



Appeal Decision

Site visit made on 8 December 2020

by Richard S Jones BA (Hons), BTP, MRTPI

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

Decision date: 26 February 2021

Appeal Ref: APP/K0425/C/20/3257992

**Land at Restaurant, London Road, Wooburn Moor, Buckinghamshire
HP10 0NJ**

- 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 Abdelsalam Alhoot against an enforcement notice issued by Wycombe District Council.
 - The enforcement notice, numbered 20/00011/CU, was issued on 29 July 2020.
 - The breaches of planning control as alleged in the notice are, without planning permission, the laying of hardstanding, siting of portacabin and erection of 2 x canopies to facilitate a material change of use of car park to a mixed use to include the operation of a car wash on the Land.
 - The requirements of the notice are:
 1. Cease the use of the Land (shown edged red on the attached plan) as a car wash facility;
 2. Remove the portacabin (outlined in Blue on the attached plan) from the Land;
 3. Remove the canopy (outlined in Green on the attached plan) from the Land;
 4. Remove the partially erected canopy (outlined in Brown on the attached plan) from the Land;
 5. Remove all advertisements and associated portable equipment associated with the car wash facility from the Land;
 6. Remove all materials and debris resulting from carrying out steps 2 to 5 of this Notice from the Land.
 - The period for compliance with the requirements is three months.
 - 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.
-

Decision

1. It is directed that the enforcement notice is corrected by deleting the words *"the laying of hardstanding, siting of portacabin and erection of 2 x canopies to facilitate a material change of use of car park to a mixed use to include the operation of a car wash on the Land"* from section 3 and their substitution with *"the material change of use of land from a mixed use of restaurant, cafe and takeaway with ancillary car parking to a mixed use of a restaurant, cafe, takeaway and car wash with ancillary car parking, facilitated by the laying of a hardstanding, siting of a portacabin and erection of two canopies."*
2. Subject to the correction, the appeal is 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 Town and Country Planning Act 1990 as amended (the 1990 Act).

Preliminary Matters

3. I wrote to the parties to explain that the allegation as drafted required correction to properly describe the breach of planning control. Where there is a mixed use of land there is a single mixed use composed of the primary uses of the land. It is not open to the Council to decouple elements of it. I therefore sought the views of parties as to whether the corrected allegation accurately reflects the actual use(s) taking place and whether any injustice arises from such a correction. The appellant confirmed he had no objection to the change in the wording. The Council confirmed agreement to the correction and that no injustice would arise. I agree.
4. The Council's view is that the alleged hardstanding is not harmful. Consistent with that position, the Council has not included its removal within the requirements of the notice. In such circumstances, s173(11) of the 1990 Act provides that where an enforcement notice could have required buildings or works to be removed, but does not do so, and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A of the 1990 Act.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

5. The main issues are the effect of the alleged development on highway safety and the character and appearance of the area.

Reasons

Highway safety

6. The enforcement notice relates to land fronting onto the A40 where the posted speed limit is 40mph. At the centre of the site is a building used as a restaurant, takeaway and shisha café. It is served by a car park on its eastern side that is accessed from Watery Lane. The alleged matters relate to the land on the western side of the building, also previously used as a car park serving the restaurant.
7. The western part of the site benefits from two access points onto the A40, thereby allowing vehicles to enter and leave the site in forward gear. To this end, the appellant explains that the access adjacent to the building is used for vehicles entering the site and the access adjacent to the portacabin for vehicles exiting the site. However, there are no markings or signs to clearly indicate this arrangement, thereby increasing the risk of vehicular conflict. This could be addressed by way of condition. Subject to the removal of the frontage signage (which could also be required by condition) visibility from the access/egress points appears to be satisfactory given the alignment of the A40.
8. I further accept that the site is able to accommodate the five vehicles the appellant explains is the maximum worked on at any one time. Moreover, the westernmost access is wide and in principle offers drivers entering the site scope to avoid vehicles reversing out of the valet bays. However, in practice, the number of drivers wanting car-wash services at any one time is unpredictable and the access may be compromised by queued vehicles. That may not be readily apparent given the visual obstruction caused by the building

when approaching from the east. Consequently, drivers entering the site could be forced to stop suddenly in a manner which may not be readily anticipated by drivers travelling behind along the A40, particularly those who are unfamiliar with the road.

9. There is also a junction on the opposite side of the access, connecting the A40 to Whitehouse Lane, the configuration of which includes a right turning lane in the centre of the A40. This arrangement is likely to increase the risk of conflict with vehicles turning right into the site. The situation is compounded by the bus stop positioned between the two access points, which increases the likelihood of conflict between vehicles turning right out of the site with vehicles turning right into Whitehouse Lane and vehicles attempting to move around a stationary bus. Moreover, a short distance to the east is the junction with Watery Lane, which also includes a right turning lane in the centre of the A40, thereby adding to the overall proximity and complexity of junctions requiring drivers' attention.
10. I am mindful that the historic use of the land as a car park serving the restaurant, café and takeaway will have resulted in similar associated vehicular movements. In this regard, the Council has provided no evidence, such as road safety data or personal injury collision data, to show that there has been a particular highway safety issue at the site, or in respect of the two car dealerships positioned close by, which also front onto the A40. However, the vehicular trips generated by the car wash will be in addition to those attracted to the commercial uses in the building, resulting in an intensified combined use throughout the daytime and evening.
11. The appellant argues that there will be no overlap or loss of parking for the adjacent restaurant, which will also continue to benefit from a sufficient level of parking on the opposite side of the building. However, that relies on the demand for parking, not just for the restaurant, but also the shisha café and takeaway, being able to be accommodated solely within the eastern side car park during the car wash opening times¹. That cannot be counted on since it is dependent on the way the restaurant, shisha cafe and takeaway are run and the choices made by its customers. Indeed, it would not be unusual for a restaurant, in particular, to be busy during the lunchtime period, especially on weekends when demand for car wash services is also likely to be high.
12. I further note that the Buckinghamshire Countywide Parking Guidance (BCPG) requires one parking space per 16m² of restaurant floor space. The Council estimate the floorspace to equate to a requirement for 30 spaces, whereas the eastern car park has around 15 spaces. The appellant has provided no evidence to dispute these figures and there is no suggestion that there is sufficient space on the western side of the building to accommodate parking for the restaurant, café and takeaway at the same time as the car wash operation.
13. Consequently, without the land given over to the car wash, car parking for the restaurant, takeaway and shisha cafe would fall significantly below that required by the BCPG. This would likely result in vehicles parking or waiting on the public highway and obstructing the free flow of traffic. Indeed, the Council has provided photographic evidence of cars double parked at the entrance to

¹ The appellant proposes that the hours of operation are between 0900 and 1700 hours Monday to Saturday and between 1000 and 1600 hours on Sundays.

the eastern car park, as well as cars on the pavement on the corner of the junction between Watery Lane and the A40.

14. I therefore conclude that the alleged development will result in unacceptable harm to highway safety – and that harm could not be wholly overcome by imposing conditions. The alleged development is therefore contrary to Policy DM33 of the Wycombe District Local Plan (LP), paragraph 109 of the National Planning Policy Framework (the Framework), the BCPG and the Buckinghamshire Council Highways Development Management Guidance: Managing the transport and travel impact of new development. These policies and guidance documents state, amongst other things, that development is required to be provided with safe and convenient access to the local highway network.

Character and appearance

15. The site forms part of a small cluster of commercial uses located on both sides of the A40. The character of the area is largely defined by the A40 itself, the trees either side of it and those commercial uses. Although there are residential properties close-by along Whitehouse Lane, they are screened by the trees on the northern side of the A40 and consequently do not form part of the street scene.
16. Given the visual relationship with the nearby car dealerships and the historic use of the land, parked vehicles and associated vehicular movements are not out of character. However, there are associated elements of the alleged development which affect the overall appearance of the site and how it relates to its surroundings.
17. The portacabin is utilitarian in its design and appearance. Because of its siting close to and at right angles to the A40, it is clearly visible in approaching views from the east, and to a lesser extent in approaching views from the west. The signs attached to it and its light colour contrast with the wooded and timber fence backdrop, thereby increasing its visibility. For these reasons, the portacabin detracts from the appeal site and street scene.
18. The canopy in front of the portacabin was not in place at the time of my site visit. I appreciate that it would have provided a degree of shelter, but it is evident from the photographs that it had a somewhat rudimentary and makeshift appearance.
19. There are a number of advertisements in and around the site which, combined with the paraphernalia associated with the car wash, create a cluttered and untidy appearance.
20. The partially completed canopy alongside the building essentially comprises a frame over the hardstanding. Without a cover it is relatively recessive but in closer views, its unfinished appearance adds to the overall harm.
21. I therefore find that the alleged development results in unacceptable harm to the character and appearance of the area, contrary to LP Policy DM35, which requires, amongst other things, all development to improve the character of the area.

Other matters

22. I have a great deal of sympathy with the appellant that the outcome of this appeal will impact on his livelihood, particularly in these extremely challenging economic conditions. I also recognise that paragraph 80 of the Framework states that planning policies and decisions should help create the conditions in which businesses can adapt. However, having regard to paragraph 117 of the Framework, I do not find that the alleged development makes effective use of land because it does not safeguard and improve the environment, and in addition, results in unacceptable harm to highway safety. For the same reasons the development does not meet the social and environmental objectives of sustainable development. The public interest in this case therefore outweighs the personal circumstances of the appellant, as well as any economic and community service benefits of the car wash use.

Conclusion

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

Richard S Jones

INSPECTOR