



Appeal Decision

Site visit made on 29 January 2020

by **H Miles BA(hons), MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal Ref: W/4000299

Former Brewers Yard, St Michael's Road, Sittingbourne, Kent, ME10 3DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mehtab Asghar against the decision of Swale Borough Council.
 - The application Ref 19/504198/FULL, dated 14 August 2019, was refused by notice dated 18 October 2019.
 - The development proposed is use of the land for parking.
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Decision

1. This appeal is allowed, and planning permission is granted for use of the land for parking in accordance with the terms of the application, Ref 19/504198/FULL, dated 14 August 2019, subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Mr Mehtab Asghar against Swale Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The fact that development has been carried out is not in dispute. For the avoidance of doubt, the fact that development has occurred has had no bearing on my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the area
 - The standard of amenity for nearby residents and users of the church with particular regard to noise, and
 - Highway safety

Reasons

Character and Appearance

5. This part of St Michael's Road is characterised by commercial and functional development. In close proximity to the site there is a multi-storey car park, a surface car park, a car show room and a garage and all these uses include the

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presence of parked cars visible in the streetscene. In the main these include neat and modest boundary treatment and hardstanding which does not detract from the orderly and functional character and appearance of the streetscene in this regard or, in the case of the multi-storey car park, attractive screening. The site itself is bordered by the Methodist Church, the rear of properties fronting the High Street many of which have vehicle access and parking to their rear, and the access to the multi-storey car park

6. The proposed use results in cars parking on the site which are visible in public views. As noted above, this is in keeping with the character and appearance of the surrounding area.
7. At the time of my visit the site was laid to hardstanding and enclosed by metal fencing. The existing hardstanding is uneven and mismatched resulting in a poor quality unattractive appearance to the site at present. The existing boundary treatment is irregular and in places imposing with no screening by planting or any other means resulting in its existing appearance being incongruous in this area and harmful for this reason.
8. A condition has been suggested which would require details of hard and soft landscaping to be submitted, which would overcome these concerns. Therefore, such a condition would enable development to proceed where it would otherwise have been necessary to refuse planning permission.
9. It is put to me that to tarmac the land would be financially unviable, and that there is an intention to develop the site in the medium term so the condition would be onerous. However I am provided with limited evidence in these regards. As such these matters do not overcome the public and permanent harm which would occur to the character and appearance of the area if the condition were not attached.
10. Without such a condition this development would be unacceptable. Therefore, this condition is reasonable, and details of hard and soft landscaping are required to be submitted in the interests of the character and appearance of the area.
11. Consequently, the proposed development would not have a harmful effect on the character and appearance of the area. As such, in this regard, it would not be contrary to policies CP4 (Requiring good design) or DM14 (General development criteria) of Bearing Fruits 2031 The Swale Borough Local Plan Adopted July 2017 (the Local Plan).

Amenity

12. Windows to what I understand to be residential properties fronting the High Street face towards the car park. They are set back from the boundary of the site behind the rear service areas for the High Street properties, some of which appear to be used for car parking and deliveries. There are also windows to the Methodist church which are in relatively close proximity to the boundary of the appeal site.
13. The car parking may generate engine noise and noise from car doors opening/closing. However, I have considered the distance of the residential and church windows from the car park, and the existing likely background noise in this location including the parking/servicing for the High Street properties and the noise from St Michael's Road. I am also aware that the use of the car park

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could take place late at night or early in the morning and on Sundays. Taking these factors into account I am not satisfied that the proposed development would be harmful to the amenity of nearby occupiers and church users.

14. Consequently, the proposed development would not result in an unacceptable standard of amenity for nearby residents and users of the church with particular regard to noise. Therefore, in this respect, the proposed development would not be contrary to Policy DM14 (General development criteria) of the Local Plan.

Highway Safety

15. The car park is accessed from St Michael's Road via an access which, in parts, is not wide enough for cars to pass. This route also appears to provide access to the rear of properties fronting the High Street. The use of part of the site for car parking would increase the number of vehicles using this access.
16. I am not provided with evidence that satisfies me that the existing arrangement is harmful to highway safety. Furthermore, whilst the proposed development would be likely to result in an increased number of vehicles turning right across oncoming traffic to enter the site, I am not satisfied that the intensification to the levels proposed would result in unacceptable harm in this regard.
17. Consequently, the proposed development would not be unacceptably harmful to highway safety. As such, in this respect, it would not be contrary to policy DM14 (General development criteria) of the Local Plan.

Other Matters

18. It is put to me that the occupiers of 38A High Street have legal rights to open their rear door and park on the land, and that access to the rear of 34, 36 and 38 High Street should be maintained. However, these would be private legal matters and not material planning considerations to which I can attribute any degree of weight. Nor is it my role as a S78 Inspector to conclude on matters of lawfulness relating to the existing use of the site.
19. The application was not refused on the grounds that it would result in the increased use of the private car and I have not been provided with detailed evidence which would prompt me to disagree with the Council's conclusions on these matters. I am not presented with substantive evidence that the site is at risk from crime or anti-social behaviour and as such I am not satisfied that security lighting and CCTV would be necessary.
20. My attention has been drawn to a previous application at this site which I understand grants permission for a drive through restaurant¹. It is put to me that the proposed access arrangements were different. As such, based on the evidence before me, the appeal scheme is notably different to that previously approved and I afford limited weight to those specific circumstances.
21. I note that the Council did not refuse the application on the grounds that it would have a harmful effect on the setting of a listed building or Conservation Area and I am not presented with any substantive evidence which would lead me to conclude otherwise.

¹ SW/01/0110

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Conditions and Conclusion

22. I have had regard to the various planning conditions that have been suggested by the Council and considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
23. Conditions are attached regarding hard and soft landscaping, the reasons for which are set out above. I do not find that marked bays make a particular contribution to the character and appearance of the area, and therefore I have omitted this requirement suggested by the Council. I note that the appellant has requested a longer period for submission of details due to the time required to draw up plans. However, I am not provided with substantive evidence that satisfies me that a period of 3 months to submission would be unreasonable. The timetable for implementation is to be agreed between the appellant and the Council. I have also included clauses to cover the situation where a scheme cannot be agreed with the local authority.
24. I have altered the wording of the conditions because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
25. The Council have requested a condition limiting the permission to 5 years in order that the site could be redeveloped to contribute to the ongoing regeneration of the town. I am not provided with substantive evidence, such as plans or policies, to satisfy me that there is a likelihood that redevelopment of this site would take place. As such it would not be reasonable to set a time limit.
26. For the reasons above, and subject to the conditions listed, this appeal should be allowed.

H Miles

INSPECTOR

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Schedule of Conditions

- 1) The use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 1 month of the date of failure to meet any one of the requirements set out in i-iv below:
 - i) Within 3 months of the date of this decision a hard and soft landscaping scheme shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

The hard and soft landscaping scheme shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers, means of enclosure, hard surfacing materials and a timetable for its implementation.

Upon implementation of the approved landscaping specified in this condition, the landscaping shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, damage, destruction or death of the original trees or shrubs unless the local planning authority gives its written consent to any variation.