



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 March 2022

Appeal Ref: APP/J1860/C/21/3271777

333 Worcester Road, Malvern, WR14 1AN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jaz Sandhar (i Shine Express Ltd) against an enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice, numbered ENF/20/0188A, was issued on 18 February 2021.
 - The breach of planning control as alleged in the notice is failure to comply with condition imposed on a planning permission ref 17/00111/FUL granted on 8 September 2017.
 - The development to which the permission relates is: Breach of condition 1 to planning permission granted for proposed single and double car wash canopies.
 - The condition in question states that: The canopies hereby permitted shall be removed from the site and the land shall be restored to its former condition on or before 3 September 2019.
 - The requirements of the notice are:
 - 1) to permanently remove the portacabin as shown approximately edged in green on the attached plan from the Land;
 - 2) to demolish and permanently remove the three car wash canopies including supporting metal structure as shown approximately edged in blue on the attached plan;
 - 3) to permanently remove all signage, equipment and paraphernalia associated with the use of the site as a car wash from the Land;
 - 4) to cease the use of the land as a car wash and restore the Land to its original condition before the breach took place.
 - The period for compliance with the requirements is: Six calendar 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 1990 Act). 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.
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Decision

1. It is directed that the enforcement notice be varied by the removal of steps 1), 3) and 4) from "requirements of the notice"
2. Subject to this variation, 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.

Applications for costs

3. This was made by Mr Jaz Sandhar (i Shine Express Ltd) against Malvern Hills District Council. This application is the subject of a separate decision.

Matters concerning the notice

4. The reasons for the notice suggest that the Council considers that the use of the site as a car wash facility does not comply with the development plan regarding its effect on the living conditions of nearby residents and the

character and appearance of the Malvern Hills Conservation Area (CA) and the setting of listed and unlisted heritage assets. I wrote to the council and the appellant expressing my concerns about the notice, which attacks the breach of condition relating to the permission granted for the car wash canopies (the 2017 permission) rather than that concerned with the change of use to a car wash facility (three year temporary) (the 2013 permission¹), which was subject to the following time limiting conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The use hereby permitted shall be discontinued and the site restored to its former condition on or before three years from the date of the commencement of the use in accordance with a scheme of work submitted to and approved in writing by the local planning authority.
5. Accordingly, I considered that requirements 1, 3 and 4 to be excessive because they do not relate to the allegation and therefore the deemed planning application. The Council suggested that no prejudice would be caused if these requirements were removed from the notice. No response was received from the appellant.

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

Main Issue

6. The main issue is therefore considered to be the effect of the development on the character and appearance of the local area, bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building, and the extent to which it would preserve or enhance the character or appearance of the CA.

Reasons

7. The appeal site consists of an area of hardstanding to the side of a commercial garage and a former Methodist chapel. A hand carwash facility operates within the site and the canopies which are the subject of the notice are located towards the rear. The site is adjacent to the junction of Spring Lane and Worcester Road and opposite is a petrol filling station with an automated car wash. The appeal site is an open plot with a low brick wall to the frontage and a wide access from Worcester Road, close to the traffic controlled junction. The immediate area is mixed commercial and residential and is located within the CA.
8. The significance of the CA derives from its linear form, following the busy thoroughfare and principal shopping street of Worcester Road. Perpendicular streets are largely residential, and many contain modest terraced brick properties. Together these features and characteristics illustrate Malvern's gradual development as an important historic settlement and tourist destination. The appeal site is within the 'Worcester Road North' zone of the CA as defined by the Malvern Link Conservation Area Appraisal and Management Strategy January 2009 (Appraisal). This characterises the area as being important with buildings of high architectural and historic quality.

¹ granted by appeal ref APP/J1860/A/13/2204110 dated 5 December 2013

9. Townsend House and 218 Worcester Road (No 218) are Grade II Listed buildings opposite the appeal site. Townsend House is set back from Spring Lane and behind No 218. Its significance relates to its age from the late C18/early C19 and the extent of architectural detailing evident. The impact of the development on the significance of Townsend House is negligible due to its distance from the site and the presence of intervening buildings.
10. The significance of No 218 derives from its origins in the early C19 as a range of red brick farm buildings and its historic relationship with Townsend House. The buildings consist of brick and include decorative dentil eaves cornice. The barns are adjacent to the junction and make a strong contribution to the local area due to their prominence in the street. The buildings have undergone some unsympathetic changes, but these have not substantially reduced the significance of the buildings. The impact of the development on the setting of the barns is moderately harmful due to the proximity and visual impact of the contrasting modern appearance of the canopies against the traditional built form of the barns. The prominence of the canopies and their metal supporting structures in this situation, fails to preserve the special interest of the listed building and the character or appearance of the CA.
11. Another significant building, the former Methodist Chapel, is situated adjacent to the appeal site. This is described by the Appraisal as a key unlisted heritage asset which makes a positive contribution to the historic and architectural quality of the CA. The building is a decorative, white-washed structure of architectural interest and stature which should be afforded extra protection. It is visible from wide vantage points, being on the junction with Spring Lane and Worcester Road and the space to its side enhances the contribution it makes to the public realm.
12. Further to the buildings of architectural interest within the immediate setting of the appeal site, there are commercial properties, some of which are recognised in the Council's Appraisal as making a negative contribution to the character of the area due to their intrusive and damaging features. The diversity of building styles within the area is highlighted as an issue where, in terms of local character, historical properties and high-quality buildings are diluted by modern development which shows little or no reference to the local vernacular. These plots detract from the historic character and significance of the CA with poor quality design and inappropriate materials. The appraisal, whilst acknowledging these sites, asserts that such development should not establish a quality of design to be replicated, adding further harm to the area.
13. The canopies are wide and tall structures. They consist of blue canvas and include text related to the car wash facility. They are mounted on metal posts and are supported from the rear. Although set back into the site, the canopies are still visually prominent and intrude into the established character of the area. These contemporary additions are especially visually intrusive being adjacent to a road junction and set within an open expanse of hardstanding against a backdrop of buildings with traditional architectural interest. The canopies are modern in their design and of a colour that jars with the immediate surroundings and wider landscape. This has a negative impact on the significance of the non-designated heritage asset due to the site's proximity and spatial context. Accordingly, the effect on the Methodist Chapel and wider area is harmful and does not preserve or enhance the quality and

distinctiveness of the streetscape and public realm and this has a negative effect on the CA.

14. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have a clear and convincing justification.
15. Whilst the appellant is of the opinion that there is "no harm caused by the canopies, which are essentially temporary structures, and that there was no issue with them at the time the last temporary consent was granted" I consider that the canopies, sited on either a temporary or permanent basis are harmful in this setting. Although I find the harm to be less than substantial in this instance, it is nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
16. Although the appellant has not suggested any public benefits that would arise from the siting of the canopies, it is evident that the canopies provide shelter for the employees who hand wash customers' vehicles. Whilst I appreciate that there would likely be benefits to the employees in inclement weather this would be a personal benefit rather than a public one.
17. I therefore conclude that, on balance, the canopies fail to preserve the special historic interest of the Grade II listed building and the character or appearance of the CA, to which I am required to have special regard and pay special attention by the Planning (Listed Buildings and Conservation Areas) Act 1990. The development is also contrary to policies SWDP6, SWDP21 and SWDP24 of the South Worcestershire Development Plans (February 2016). These policies include the requirement for development to conserve and enhance heritage assets, to integrate effectively with its surroundings and to be considered in accordance with the Framework. Furthermore, the development is contrary to policies MD1 and MD2 of the Malvern Town Neighbourhood Plan 2015–2030 which seek development to integrate into the existing area and integrate into the public realm setting.

Conclusion on ground (a) and the deemed planning application

18. For the reasons given above, I consider the development to be contrary to the development plan as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. The appeal on this ground is therefore dismissed and planning permission is refused.

The appeal on ground (f)

19. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the removal of the three canopies and supporting metal structures, I consider the purpose is to remedy the breach of planning control.

20. The appeal under ground (f) is that the requirements of the notice exceed what is necessary and for the consideration of whether lesser steps would overcome the breach of planning control. The appellant considers that a temporary consent would be acceptable in planning terms and that the requirement of the notice is excessive.
21. I have already considered the temporary permission put forward under ground (a) and found it to be unacceptable. Given that the requirements, which have been varied for clarity, go no further than simply requiring the appellant to undo what has been done, the requirements self-evidently cannot exceed what is necessary to fully remedy the breach of planning control. Allowing the canopies to remain either on a temporary or permanent basis, would not fully remedy the breach.
22. There are no lesser steps that would achieve the statutory purpose behind the notices. Accordingly, the appeal on ground (f) fails.

S A Hanson

INSPECTOR