



Appeal Decision

Site visit made on 9 January 2024

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/Q4625/C/23/3316197
1021 Warwick Road, SOLIHULL, B91 3HG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Amjad Ahmed against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The notice, numbered AK/105985, was issued on 6 January 2023.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised erection of a marquee to the rear of the property'.
 - The requirements of the notice are to: Dismantle and take down the marquee in the approximate position shown in the site plan (drawing reference: 22424/001(A)) attached to this notice, and remove it from the land.
 - The period for compliance with the requirement is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and temporary planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a marquee at 1021 Warwick Road, Solihull, B91 3HG, as shown on the plan attached to the notice and subject to the following condition:
 - 1) The development hereby permitted shall be for a limited period being the period of 12 months from the date of this decision. The marquee hereby permitted shall be removed and the land restored to its former condition on or before 22 January 2025.

Preliminary Matters

2. On 19 December 2023 the Government published a revised version of the National Planning Policy Framework (the Framework). In the interests of natural justice both main parties have had the opportunity to submit comments on the relevance of the Framework to this case. I have taken any comments received into consideration and in reaching my decision I have had regard to the revised Framework.
3. Planning application ref. PL/2022/01264/MINFOT for the temporary retention of the development subject of the Notice was refused by the Council on 5 December 2022. Although that decision was not subject of an appeal, as a decision material to the reasons for issuing the Notice, I have also had regard to it in making my decision.

Ground (a) – the deemed application for planning permission

4. The ground (a) appeal is sought for the retention of the development described in the Notice on a temporary basis for a period of 12 months only.

Main Issues

5. The main issues are:

- Whether the development is inappropriate development in the Green Belt having regard to the revised Framework and any relevant development plan policies.
- The effect of the development on the character and appearance of the locality.
- The effect of the development on Sandals Cottage (at 1021 Warwick Road) as a non-designated heritage asset.
- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate in the Green Belt

6. The Government attaches great importance to Green Belts; the essential characteristics of Green Belts are their openness and their permanence. Section 13 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy P17 of the Solihull Local Plan [2013] (the SLP) affirms that the Council will not support inappropriate development in the Green Belt.
7. Paragraph 154 of the Framework makes it clear that new buildings are inappropriate in the Green Belt save for a number of specified exceptions. Of the exceptions, the appellant refers me to provisions for the re-use of land and allowances for the extension of buildings.
8. The exception at Paragraph 154 g) of the Framework relating to the partial or complete redevelopment of previously developed land is subject to the development not having a greater impact on the openness of the Green Belt than the existing development. According to the appellant, the 'existing' site was levelled hard surfacing which accommodated parking and bin storage.
9. Although the land's use in conjunction with the community use of the buildings was previously established, the introduction of the marquee in addition to the displaced parking and storage, causes a loss of spatial openness through its presence. A loss to visual openness also occurs; however, this is limited on account of being largely successfully screened by the existing frontage building and surrounding treed areas. Nevertheless, the resultant loss of openness conflicts with the requirement in Paragraph 154 g) and Policy P17 of the SLP.
10. If considered as an extension, the test in Paragraph 154 c) of the Framework is whether or not it results in disproportionate additions over and above the size of the original building. Despite the marquee's detachment, it lies close to the

rear of the building. As a matter of fact and degree, in its position it appears as an extension for all intents and purposes.

11. There is limited evidence provide as to the degree to which the original building has been previously extended. Although extensions pursuant to planning permission Ref.PL/2007/01988/CU are referenced, it is unclear what other parts were added when, or what the original building consisted of.
12. At my site inspection, I saw that there were multiple elements to the building and some clearly more recent than others. On balance, it seems to me that the building has had several phases of development including various adjuncts and detached structures (some now linked) and a relatively large flat-roofed modern rear extension. In the absence of evidence to the contrary, it is my view that, in conjunction with those recent additions, the scale of the marquee appears disproportionate to what appears to be the original building. As it has not been demonstrated otherwise, I cannot find that it meets the requirement of Paragraph 154 c) of the Framework.
13. In the context of being located within the curtilage of the cottage and sited between the main building and other detached structures, I find that there is little conflict with the reasons for including land in the Green Belt. However, for the reasons given above, I conclude that the marquee is inappropriate development in the Green Belt that erodes its openness. It thereby conflicts with Policy P17 of the SLP and the Framework.

Character and appearance

14. The site includes an extended cottage of 1½ storeys set central in its plot. It sits behind a small open landscaped garden with parking areas to the sides. The building is constructed of painted brickwork with a red tile roof featuring chimneys and front projecting gabled dormer rooflights. Later additions are set to the side and rear, deeper within the site. According to the main parties, the original cottage dates from the early C19.
15. The site is enclaved in woodland and fronts on to Warwick Road, opposite a public car park and a recreational park. In the locality there are suburbs of large, individually designed detached houses and a parkland estate of apartment blocks.
16. Despite its size, the marquee is largely screened by the extended cottage and surrounding trees. Only the pinnacle can be clearly viewed from the frontage. It is visible over a lower link element between higher parts of the main building. Additionally, some filtered views can be seen through the trees to the south of the site. Its effect on the Warwick Road streetscene is therefore substantially limited.
17. As a form of development designed for temporary use and easy relocation, it is distinct from the more permanent forms of development on the site. It contrasts with the character and appearance of the adjacent buildings and structures. However, as a structure that the appellant describes as intended to be temporary, which benefits from a high degree of screening and has a degree of assimilation with the white painted gables of the building, the overall harm to the character and appearance of the locality is limited.
18. As a non-permanent form of accommodation its long-term retention would be inappropriate in the area and the marquee results in a minor conflict with policy

P15 of the SLP which requires development to conserve local character and distinctiveness, and ensure that the scale and materials of the development respect the surrounding built environment.

Non-designated heritage asset (NDHA)

19. The significance of the original building derives from its early C19 origin and archaeological value. The marquee is a free-standing framed structure which does not directly attach to the building. It sits on the ground with no permanent foundations or other excavated attachment. Accordingly, the integrity of the NDHA and any associated archaeological significance will be substantially unaffected.
20. However, the visible presence of the marquee between elements of the NDHA obscures a limited part of the verdant backdrop to the building. It thereby undermines the sense of woodland enclosure and isolation from other buildings in the vicinity. As an indirect effect on the NDHA, the associated scale of harm is limited.
21. Nevertheless, for the above reasons, I find the marquee results in a minor conflict with Policies P15 and P16 of the SLP as they require development to respect the historic environment and preserve heritage assets as appropriate to their significance. In weighing the indirect effect on the NDHA, the Framework requires that a balanced judgement is required having regard to the identified scale of harm and the significance of the asset. This is a matter I return to below in the overall balance and conclusion.

Other Considerations

22. According to the appellant, the marquee was erected in 2020. This was pursuant to the onset of the Covid-19 pandemic and subsequent requirements for social distancing. The marquee provided for the enhanced continuity of prayer meetings that would otherwise be constrained by the limited size of the prayer rooms within the main building. The facility has provided additional room for the appellant's approximated 50 patrons attending the meetings during the pandemic.
23. There is no dispute between the main parties that social distancing requirements have since fallen away. However, the appellant highlights that a high proportion of community members attending the site are elderly. Many of them fall within the 'higher risk' categories for the effects associated with contracting Covid or similar infections. Accordingly, elevated residual anxiety is said to persist in those of more vulnerable ages or dispositions. Given the limitations of the existing allocated internal prayer spaces, I have little doubt that a significant benefit arises from the additional space provided by the marquee in reducing those legitimate concerns.
24. The appellant highlights that the use of the marquee also provides for less cramped and less disjointed prayer space rather than any intensification of the use of the site. This is not contested by the Council. It therefore provides for the improved facilitation of the religious meetings held for the local Muslim population in those respects.
25. The appellant advises that the marquee additionally provides for other activities including, but not limited to, mixed gender multi-faith activities, school group use and charitable food collections which would be difficult within the

constraints of the existing building. It is asserted that the removal of the unauthorised extension would compromise the ability to continue to provide sufficient capacity for the existing religious, social and cultural activities taking place at the site until such a time that alternative, more-permanent accommodation can be secured.

26. Amongst other things, Paragraph 97 (formerly Para. 93) of the Framework supports decisions for the provision and use of shared spaces, community facilities (including places of worship) to enhance the sustainability of communities. It promotes the development and modernisation of established facilities for the benefit of the community. This is reflected in Policy P18 of the SLP, which supports the general approach to development in promoting mental health and wellbeing and is protective of community and social infrastructure. Accordingly, those benefits favour the development.
27. The appellant highlights that the substantially level access and approach to the marquee provide a more accessible space for those with mobility limitations. Given the internal arrangement and confines of the extended cottage, I have little doubt that that is the case. Although there is little to demonstrate any attempts to modify the existing building to improve its accessibility in a manner consistent with its NDHA status, it is nevertheless a benefit of the development and entitled to significant weight.
28. I note that the temporary retention of the marquee would allow time for further exploration of alternative sites, or a more permanent on-site solution. In the absence of evidence of any efforts to date to support that argument, it doesn't add weight to any benefits associated with the marquee. The claim does, however, support the case for the additional need for enclosed space for community facilities in the area.
29. Some third parties have highlighted that the presence of the marquee has displaced additional parking provision at the site such that visitors travelling by private vehicle may rely on the public car park on the opposite side of the road. However, there is little before me to demonstrate that this arrangement results in parking capacity issues such that out-spill or dangerous parking occurs in the locality. On-street parking that could give rise to highway safety issues in the vicinity is largely controlled through yellow line restrictions.
30. Concerns in relation to noise arising from the use of the marquee and associated calls to prayer have been raised. However, there is minimal evidence provided to demonstrate that this occurs to any significant extent or is sufficient to adversely affect the living conditions of surrounding residents.
31. There is little to indicate that the Council have received complaints in that regard. Notwithstanding any limited acoustic attenuation provided by the canopy of the marquee, given the distance to surrounding residential properties, I find significant noise effects unlikely. Even if the call to prayer is audible at some distance, the reported limited duration would be unlikely, in my view, to cause a material effect on local residents' living conditions.

Planning balance

32. The marquee is inappropriate development in the Green Belt that causes harm to its openness. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be

given to that and any other harm to it. In addition, the development results in a minor conflict with the development plan in relation to preserving the character and appearance of locations and heritage assets. However, the extent of harm in relation to those matters is very limited.

33. In the context of a development to remain on site for no longer than 12 months, such that the associated identified harm would also be temporary, I find that the community and social need for the stopgap development in providing continued safe and accessible community facilities is a significant benefit.
34. Furthermore, that need is associated with the protected characteristics of religion, age and disability for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010. The removal of the marquee would largely deprive the local Muslim population of safe and accessible community facilities until such a time an alternative solution can be identified. This adds weight in favour of the development.
35. On balance, I am satisfied that the time-limited harm which is caused by the development is clearly outweighed by the other considerations such that very special circumstances exist to justify the temporary planning permission sought. Moreover, it is necessary and proportionate to permit the development on a temporary basis to eliminate discrimination against and advance equality of opportunity for the site's users, and to foster good relations between them and other parts of the community.

Conditions

36. As the balance of harm against the benefits of the marquee is dependent on the time-based effects of the development, having had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions, I find a condition limiting the lifespan of the development to 12 months from the date of this decision to be necessary and reasonable.

Conclusion

37. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant temporary planning permission for a marquee as described in the notice.
38. The appeal on ground (g) does not therefore fall to be considered.

R Hitchcock

INSPECTOR