
Appeal Decision

Site visit made on 19 November 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 14th December 2021

Appeal Ref: APP/D4635/C/21/3275490

Land at 480 Dudley Road, Wolverhampton WV2 3AF

- 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 George Ellis against an enforcement notice issued by Wolverhampton City Council.
 - The enforcement notice was issued on 21 April 2021.
The breach of planning control as alleged in the notice is: Without planning permission, the construction of a building consisting of a modified, extended, and exterior-clad shipping container, for the purposes of operating a hot food takeaway.
 - The requirements of the notice are
Remove the building in its entirety from the property and restore the parking area, making good any damage caused by the building, services, or its removal.
 - The period for compliance with the requirements is 2 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 (the 1990 Act). As an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be decided.
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Decision

1. 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.

The notice

2. The notice contains reasons for the issue of the notice but those reasons are not supported by reference to policies. Whilst the Council was prepared to withdraw the notice, the appellant wanted the appeal to continue. The Council did therefore subsequently provide details of policies to support the reasons. The appellant was given the opportunity to comment upon those policies and does not consider that continuing would result in injustice to him. I agree that in the particular circumstances of this case, the appeal can proceed without causing injustice to either party.

The appeal under ground (a) and the deemed planning application (the DPA)

3. The DPA derives directly from the breach of planning control contained in the notice which is the construction of a building. The appellant is seeking a temporary planning permission to retain the development for 3 years. The Council's reasons for issuing the notice refer to impact on the streetscene, the

design and construction and overdevelopment resulting in a reduction in onsite parking.

The Main Issue

4. The main issue is the effect of the development upon the character and appearance of the surrounding area.

Reasons

5. The development is situated within a car park which is on the corner of Drayton Street which is a side road and Dudley Road which leads into the city centre. Whilst the appeal site was previously brewery buildings and a car park, the buildings to the rear of the car park are now a pizza outlet and two retail units. The car park is likely to be used by customers of these shops and also nearby shops on this section of Dudley Road.
6. The development is side on within the part of the car park that faces onto Drayton Street and occupies car parking spaces. The development is visually prominent when travelling in both directions along the Dudley Road but is particularly visible when traveling away from the city centre as there is a car park rather than built development on the opposite corner of Drayton Street.
7. Although described as a modified shipping container by the Council, the extent of the wooden cladding means that elements of the shipping container are not obviously visible from the outside and the development resembles a wooden kiosk with window type openings with railings and a front door to the front of the building. The appellant describes the development as a decorated shed which evokes a beach shack and is consistent with the product it sells which is takeaway Caribbean food.
8. The character of the surrounding area is a mix of retail and other commercial uses. Surrounding buildings are clearly permanent buildings and a mix of brick and render. Whilst it may be the case that there is no single style to the surrounding buildings nevertheless, the wooden shed- like appearance does appear out of place in terms of its design and appearance when it is occupying a prominent road side position in a car park. The development is incongruous and out of keeping with the area in view of its location, design, scale and mass and does therefore harm the character and appearance of the surrounding area.
9. The appellant has referred to using black staining to tone down the untreated timber cladding but staining by itself does not overcome the harm I have identified particularly the issues with the location and the design of the building.
10. With regard to the request for a temporary planning permission for three years, Planning Practice Guidance refer to the circumstances in which a temporary permission may be appropriate. These include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. Another example is given is when a temporary use is appropriate prior to any longer term proposals coming forward. None of those examples appear to be relevant. The development is taking up three spaces in a car park that is in use and there is no indication that there are plans for the car park use to cease in the future. The appellant simply states that if the hot

food takeaway takes off then permanent accommodation may be required elsewhere. However, the appellant has indicated that prior to the development taking place, the business operated from a shipping container on a different part of the appeal site for 78 months. It is therefore not clear why a further three years is required as a trial run particularly when the signs on the development at the time of my visit indicated that food was sold between the hours of 3pm to 10pm on Thursday, Friday and Saturday only.

11. The Council has referred to other empty shop premises in the vicinity in the notice although no details are provided. The appellant is concerned about lack of availability and all the associated costs of having a shop in terms of leases etc but that is a matter of choice for the appellant. It is not clear if the appellant has investigated mobile options if he does not want the financial commitment of a shop. He is however seeking a 3 year temporary planning permission to retain the building in its current location to run a business that has already operated in excess of 6 years which, in my view, is not justified.
12. I note that a number of local businesses have signed a letter indicating that there are no health and safety issues and that the business does not hinder any other business in any way but those factors do not overcome the planning harm that I have identified. Similarly, a petition signed by customers over a 3 day period is of limited relevance when it is not known if customers are local and would not use the business if it was located in a different location. Similarly, whether or not the car park is busy or not does not alter the visual harm resulting from the development.
13. The development is therefore contrary to Policy D8 of the Wolverhampton Unitary Development Plan (the UDP) which refers, amongst other things, to buildings making a positive contribution to the appearance of the area by means of appropriate massing and orientation. It would also be contrary to Policies D9 and D4 of the UDP which collectively refer, amongst other things to buildings making a positive contribution to the locality through the use of appropriate form and good quality detailing and materials.
14. The development is also in conflict with Policy ENV3 of the Black Country Core Strategy (Adopted February 2011) which supports high quality design. The Council has referred to a total of nine policies in support of the issue of the notice. However, the most relevant policies to the main issue are those which I have specifically referred to and which address matters such as scale, massing, appearance, and design rather than policies which address wider matters such as strategic objectives and the use of the development which are less relevant to this appeal.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

E. Griffin

INSPECTOR