

## Appeal Decisions

Site visit made on 6 June 2017

**by Elizabeth Jones BSc (Hons) MCTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3 July 2017**

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### **Appeal A Ref: APP/L3245/C/17/3167878**

#### **The Village Fish Bar, Main Road, Pontesbury, Shrewsbury SY5 0PR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Stelios Georgiou against an enforcement notice issued by Shropshire Council.
- The enforcement notice, numbered 16/04922/ENF, was issued on 23 December 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey rear and side extension to the Village Fish Bar on the land.
- The requirements of the notice are:
  - 5.1 Remove the single storey rear and side extension to the Village Fish Bar from the land.
  - 5.2 Remove the materials from the land resulting from compliance with 5.1.
- 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.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variation.**

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### **Appeal B Ref: APP/L3245/W/17/3167876**

#### **The Village Fish Bar, Main Road, Pontesbury, Shrewsbury SY5 0PR**

- 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 Stelios Georgiou against the decision of Shropshire Council.
- The application Ref 16/03991/FUL, dated 2 September 2016, was refused by notice dated 16 December 2016.
- The development proposed is single storey rear and side extension to provide additional store area, external servery counter and seating area to existing restaurant/takeaway and to provide single bedsit accommodation to allow the primary worker/owner to live on site.

**Summary Decision: The appeal is dismissed.**

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### **Appeal A on ground (a) and Appeal B (s78 appeal)**

#### **Main Issues**

1. The main issues are:
    - the effect of the development on the character and appearance of the host property and the street scene;
    - the effect of the development on the living conditions of neighbouring residents having regard to noise and disturbance;
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- the effect of the development on highway safety having particular regard to parking provision; and
- whether the bedsit accommodation provides satisfactory living accommodation.

### *Character and appearance*

2. The Village Fish Bar is a hot food takeaway located within the centre of the village and surrounded by residential properties. The site has no on-site parking and there is limited on-street parking in the immediate vicinity. Although there is some variation, the majority of dwellings in the immediate area are built in local stone with tiled roofs. The Village Fish Bar comprises a single storey brick building with a tiled roof. At the time of my site visit the development although incomplete and not in use was largely constructed with timber floors, walls, roof and a retractable canvas roof over an area marked on the drawing<sup>1</sup> as 'external seating'. Once finished the extension would provide an additional storage area, servery, seating area and a single bedsit.
3. The development occupies the majority of the external space that surrounds the rear of the original building. The eaves height of the development is above the eaves height of the original building. Due to its size and height the development dominates the original building and fails to ensure it appears subservient to it.
4. The appellant contends that the development is well screened by the site boundary walling. Although sited towards the rear of the site behind the boundary gates and wall and beyond the open courtyard area, the development remains visible from a number of surrounding properties as well as from the street. Consequently, due to its form, size and design the development appears as an incongruous addition which harms the character and appearance of both the original building and the surrounding street scene. The external timber materials although used elsewhere in the area do not overcome this harm.
5. The appellant argues that the development is sited on an unkempt area of grass which was previously used for "bins and storage" and was unsightly. Be that as it may, for the reasons above, the development alters the character and appearance of the appeal site to a harmful degree.
6. I conclude that the development has an adverse effect on the character and appearance of the host property and the street scene. The development conflicts with Policy CS6 of the Shropshire Local Development Framework: Adopted Core Strategy (2011) (CS) and Policy MD2 of the Shropshire Council Site Allocations and Management of Development (SAMDev) Plan (2015) which aim to ensure that all development protects, restores, conserves and enhances the built environment and is appropriate in scale, density, pattern and design taking into account the local context and character. These policies are broadly consistent with the National Planning Policy Framework (the Framework) insofar as they relate to good design and character.

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<sup>1</sup> Drawing no. 012.

### *Living conditions*

7. The property is bordered by a number of residential properties. I note comments regarding policing of the dining area by the owner and staff to avoid disturbance. I also note that the appellant does not sell alcohol and despite the hours indicated on the application form<sup>2</sup>, intends to adhere to the previously approved hours of opening. However, the external seating area when completed would introduce approximately 10-15 people to an area not previously used by customers. Irrespective of whether they are new or existing customers, the seating area would enable people to sit and spend a greater length of time on the premises compared to those customers using the takeaway facility. Whilst residents living in close proximity to a takeaway premises can reasonably expect noisier conditions than in a wholly residential area, I consider that the use of the external seating area would result in a greater degree of noise and disturbance causing material harm to the living conditions of nearby occupiers.
8. I note residents' comments regarding odour, litter and the storage of waste. The appeal site is already in use as a takeaway facility. Whilst I have not been provided with detailed plans of any extraction system, I see no reason why a suitable arrangement could not be secured by the imposition of a planning condition, as suggested in principle by the Council's Public Protection Officer. In addition, I have not been provided with any substantive evidence that the external seating area is likely to generate higher levels of litter or that the current arrangements for the storage of waste are inadequate. Thus, I give these matters little weight.
9. I conclude that the proposal would result in material harm to the living conditions of nearby occupiers in terms of noise and disturbance. It would conflict with Policy CS6 of the CS and Policy MD2 of the SAMDev which seek to ensure that all development contributes to the health and wellbeing of communities including safeguarding residential and local amenity.

### *Highway safety*

10. The Highway Authority considers that the lack of on-site parking and the limited on-street parking is likely to result in an increase in traffic standing on the highway to the detriment of the free flow and safe movement of traffic. Comments made by local residents that customer parking in the surrounding area is already problematic are noted. The appellant states that on-street parking places on the adjacent road network are always available after 1800 hours although he acknowledges that on-street parking spaces can be scarce at peak times. The provision of on-site dining would result in vehicles parking for longer periods of time rather than the transient parking normally associated with takeaways. However, having regard to its capacity I am not persuaded that the provision of the external seating area would generate significant levels of traffic such that the resultant demand for on-street parking places would have an adverse effect on highway safety. Thus, the aims of Policy CS6 of the CS which require development which is likely to generate significant levels of traffic to be located in accessible locations are not compromised. There would be no conflict with the Framework which states that development should only

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<sup>2</sup> 16/03991/FUL.

be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

#### *Bedsit accommodation*

11. The development incorporates bedsit accommodation consisting of a sleeping/living/kitchenette area and a shower/toilet room with the latter being shared with customers. I am informed by the appellant that this accommodation would be used by the owner during the working day as a 'rest room' and for occasional overnight stays. I accept it is not unreasonable for 'rest room' facilities to be provided for staff in order to have somewhere to go during their working hours. However, the accommodation has the potential of being lived in given the internal layout. The accommodation would not provide a suitable living environment for its occupier(s) due to its small size, shared toilet/shower facilities and lack of private outdoor garden space. Thus, there would be conflict with the aims of Policies CS6, CS11, CS18 of the CS and with one of the core planning principles of the Framework which seeks to ensure a good standard of amenity for all occupiers of land and buildings.

#### **Other matters**

12. I have taken into account concerns expressed by a number of residents and the Parish Council regarding the potential fire hazard and drainage. There is no evidence to suggest that the development would pose a greater fire risk than the existing fish bar. Also, no technical evidence has been provided to show that the development results in drainage problems. Thus, these issues do not add to my reasons for dismissing the appeals.

#### **Conclusion**

13. For the above reasons, and with regard to all other matters raised, I conclude that the appeal on ground (a) in Appeal A, and Appeal B should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

#### **Appeal A on ground (f)**

14. The purpose of the notice is to remedy the breach of planning control. The requirements are not excessive to achieve that purpose.
15. I note the appellant's willingness to carry out modifications by facing the elevation to the courtyard with a more suitable material, or staining the existing timber cladding to a darker colour. In the absence of specific information, I would be unable to substitute a lesser requirement. Moreover, I have commented on the planning merits of the development when dealing with ground (a) above and the modifications as suggested by the appellant would not overcome the identified harm in any case. The appeal on ground (f) therefore fails.

#### **Appeal A on ground (g)**

16. The appellant argues that the removal of the development would necessitate the complete reorganisation of the existing shop area and has requested a period of six months to allow for the bespoke internal fittings to be made and fitted. Given that the development is incomplete and not currently in full use

and having regard to the submissions from both parties, I consider that a period of six months would represent a more reasonable length of time which would strike the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellant. To that extent, the appeal on ground (g) should succeed.

### **Formal Decisions**

17. It is directed that the enforcement notice be varied by the deletion of the words "two months" and the substitution therefor of the words "six months" as the time for compliance in paragraph 6 of the notice.
18. Subject to this variation, I dismiss Appeal A and uphold the enforcement notice.
19. Appeal B is dismissed.

*Elizabeth Jones*

INSPECTOR