashlar stone with its central Corinthian portico and pediment, fronted onto the Lane by its separately listed Grade II green sandstone wall and wrought iron railings. Just to the north, on the opposite side of the road are Nos 5 and 7 Mustons Lane, also Grade II listed buildings (LBs) faced in green sandstone.

The Canopy and Toilet Building

7. The beige coloured fabric canopy strung over the front part of the open yard and the toilet building obscure the open views of the yard, which otherwise would occur when standing in the Lane outside the premises. This is clearly shown in the Council's photographs (Appendices R and S of its appeal statement) which respectively show the yard from the street in 2009/2016 and the situation now. I acknowledge that the toilet building is faced in painted timber cladding and partially screened by planting but that does not prevent it blocking open views of the yard and the stone walls of the outbuildings surrounding it.
8. The way in which the canopy has been affixed to the stone walls of the buildings either side of it is fairly sensitive. But its overall effect on the settings of these attractive greensand buildings – which I agree are undesignated heritage assets in their own right – is significantly adverse. That is because

they are part of the stone outbuildings likely to have been associated with the former Crown Inn on the High Street and its historic brewery.

9. The historical and evidential significance and attractiveness of these buildings is to a large extent based on their relationship with each other and the open settings between them. The canopy and particularly the toilet building introduce out of character clutter, which harms the character of this open yard and therefore the significance of the buildings themselves. This clutter is clearly integral operational development associated with the unauthorised use of the premises as a drinking establishment and I agree with the Council that their removal is therefore warranted and can occur under established caselaw¹.
10. Various other unauthorised integral operational works are listed in the notice, but the Council is only taking action against the canopy and toilet building. I agree that it is only these features that harm the significance of the green sandstone outbuildings in Mustons Yard. I consider that the yard and face of these buildings should be clearly seen and appreciated from the Lane because they would contribute to the street scene in this part of the CA, as they used to before the unauthorised use commenced.
11. This yard also forms part of the setting of the LBs described above. The canopy and toilet building would detract from their settings. It would also harm the character and appearance of this part of the Conservation Area, albeit have a limited overall effect on it. These combined harms would certainly be at the lower end of the spectrum of 'less than substantial' in terms of paragraph 196 of the National Planning Policy Framework (NPPF). However, 'less than substantial harm' in this context does not equate to a less than substantial planning objection, as set down by caselaw. Any harm to the significance of a designated heritage asset requires clear and convincing justification, to which considerable importance and weight should be given.
12. The appellant argues that this operational development is readily reversible in that the canopy and toilet container building can be easily removed without any harm to the courtyard or the buildings. Whilst that may be so, what is proposed is to permanently retain these features, which the appellant maintains are necessary for the viable operation of the business. Their reversibility is therefore of little relevance since they would remain on site for as long as Angola 76 continues to trade and any successor similar use to it.

The Drinking Establishment Use

13. Three retrospective planning applications for the use and latterly its associated operational development have recently been refused: LPA Refs 2/2016/1694/FUL on 18 May 2018, 2/2018/1775/FUL on 9 October 2019 and 2/2019/1790/FUL on 5 May 2020. The refusal reasons cited include unacceptable noise and disturbance prejudicial to the living conditions of residential neighbours. These applications resulted in 4, 24 and 12 objections respectively including on these grounds, albeit there were also 49 and 11 representations of support for the latter two applications.
14. Mustons Lane is a narrow road well used by pedestrians to access the town centre and the public library round the corner on Bell Street, despite only having a footway along part of its length. It contains a mixture of commercial

¹ *Murfitt v SSE & East Cambridgeshire CC* [1980] JPL 598

and residential uses. No 3 directly opposite the front yard of Angola 76 comprises two flats, whose windows face onto the frontage churchyard. Next to that are the two 2-storey listed buildings, Nos 5 and 7, whose front windows face directly onto the Lane, with no footway at this point. No 5 is a house and No 7 (originally listed as three cottages) appears from its front doorbell to be in use as two dwellings.

15. North of that there appear to be other flats on the upper floors including above the beauty shop and the antique shop on the corner of Bell Street. There are also flats at the southern end of Mustons Lane behind the Building Society on the corner of the High Street. This is in addition to the property in the same ownership as the appeal site, the stone building on the northern side of Angola 76 that has windows facing onto the yard, as well as residential dwellings in the other parts of Mustons Yard behind the site to the west.
16. The Council has described in its appeal statement the numerous and persistent complaints by neighbouring residents backed up by substantial documentary and video evidence of noise and disturbance from music and patrons of the premises as well as anti-social behaviour, which has adversely affected their living conditions late at night, particularly on Friday and Saturday nights. These complaints have been persistent over the last 4 years, and have been made to the Council's Planning, Licensing and Environmental Health teams as well as to the Police, the latter having attended the premises at least 10 times in response to such complaints.
17. A written warning pursuant to Section 43 (5) of the Anti-Social Behaviour Crime and Policing Act 2014 (the 2014 Act) was served on the freeholder by the Council's Environmental Protection Team (EPT) on 20 February 2018 requiring him to reduce disturbance to local residents by: monitoring external noise levels after 11pm and recording incidents in a log, preventing customers using the yard after 11pm, and requiring doors and windows of the premises to remain closed whenever amplified music is played on the premises. A visit by the enforcement officer on Saturday 21 July 2018 revealed a breach of these and the Liquor License requirements. As a result, a further reminder letter was set by the EPT on 11 September 2018.
18. On 8 November 2019 a statutory noise nuisance abatement notice was served by Environmental Health (EH) on Angola 76 Ltd to prevent excessive noise from amplified music or speech after 11pm as this had been evidenced as a statutory nuisance under the Environmental Protection Act 1990. Additional licensing conditions were imposed on the premises following a license review hearing on 19 December 2019, at which seven local residents made representations including one via a qualified and accredited sound consultant.
19. A further written warning under the 2014 Act was served by EH on 3 August 2020 following a monitoring visit to the site on 31 July by the Police, EH and Licensing officers, which revealed levels of noise and disturbance that were still considered excessive, despite the stated intentions of the appellants in an email dated 30 June to improve the situation.
20. The appellants have had ample time – 4 years – in which to address the unsatisfactory noise and disturbance to neighbouring residents from live and recorded music and from the raised voices and anti-social behaviour of the business's patrons late at night, which has clearly had a significant harmful

effect on residents' living conditions. They have not successfully addressed these issues.

21. Even if the use was to shut every night no later than 11pm, as the appellant suggests in her email to the enforcement officer on 30 June 2020, I am not convinced that unacceptable noise and disturbance to the nearest residential neighbours would no longer occur. That is because the yard is right next to the residential stone building abutting its northern side, directly opposite No 3 and diagonally opposite Nos 5 and 7 Mustons Lane.
22. It is obvious that Angola 76 is a popular place to go for a night out in Shaftesbury, given its mix of drinks, food, live and recorded music combining to provide an attractive atmosphere. That would be fine in if there was no substantial harm to the living conditions of surrounding residents. But that is clearly not the case.
23. I note the comments of EH on the last planning application concerning the efficacy of conditions, whether planning or licensing conditions. Planning permission should not be refused if development could be made acceptable through the use of conditions. But I agree that the pursuit of planning objectives – in this case the prevention of harmful noise and disturbance to residential neighbours – is always at risk from non-compliance with conditions. I agree that such risk is a function of:
 - The intrinsic suitability of the use here
 - Confidence in the appellants' likelihood to comply with any conditions
 - The ease with which evidences of breaches of condition can be acquired
 - The likelihood of achieving enforcement of such conditions in the long term
 - The consequences to neighbours if conditions are breached.
24. The nearest dwellings are very close to the yard here. Noise from the yard is likely to continue to adversely affect them, especially in good weather in the summer when patrons are likely to sit outside. The venue is inevitably likely to remain dependent on late night trade for its viability so I have no confidence that a condition restricting opening until 11pm or earlier would be likely to be complied with.
25. The layout of the premises means that any amplified music or voices, whether live or recorded, is bound to escape from the building through doors and windows opening and closing, an occurrence which I consider to be inevitable and frequent because the bar is inside the building and there are many seats and the male/disabled toilet located in the yard outside. Hence there would be many and frequent comings and goings between the bar and the yard. The canopy over the yard provides no effective soundproofing for raised voices, which would inevitably on occasion result in noise nuisance to the nearest residential neighbours.
26. It is clear that the Council has already spent a lot of time and resources monitoring the noise and disturbance created by Angola 76 on neighbouring residents, and that these neighbours have been significantly adversely affected by such problems. I have no confidence that any planning conditions, even with the appellants' best will, would be complied with. Furthermore, the likely

breach of such conditions – such as those requiring patrons to leave or music to stop being played at a certain time or doors and windows to be kept shut etc – would place an onerous burden on the Council by committing it to regularly monitor the operation of the business in order to prove such breaches, which may well be difficult despite their likely regular occurrence.

27. That burden would clearly be unreasonable under the unfortunate and disruptive circumstances of the last 4 years; it would commit the Council to devoting an out of proportion expenditure of time and money late at night and on the weekend to securing evidence of the breach of any such conditions in response to likely complaints from residential neighbours.
28. I acknowledge Angola 76's Management Plan (Appendix A of the appellants' appeal statement). But even with professional security, no admittance to the premises and no use of the yard after 11pm, I have no confidence that noise and disturbance will not be caused either before 11pm or afterwards, when patrons leave the premises and walk up or down the Lane past dwellings that directly front it. As the Plan says, Angola 76 cannot be held responsible for the behaviour of people once they are off the premises. But that does not prevent any noise or anti-social behaviour from patrons of the premises impacting on residents when they leave. That has occurred for the last 4 years; I see no reason why it would not in all likelihood continue.
29. In summary, the location of Angola 76 and its proximity to and continued likely adverse effect on the living conditions of neighbouring residents is incapable of being successfully addressed by any planning conditions.

The Planning Balance

30. The harm to heritage assets and to the living conditions of neighbouring residents should be weighed against any public benefits of the proposal. I can appreciate that people who like to listen to live music and indeed customers of the bar/café/restaurant may well consider Angola 76 to have public benefits not only for them as individuals but for the town centre and for Shaftesbury as a whole, in that the bar/restaurant contributes to sustaining, enhancing and diversifying the local economy. This is a material consideration in weighing up whether to grant planning permission. I acknowledge the petition on Change.org signed by 1,208 people in this regard.
31. In terms of the heritage balance, NPPF paragraph 196 requires any less than substantial harm to designated heritage assets (in this case the character and appearance of the CA and the settings of the nearby LBs) to be weighed against any public benefits of the development, the benefits indicated above. These benefits are also relevant in balancing the harm to the building and yard occupied by the development and the adjacent residential building on its northern side – the non-designated heritage assets – as set out in NPPF paragraph 197. It is these same benefits as material considerations that figure in the overall planning balance.
32. However, these benefits are nowhere near sufficient to outweigh the significant harm to residential neighbours' living conditions or the less than substantial harm to the above designated and non-designated heritage assets.
33. Policy 5 (The Historic Environment) of the North Dorset Local Plan (LP) mirrors NPPF policy that clear and convincing justification is required for any

development that harms the significance of a designated heritage asset, however slight whether through direct physical impact or by change to its setting. The canopy and the toilet building fail to preserve the significance of the building and yard on the site and the adjacent stone outbuilding abutting it to the north, as well as the nearby LBs in Mustons Lane; they harm the character and appearance of the CA. As such they conflict with this policy and with NPPF paragraphs 196 and 197. They also conflict with LP Policy 24 (Design), which requires development to be designed to improve the character and quality of the area; development that harms heritage assets cannot possibly do so.

34. LP Policy 24 also requires development not to significantly diminish the enjoyment of existing properties. Policy 25 (Amenity) sets out that development will be permitted provided that levels of noise and/or vibration would not cause an unacceptable level of disturbance to the occupants of nearby properties. Clearly, the unauthorised use breaches these policies. It is also contrary to NPPF paragraph 127 f), which requires planning decisions to promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion.
35. The benefits of Angola 76 are insufficient to outweigh this clear conflict with the development plan and with national policy. Ground (a) consequently fails.

Ground (f)

36. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control.
37. For the reasons set out above, it is not only the unauthorised use of the premises as a drinking establishment that needs to cease, but also the canopy and toilet building as integral operational development that require removing because they harm the significance of heritage assets.
38. No lesser steps would therefore be acceptable. The other associated integral development, as set out in the notice's allegation, is not subject to the notice's requirements. The Council have, by under-enforcing in terms of that other development, already satisfactorily taken into account which aspects of the unauthorised development must be removed.
39. For this reason, ground (f) also fails.

Conclusion

40. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Fagan

INSPECTOR