



Appeal Decision

Hearing held on 9 November 2021

Site Visits made on 9 and 10 November 2021

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/C1435/C/20/3257620

Selmeston Service Station, Lewes Road, Selmeston, East Sussex BN26 6UE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended. The appeal is made by Pricewatch Limited against an enforcement notice issued by Wealden District Council.
- The notice was issued on 9 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an illuminated canopy with supporting metal pillars ("the Canopy") over the garage forecourt.
- The requirements of the notice are to:
 - (i) Demolish, dismantle and remove the Canopy from the Land
 - (ii) Remove all supporting metal pillars and all other infrastructure associated with the Canopy from the land
 - (iii) Remove from the Land all rubble, rubbish, debris, materials, plant, tools and equipment arising from compliance with the above requirements.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. During the accompanied site visit following the hearing it was noted that some of the downlights on the building weren't operating. I returned later in the day to view the site after dark and noted that all the downlighters in the canopy were on. I carried out a further site visit in clearer weather the following day. I was able to view the site from the path between the car park at Bo Peep and Firle Beacon at the top of the northern escarpment of the South Downs and the public footpaths from The Street to the north and west of Selmeston.

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

Main issues

2. The main issues are:

- the effect of the canopy on the intrinsic character and beauty of the landscape, including the setting of the South Downs National Park; and
- whether the canopy preserves or enhances the character or appearance of the Selmeston Conservation Area, whether it affects the setting of the listed buildings at Forge Cottage, Corner Cottage, Flint House and the War

Memorial and whether it affects the setting of the non-designated heritage asset at The Barley Mow Public House.

Reasons

Landscape

3. Selmeston Service Station is located within the small settlement of Selmeston, on the busy main A27 road to the north of the South Downs. It is located within the largely flat countryside of the Low Weald. The northern escarpment of the South Downs is to the south of the A27 and roughly parallel to the road as it approaches and passes through Selmeston.
4. The South Downs National Park boundary generally runs on the south side of the A27. However, it departs from the road to exclude the Barley Mow Public House and attached Forge Cottage opposite the service station. The National Park is designated as an International Dark Skies Reserve and the area closest to Selmeston is an intrinsic rural darkness area.
5. The South Downs Way is a long distance footpath that runs along the top of the escarpment to the south of the road. There are expansive views across the countryside of the Low Weald to the north from that path. Selmeston is seen in those views as one of a number of small settlements within the expanse of countryside.
6. The service station comprises a modest painted timber shop building with fuel pumps on the concrete forecourt and hard surfaced parking areas to either side of the building. It is located adjacent to the road, close to the junction with The Street that joins the A27 and runs through the settlement of Selmeston. Access to the site is both from the A27 and The Street. It is at the top of a small ridge in the Low Weald, which increases its visibility in views along the A27, particularly from the west.
7. The canopy comprises a covering over much of the service station forecourt. It is set on posts that rise up between the pumps. It is a flat canopy to the sides, with a pitched gable end to the centre. A clock is located on the front of the gable, facing the road and public house opposite. The sides of the canopy are constructed in uPVC and are of a muted colour. To the rear is the single storey shop building, with a shallow pitched roof. The ridge of the building is approximately at the level of the bottom of the canopy.
8. The height, size and location of the canopy mean that it is prominent in views along the A27 as it approaches and passes through Selmeston. The size, gable end and clock mean that it appears as a substantial intrusion, taking account of the surrounding buildings within the Low Weald and in close proximity to the National Park. This has resulted in an adverse visual impact on the setting of the National Park.
9. However, given the location and recessive colour of the canopy, it is either blocked in views by trees and other buildings, or not possible to distinguish from the other buildings within the settlement in the longer views from the South Downs Way, or from the footpaths to the north and west of the village.
10. After dusk the lighting within the canopy is turned on. It replaces the previous directional floodlights on the front of the building that are no longer in use. The public house opposite is also well lit with bulbs along the eaves of the building.

The lights under the canopy are not restricted to that area such that light spills over the road outside and the parking areas to either side. Reflection of light from surfaces adds to the visibility of lighting, and its effects on the night sky. Whilst the canopy restricts some light from extending into the sky, the lighting contributes to the visibility of the canopy both from the A27 and the South Downs Way after dark and affects the intrinsic rural darkness area.

11. Taking account of all the above, I conclude that the canopy does not recognise the intrinsic character and beauty of the countryside and has resulted in harm to the setting of the South Downs National Park. As such, it is contrary to Policies SPO1 and WCS14 of the Wealden Core Strategy Local Plan (CS), Policies EN8, EN27 and EN29 of the Wealden Local Plan (LP) and the National Planning Policy Framework (the Framework). Those policies seek to conserve the intrinsic character and beauty of the landscape. They seek development within the setting of the South Downs National Park to be sensitively located and designed to minimise adverse impacts on the designated areas including minimising the effect of light spillage on the surrounding landscape.
12. My attention has been drawn to Policy EN9 of the LP that relates to development within the South Downs Area of Outstanding Natural Beauty. I note that pre-dates the designation of the South Downs as a National Park. As the location of the canopy is outside the South Downs National Park, this policy does not apply to this location so there is no conflict with it.

Heritage

13. Selveston Service Station is located within Selveston Conservation Area. The conservation area comprises a large, mainly linear area extending from the A27 and along The Street. Historic development has occurred around the junction with the A27 and in the centre of the conservation area along The Street. The development around that junction includes the service station, War Memorial, The Barley Mow Public House and Forge Cottage. Whilst it is unclear where the forge itself was located, evidence indicates this may have been either somewhere close to Forge Cottage or on the service station site. It suggests a group of buildings constructed to serve travellers along the route of what is now the A27.
14. The significance of the conservation area derives from the domestic scale of the buildings in a linear form along The Street and the commercial activity around the junction of the A27 and The Street.
15. A number of listed buildings are located within the conservation area. These include the War Memorial on the grass between the service station and The Street, Corner Cottage over The Street from the War Memorial and Forge Cottage opposite the service station. Flint House is located a short distance along The Street, separated from the service station by a bungalow. The Barley Mow Public House is a non-designated heritage asset over the A27 from the service station.
16. The War Memorial is a granite cross over a stone plinth in a prominent location on the A27, particularly on the approach from the east. It commemorates those from the local area who lost their lives in the First World War, their names inscribed on the plinth. Its significance is derived from its historic and cultural interest as a memorial, described in the listing as exceptionally simple and powerful.

17. Corner Cottage is a modest two storey brick dwelling located close to the road and facing across the junction of the A27 and The Street. Forge Cottage is attached to The Barley Mow Public House and is a modest two storey dwelling faced with weatherboarding. Flint House was constructed as the village school but is now a dwelling. It is single storey with rooms in the roof and constructed of knapped flints with brick dressings and quoins, and a slate roof. The significance of these dwellings is their modest and simple styles that contribute to the diverse character and appearance of the conservation area.
18. The Barley Mow Public House is a non-designated heritage asset and one of the more substantial buildings within the conservation area. It is a two storey, painted, brick and tile hung building with a painted single storey element to the western end. It is an attractive building that contributes to the group of buildings serving travellers along the A27, and it is these factors from which it derives its significance.
19. The service station building appears to have been constructed later than most of the surrounding buildings within the conservation area. It is set back from the road and appears functional, constructed in simple and lightweight materials. Its location on the outside of a bend means that it is prominent within the street scene and conservation area. To the front and sides are hard surfaced areas used for parking and the fuel pumps. Its use reflects the historic development of this part of the conservation area. As a result, the use contributes to the significance of the conservation area.
20. The canopy has been erected in front of the building and is a modern addition to the service station. It has been constructed to mitigate risks to the safety of the site, in providing adequate down light to the forecourt area and shelter from rain and snow. Canopies are common features of service stations and, as such, it reflects the use of the site. However, the canopy erected has a pitched central part and a clock within the gable end. This design appears contrived and overly elaborate for a structure with a functional purpose. Its relationship with the shop building also appears incongruous as the canopy is higher than the shop building. Its location, design and scale all mean that it is a dominant feature within the street scene that harms the character and appearance of this part of the conservation area.
21. The canopy adds to the street clutter, including signs (street signs and service station totem pole) and post box in the vicinity of the War Memorial. These compete for attention within the street scene. As such, it diminishes the power of the War Memorial, thereby affecting its significance as a heritage asset.
22. The height and contrived appearance of the canopy also contrasts with the simplicity of Corner Cottage and Forge Cottage. It attracts attention away from those modest cottages in close proximity and visible together within the street scene, such that it affects their setting. Similarly, the canopy is opposite The Barley Mow Public House and its prominence competes with that of the pub. As a result, it affects the setting of that non-designated heritage asset.
23. The location of Flint Cottage a short distance up The Street means that the canopy and that dwelling are seen together only in limited views, so it distracts the attention to a much lesser extent. Consequently, whilst within the setting of that listed building, the effect is limited.

24. The lights in the canopy are directed down onto the forecourt. However, they are bright and the light spills over the highway such that the canopy dominates views along the road within this part of the conservation area. These lights replace previous floodlights on the front of the building, which I understand were at a low level and lit parts of the forecourt, rather than the whole area. The nature of the lighting distracts attention away from nearby buildings, such as Forge Cottage, the War Memorial and The Barley Mow Public House. As a result, this adds to the harm to the setting of these heritage assets.
25. For these reasons, I conclude that, due to its appearance, height and lighting, the canopy has harmed the settings of listed buildings, being the War Memorial, Corner Cottage, Forge Cottage and Flint House. The canopy harms the setting of the non-designated heritage asset of the Barley Mow Public House. In addition, the canopy harms the character and appearance of the Selmeston Conservation Area. This has affected the significance of these buildings and conservation area as heritage assets. As such, the canopy is contrary to Policies SPO2 and WCS14 of the CS, Policies EN19, EN27 and EN29 of the LP and the Framework. These policies seek to preserve or enhance the character, scale and visual amenity of conservation areas, that development should respect the character of adjoining development and minimise light spillage using the minimum intensity of light necessary to be compatible with safety and security objectives.
26. The Framework advises at Paragraph 199 that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Accordingly, while the effects on the significance vary between the assets, in all cases it is less than the 'substantial harm' referred to in Paragraph 201 of the Framework. Nevertheless, the harm to the heritage assets is a matter of considerable importance in this case.

Public benefits

27. Paragraph 202 of the Framework establishes that, where a development proposal would lead to less than substantial harm to the significance of designated heritage assets, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
28. The service station provides a service to local residents and those travelling along the A27. This comprises the offerings of the shop, fuel sales and providing employment opportunities. I understand that improvements within the shop have made it more attractive, particularly for local residents, in providing supplies. This has affected the viability of the shop, the owner suggesting that the service station has gone from turning a slight loss to a slight profit. However, there are a number of factors that may have contributed to that other than the installation of the canopy. People have travelled less during the pandemic and that has meant more sales to local residents and provided some social benefits as residents may meet one another in the shop. The offering of the service station has changed with freezers installed and fruit and vegetable sales starting, replacing the previous café.

29. The canopy seeks to improve the safety of the forecourt. There are a number of reasons for this, including that it would provide shelter from rain, snow and the sun. It is easier to clear fuel spills and less potential for fuel and rainwater to mix as the ground under the canopy is protected from rainfall. That could reduce risks of accidents from slipping or skidding on the forecourt, from the heat of the sun and reduce potential ground pollution. Lighting of the forecourt is improved with downlights in the canopy meaning less shadowing than the floodlights on the front of the building that were previously used. I note that, prior to installation of the canopy, concern was raised about the lighting during an audit by the Petroleum Authority. If these risks are not appropriately assessed and addressed they could result in issues that could affect the viability of the business.
30. My attention has been drawn to the Approved Code of Practice (ACOP) from the Health and Safety Executive (HSE) regarding unloading petrol from road tankers relating to the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR). The ACOP provides guidance. It does not require the provision of canopies over forecourts, although they are a common means to enable forecourts to meet the requirements of DSEAR.
31. I note that complying with the ACOP can assist in mitigating risks and avoiding incidents, for example relating to fire and explosion from unloading petrol from road tankers. It states that written instructions must be made available to tanker drivers making deliveries and it is important that these can be easily read. The ACOP states that adequate illumination at ground level must be provided where necessary to enable unloading to be carried out safely outside daylight hours. I understand that regulations require a minimum level of luminance of 100 lux within the areas of the pumping station. If a tanker driver is not satisfied that they can make the delivery safely they may refuse to do so. Canopies with downlights provide good lighting for delivery drivers and enable them to safely complete their delivery. As a result, it assists in ensuring that deliveries could safely continue to take place. In turn, that contributes to the viability of the service station.
32. The service station provides shopping services that serve the local community as well as the fuel and other services that support travellers along the A27 and is only likely to continue to do so if it is viable. These comprise public benefits to the scheme. I accept that these are important public benefits that carry significant weight in favour of the development. Nevertheless, on balance they do not outweigh the identified harm to the significance of designated heritage assets in this instance.

Other matters

33. The development plan comprises the LP that dates from 1998 and the CS that dates from 2013. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that determination of the ground (a) appeal must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration of great weight. I note that the Framework at paragraph 11 sets out how to proceed where the development plan policies which are most important for determining the appeal are out-of-date. However, the age of the policies does not necessarily mean they are out-of-date.

34. The appellant suggests that Policy GD2 of the LP is not consistent with the Framework as it seeks to resist all development outside identified development boundaries that is not supported by other policies. The development conflicts with that policy. However, the policies that are most important for determining the appeal are set out in the main issues above. Consequently, the conflict with Policy GD2 attracts limited weight in this instance.
35. Policy BS9 of the LP enables the expansion or intensification of business sites outside development boundaries where there would be no adverse effect on the landscape or character of the open countryside. Given my conclusion that the canopy does not recognise the intrinsic character and beauty of the countryside and has resulted in harm to the setting of the South Downs National Park, it would not be supported by Policy BS9 of the LP.
36. Paragraph 93 of the Framework seeks to ensure established shops and services can develop and modernise and be retained for the benefit of the community. The canopy seeks to mitigate the health and safety risks on the site as set out above. It, therefore, supports the viability of the service station to a modest extent. Therefore, the provision of the canopy accords with this section of the Framework and this carries modest weight in favour of the development.
37. I note that a scheme to control the lighting could be required by condition, which may mitigate effects by reducing the luminance of the lighting or enabling it to be directed to the areas and times it is most required. This may also lead to changes in terms of light spill that could improve the living conditions of occupiers of surrounding houses and bats foraging and commuting in the area. Nevertheless, whilst this would mitigate the effects of the lighting to some extent, it would not wholly overcome the harm that arises from the effect of the canopy on the surrounding countryside, setting of the South Downs National Park and on the significance of the heritage assets.
38. My attention has been drawn to improvement works proposed along the A27, including widening of junctions such as that at The Street and provision of new footways. There was some doubt at the hearing as to whether the proposals would occur as set out on the plans provided. However, I consider that the works proposed would not alter my conclusions on the main issues.

Alternative design solutions

39. It was suggested that the canopy could be reduced in height or otherwise altered with the intention of seeking to remedy the injury to amenity caused by the breach. This may comprise replacing the materials on the face of the canopy with tiles or other works to alter the appearance. As these could include alterations to the existing structure, they would relate to part of the matters referred to in the enforcement notice. Consequently, these could comprise obvious alternatives to the existing canopy. There is power when determining an appeal under section 174 of the Act for me to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters (section 177(1) of the Act).
40. Reducing the height may affect the ability of tanker drivers to drive under the canopy that could affect their route to access and egress the site or stop under the canopy lights. That would mean that the safety benefits of the canopy would be reduced and limit the weight to be attached to that in the balance. Whilst it

may assist in reducing the prominence of the canopy to some extent, this would not otherwise affect its appearance such that it would not overcome the harms I have identified to the significance of the heritage assets, intrinsic character and beauty of the countryside and setting of the South Downs National Park.

41. Limited information has been provided, such as drawings or artists impressions, of these works. Consequently, it is not possible to assess their effects, particularly on the intrinsic character and beauty of the countryside, setting of the South Downs National Park, significance of the listed buildings, non-designated heritage asset and Selmeston Conservation Area. Given the limited information available, it is not possible to conclude whether the alternatives would overcome the harms I have identified. I will return to this matter in the ground (g) appeal.

42. For these reasons, I consider that there are no obvious alternatives that would overcome the conflicts I have found with the development plan.

Conclusion

43. For the reasons given above and taking all matters into account, I conclude that the provision of the canopy on the forecourt of Selmeston Service Station is contrary to the relevant policies of the Council's development plan. However, I accept that the canopy does contribute to the safe use of the forecourt, including for fuel deliveries, and the viability of the business. These are material considerations both in terms of public benefits in relation to the heritage balance and to which I have attached considerable weight in the overall planning balance. I have also considered whether there are any obvious alternatives to overcome the harms I have identified. However, on balance I conclude that the other material considerations do not outweigh the harm arising from the conflict with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

44. An appeal on this ground 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 which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek the demolition, dismantling and removal of the canopy and resulting materials from the land in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

45. I have considered whether there are obvious alternatives to the development completed that formed part of the development under the ground (a) appeal. In this case, I have concluded that no obvious alternatives exist that would overcome the reasons for issuing the notice. As a result, such works would not remedy the breach of planning control.

46. I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

The Appeal on Ground (g)

47. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
48. The appellant suggests that time should be provided to agree an alternative form of canopy and seek planning permission, which was estimated to take around six months, along with time to replace the structure estimated at two months. They suggest that it would take up to nine months to find a specialist contractor to remove the canopy.
49. As set out in the ground (a) appeal, it is possible that an alternative means to light the forecourt may be agreed by the Council, which may include a replacement canopy. Nevertheless, it is unclear whether an acceptable alternative form of canopy would be possible and, in the meantime, the identified harms would continue. On that basis, the existing canopy needs to be removed in order to address the harms identified. However, I accept that removal of the canopy would be a complex activity given how it has been integrated into the service station forecourt. Limited evidence has been provided to justify a period of nine months to find a specialist contractor to remove the canopy. On balance, therefore, I consider that a period of four months would be more appropriate to allow the canopy to be removed.
50. For these reasons, I conclude that the appeal under ground (g) should succeed and the period for compliance should be varied.

Formal Decision

51. It is directed that the enforcement notice is varied by the deletion of two months and the substitution of four months as the period for compliance.
52. Subject to the variations, 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 1990 Act as amended.

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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FOR THE LOCAL PLANNING AUTHORITY:

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INTERESTED PARTIES:

R. Thompson Local resident

Margaret Wilmot Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

Document 1: HSE – Unloading petrol from tankers – Dangerous Substances and Explosive Atmospheres Regulations 2002 Approved Code of Practice

Document 2: South Downs National Park Authority letter dated 11 June 2020 addressed to Mr Jon Honeysett, Wealden District Council

Document 3: Policy BS9 of Wealden Local Plan