



Appeal Decision

Site visit made on 15 March 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Appeal Ref: APP/H1840/C/21/3284906

Land lying west of Townsend Way, Malvern Link, Malvern, Worcestershire WR14 1PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Edward Furborough against an enforcement notice issued by Malvern Hills District Council.
 - The notice, numbered ENF/21/0055, was issued on 22 September 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised material change of use of land for the siting of a converted portable container for use as a food and drink outlet.
 - The requirements of the notice are to: 1. Permanently cease the use of the land edged in red on the attached plan for the use of a food and drink outlet. 2. Permanently remove the container approximately edged in blue on the attached plan and lawfully remove all resulting materials from the land edged in red on the attached plan. 3. Permanently remove any associated food and drink outlet paraphernalia from the land edged in red on the attached plan.
 - The period for compliance with the requirements is: 9 (nine) calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the 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. 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, for the development already carried out, namely the material change of use of land for the siting of a converted portable container for use as a food and drink outlet on Land lying west of Townsend Way, Malvern Link, Malvern, Worcestershire WR14 1PY, as shown on the plan attached to the notice and subject to the following condition:
 - 1) The illuminated signage shall be switched off when the food and drink outlet is not open for customers.

Preliminary Matters

2. The notice was issued by Malvern Hills District Council. However, the appeal form provides details for Wychavon District Council. The appeal reference number uses the local planning authority code for Wychavon District Council (H1840). Both local planning authorities were contacted, but no responses were forthcoming. As the notice and the council appeal statement reference Malvern Hills District Council, I have referred to this Council in the banner heading. However, the local planning authority code remains unaltered as this is automatically generated when an appeal is submitted online.

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

Main Issues

3. These are the effect of the development on the character and appearance of the area and the provision of car parking for the retail park.

Reasons

Character and appearance

4. The appeal site is located within an established retail park, 'Malvern Shopping Park'. The area is on the edge of town and is characterised by an urban extension mix of retail, commercial and residential uses. The retail park provides units for occupiers such as M&S, Next, Poundland, Shoezone, Halfords, coffee shops and a free-standing McDonalds. A large car park is provided adjacent to the north and east side of the shops with an overflow car park to the southwest. The retail park is immediately bounded by Townsend Way to the east; a commercial business park, where there are also leisure uses, directly to the south; and to the north, a large supermarket and petrol station.
5. The surroundings are well landscaped with a substantial mature tree belt which envelopes the retail park on three sides. Along the open boundary with Townsend Way, a wide grass verge planted with trees separates the retail park from the main road. Beyond Townsend Way, a landscape buffer divides the built environment from open countryside beyond. Positioned close to the landscaped southern edge of the retail park and perpendicular to a kitchen/bathroom showroom, the food and drink outlet is sited on an area formerly used for car parking. There is additional space to the front taken up by paraphernalia associated with the business, although this is limited by the access to the showroom.
6. The Malvern Town Neighbourhood Plan 2015-2030 (adopted 2019) (the MTNP) describes this area as Malvern Industrial Fringe which is 'characterised by commercial, retail, leisure and recreation users. The street pattern defines large industrial blocks which are bound by grass verges and ornamental planting. Large areas of dense woodland on the boundaries of development provide green infrastructure corridors which break the massing of large commercial buildings.'
7. There are limited views towards the appeal site from vehicular and pedestrian traffic moving northwards because of the mature landscape bund between the retail and business park which provides significant screening. However, the site is visible to drivers and those walking along the footpath next to Townsend Way in a southerly direction, and those using the public rights of way to the south and east of the site. Views into the site from drivers will be fleeting and compromised to an extent as the road is at a higher level, and the wide verge that separates the road from the site is planted with semi-mature trees.
8. Notwithstanding this, and even though the catering outlet is a standalone structure and significantly smaller in scale and different to the form of the main body of the retail and commercial buildings, the appeal site is within the boundary of an established retail park, and it is viewed in association with the built form. In this respect, I consider that the appeal development, due mainly

to its scale and positioning, integrates with its surroundings and does not detract from the rural fringe character of the area.

9. For these reasons, I find that the appeal development accords with Policy SWDP 21 of the South Worcestershire Development Plan (February 2016) (the SWDP) which seeks to permit development where the layout, scale, massing, density, materials and design of the proposal respect the character and quality of the area. Furthermore, it complies with Policy MD2 of the MTNP which sets out that proposals must be fully integrated into, and contribute to, their landscape character and public realm setting.

Car parking provision

10. The planning history shows that the retail park has expanded since planning permission was first granted in 1991. Accordingly, parking provision has been extended to accommodate that growth with space found within the structural landscaping for an extension to the site in 2016/17.
11. While I acknowledge that the retail park is popular, and my visit was only a snapshot in time, around lunchtime on a weekday, there were parking spaces available in the main car park. There were spaces also available within the vicinity of the food and drink outlet and within the overflow car park. Furthermore, although the car park was busy, the traffic was free flowing within the retail park and on the surrounding roads.
12. Overall, and in the absence of parking standards which would inform the level of parking required for the retail park, the evidence provided does not convince me that the siting of the food and drink outlet has reduced the provision of onsite parking to such an extent whereby it could contribute to levels of congestion that would adversely affect the retail function or highway safety of the area. Furthermore, it seems to me that the food and drink outlet is likely to be used primarily by shoppers and workers at the retail park, and this would result in combined trips.
13. In this respect, the appeal development accords with Policy SWDP4 of the SWDP which looks to minimise demand for travel, Policy MD1 of the MTNP and Paragraph 110 of the National Planning Policy Framework which seek to ensure that new development creates a safe and accessible environment for all highway users.

Conditions

14. The council has not suggested any conditions. However, the appellant has suggested that the illuminated signage could be switched off when the food and drink outlet is not in operation. I consider this to be reasonable and necessary to protect the local environment and the character and appearance of the area.

Conclusion

15. For the reasons given above, I conclude that the appeal on ground (a) and the deemed application for planning permission succeed. Consequently, the enforcement notice is quashed, and planning permission is granted on the deemed application.

S A Hanson INSPECTOR