



Appeal Decisions

Site visit made on 1 February 2021

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Appeal Ref: APP/F4410/C/20/3259825 ('Appeal A')

Corner Pocket Snooker and Social Club, Bank Street, Mexborough S64 9QD

- 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 Peter Eyre against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The enforcement notice was issued on 12 August 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the extension of a wooden decking area with associated steel girders and concrete footings marked in grey on the Plan, the siting of two shipping containers in the approximate positions marked in purple on the Plan, the installation of wooden fencing marked in blue on the Plan, the installation of four additional vertical steel girders with concrete footings adjacent to the highway marked in yellow on the Plan and the partial demolition of a wall in a conservation area marked in white on the Plan, on the Land.*
- The requirements of the notice are to:
 - (i) Remove all wooden decking, steel girders and concrete footings from the Land marked in grey on the Plan;
 - (ii) Remove the two shipping containers from the Land marked in purple on the Plan;
 - (iii) Remove all wooden fencing from the Land marked in blue on the Plan;
 - (iv) Remove all steel girders and concrete footings from the Land marked in yellow on the Plan;
 - (v) Reinststate the wall using the original materials on the Land marked in white on the Plan; and
 - (vi) Following compliance with steps (i) to (iv) above permanently remove the resultant materials from the Land.
- The period for compliance with the requirements is three 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.

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

Appeal Ref: APP/F4410/C/20/3262438 ('Appeal B')

Corner Pocket Snooker and Social Club, Bank Street, Mexborough S64 9QD

- 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 Peter Eyre against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The enforcement notice was issued on 22 September 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the extension of a wooden decking area with associated steel girders and concrete footings marked in grey on the Plan and the installation of roller shutters above bi-fold doors marked in blue on the Plan, on the Land.*
- The requirements of the notice are to:
 - (i) Remove all wooden decking, steel girders and concrete footings from the Land marked in grey on the Plan;

- (ii) Remove the roller shutters from above the bi-fold doors marked in blue on the Plan.
- (iii) Following compliance with steps (i) to (ii) above, permanently remove the resultant materials from the Land.
- The period for compliance with the requirements is not given; however the notice requires compliance with the steps specified by 'no later than 23 December 2020'.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the corrected enforcement notice is upheld.

Preliminary Matters

1. In relation to the 'decking' allegations, Appeal B concerns works that are essentially a continuation of those that are the subject of Appeal A. The erection of an external terrace was retrospectively approved in August 2019 ('the approved decking'). I saw that the decking area that is the subject of the notice in Appeal A ('Notice A') is an extension to the approved decking area. The decking has been extended further and this further extension forms, in part, the subject of the separate notice in Appeal B ('Notice B').
2. Although it is possible to discern the separate elements of the developments, the Notice A and Notice B extensions together with the approved decking area result in a single extended decking area. Neither party has expressly addressed whether the Notice B decking area is capable of existing independently of the Notice A area, or if it is then what the merits of that as an independent, rather than as a cumulative, extension to the approved decking area might be. I have considered the appeals accordingly, with the Notice B decking as a cumulative addition to that of Notice A.
3. The enforcement notice to which Appeal B relates ('Notice B') does not specify a period for compliance with its requirements, as the legislation requires, but instead specifies a date. The specified date (which has now passed, owing to the appeal having been brought) is equivalent to a period of 50 days after the notice takes effect, and I am satisfied that the notice is capable of correction to stipulate this period without prejudice to either party.

Main Issues

4. Each of the appeals is brought only on ground (a) which is to raise a deemed planning application for the works that are alleged in each notice to constitute a breach of planning control. Although consisting of several discrete elements, there is considerable interrelationship between the works and neither party to the appeals suggests that I consider granting a permission on the ground (a) appeals except in relation to the whole of what is alleged in each notice.
5. The reasons given in each of the Council's notices relate to the impact of the development on the character and appearance of the Mexborough Conservation Area ('MCA'). The main issue in each of the appeals is therefore whether the development enforced against preserves or enhances the character or appearance of the MCA.
6. Further reasons are raised in the Council's statement concerning the impact of the Appeal A development on the residential amenity of neighbours, specifically in relation to noise, disturbance and odours. Retrospective planning permission

was refused on 30 September 2020 for (inter alia) the erection of the two shipping containers for use as a food outlet, for reasons including the impacts on the residential amenity of neighbours. However, these are not concerns raised by the notice, which is required (by regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002) to specify why the Council considers it expedient to issue it, together with all policies and proposals in the development plan that are relevant to the decision. Those reasons and policies, in each case, relate only to the impacts on the Conservation Area and not to any other considerations.

7. The Council asserts that the ground (a) appeal in Appeal A seeks retrospective permission for 'the siting of the two shipping containers for A4/A5 use and storage, a 1.8m high black stained timber fence forming bin enclosure, outdoor video screen and steel frame and wooden deck'. However this is not quite the same as the development enforced against, which forms the subject of the ground (a) appeal. There is no appeal before me against the refusal of the application for retrospective planning permission.
8. The Council comments on the appellant's grounds of appeal to say that the appellant does not fully consider the amenity issues in relation to the use of the steel storage containers. The 'amenity' matters raised in the Council's statement, however, relate to the subject of the recent retrospective planning application, which differs in some material respects from the development against which either notice is directed. In particular, the Council's concerns about noise appear to arise in part from the potential use of a large outdoor video screen at the premises which does not form part of the allegation in either notice (and which appears to be mounted at least partly above an area of decking that is not itself unauthorised).
9. I therefore consider that the case presented in respect of residential amenity by both parties is somewhat incomplete insofar as it relates to the development actually enforced against, and I have also not had the advantage of seeing at first hand the representations made on the retrospective planning application. As it is not an issue raised by either notice, and given my conclusions on the first main issue, I do not consider it necessary to pronounce on the question of residential amenity because I consider the harm to the Conservation Area alone is sufficient to dispose of the appeals. Therefore I have not put the parties to the additional effort of supplying further information in relation to residential amenity considerations. Thus the only main issue in the appeal is the effect of each of the developments on the character or appearance of the MCA.

Reasons

10. The appeal site, referred to by the appellant as 'The Pocket Sports Bar' (hereafter 'the Pocket'), faces north onto Bank Street in the small town of Mexborough. An inter-war former cinema, it is one of a number of significant civic or community buildings fronting onto the main commercial and retail area of Bank Street and which are comprised in the MCA. Buildings on the south side of the street, including the appeal site, back onto Greens Way, the A6023 dual carriageway passing below the town as it falls away to the rivers Don and Dearn and the railway line below. The boundary with Greens Way forms the southern edge of the linear MCA that consists almost entirely of buildings fronting onto Bank Street.

11. In the triangle of land between Bank Street and Greens Way and the off-slip road rising from and over the dual carriageway, the land falls away very steeply between Bank Street and Greens Way. The Pocket, like the former library building to the west, has a relatively modest façade as it faces onto Bank Street but viewed from the rear, from Greens Way or the slip road, is revealed to be a building of considerable dimensions. The Pocket contains a large bar area on the ground floor and a further bar below on the lower ground floor.
12. To the east of the Pocket, beyond what appears previously to have been a gap in the frontage save for an historic sandstone wall and sunken garden area, lies what appears to be a former chapel building. Between the two buildings, and adjacent to the Pocket, areas of decking have been constructed that lie at the Bank Street street level. The approved decking is adjacent to the eastern side wall of the Pocket, the Notice A decking lies alongside that further to the east and to the north of the site, and the Notice B decking comprises a further rectangle to the south of the Notice A decking and east of the approved decking. The Notice B decking is bounded by steel railings to its southern and eastern sides around 4' high, whereas the Notice A decking is bounded by approximately 6' high vertical close-boarded black wooden fencing to its eastern side as well as the fencing to the north surrounding the shipping containers that lie close to Bank Street.
13. There remains a sunken lawn area between the easternmost steel girders supporting the decking and the western side of the former chapel building; however, to the northern side of this, there are substantial concrete footings and four steel girders rise from the ground which appear to form preparatory works for further development between the two buildings.
14. The building pattern to the south side of Bank Street is considerably more spacious than to the north, with a pattern of rather large buildings and gaps in the frontage giving an open feel and pleasant views across the rivers to the rising countryside beyond to the south. Whilst an extension of the decking area to fill part of the gap at street level between the approved decking and the former chapel would not necessarily harm this aspect of the Conservation Area's character or appearance, the particular way in which it has been executed here causes considerable harm to the heritage interests of the area.
15. This is principally because the height of the resultant fencing serves to block off the gap in the frontage, enclosing Bank Street and preventing the long countryside views that were previously available from it (as evidenced by the Council's Figure 1). As well as resulting in this loss of open character, the black stained fencing itself constitutes a jarring contrast with the surrounding building materials and boundary treatments. The loss of the low sandstone wall, comprised of a traditional local building material, is unfortunate and results in a further diminution of the local historic interest here.
16. The introduction of the black coated shipping containers is very unsympathetic to the prevailing brick and stone building materials of the area, to which the containers bear no relation. The surrounding buildings are constructed of more organic materials and do not share the containers' rather industrial countenance. As well as causing harm by their discordant appearance the containers, each taller than the surrounding fencing, also play a role in eroding

- the previously open frontage that I find to be harmful to the character and appearance of the Conservation Area.
17. Turning to the roller shutters, the appellant correctly points out that external shutters prevail in the area, although he also accepts that the shutters could be considered to be detrimental to the character of the building. The building's description as a 'Key Unlisted Building' in the MCA suggests a need for particular care and attention to its historic character when making alterations. I agree that the boxed projections of the shutters from the side wall of the building cause detriment to the appearance of the building, and hence to the Conservation Area.
 18. I therefore find that overall each of the developments enforced against result in harm to the character and appearance of the MCA. In relation to the various aspects of the developments enforced against, the appellant cites the local economic benefits in favour. Additionally, the roller shutters are said to offer security benefits. Although only limited evidence as to local economic conditions has been supplied, I accept that the developments have the potential to offer increased consumer choice and to make a meaningful contribution to the vitality of Mexborough centre. I give these economic benefits considerable weight in my decisions.
 19. Overall, however, I do not find that the economic or security benefits of the developments are sufficient to outweigh the harm that arises to the character and appearance of the Conservation Area. I am required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the MCA in my decision. National planning policy ('the Framework') indicates that great weight should be given in my decision to the conservation of this heritage asset.
 20. The development plan for the area presently consists of the Core Strategy 2011 – 2028, adopted in 2012, and the Unitary Development Plan adopted in 1998. Each contains policies for the preservation and enhancement of conservation areas, notably CS15 of the Core Strategy and ENV25 of the UDP. Development in the MCA will not attract support from these policies unless the MCA is to be preserved or enhanced as a result. For the reasons set out above, I find that the developments are contrary to those policies because the character and appearance of the MCA are not preserved or enhanced.
 21. The Framework requires harm to a heritage asset to be weighed against the public benefits of the development where, as here, 'less than substantial' harm to significance is judged to result. Although I give the economic and security benefits cited by the appellant considerable weight, these benefits do not outweigh the heritage harm. This is not least because it has not been demonstrated that the same benefits could not be delivered in some other less harmful way. The same security benefits could arise from the roller shutters if they were mounted internally (for which I understand a permission exists) and this would avoid the harm to the appearance of the building. The need for the particular appearance of the fencing or the shipping containers is unexplained and consequently the benefits they bring do not outbalance the harm they cause.

Conclusion

22. For the reasons given above I conclude that the appeals should not succeed. I shall correct Notice B and shall uphold each of the enforcement notices and refuse to grant planning permission on the deemed applications.

Formal Decisions

Appeal A

23. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

24. It is directed that the enforcement notice be corrected by deleting from paragraph 5 "by no later than 23 December 2020" and inserting "50 days". Subject to that correction the appeal is dismissed and 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.

Laura Renaudon

INSPECTOR