The Planning Inspectorate

# Appeal Decision

Site visit made on 10 July 2020

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2nd October 2020**

**Appeal Ref: APP/Q4625/C/19/3223403**
**Land at 2 Station Approach, Dorridge, Solihull, B93 8JF**

- 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 John Martin of Skogen Limited against an enforcement notice issued by Solihull Metropolitan Borough Council.
- The enforcement notice was issued on 28 January 2019.
- The breach of planning control as alleged in the notice is: Without planning permission;
  i) The unauthorised development of the erection of a timber framed single storey extension plus first floor extension, cladding of structure, forming of new timber fencing to boundary, alterations to fenestration, erection of railings, installation of extractor vent (as shown on the enclosed refused plan number 5497/06 F, as refused by application reference PL/2018/02828/PPFL) and
  ii) The material change of use of the premises from an A3 Café use to a mixed use including A3 Café and A4 drinking establishment.
- The requirements of the notice are:
  EITHER;
  a) Cease the use of the premises as a mixed A3 and A4 use, and return to the lawful use of the premises within use class A3 (restaurants and cafes) of the Use Classes Order 1987 (as amended):
  AND
  b) Demolish: the timber framed single storey extension, first floor extension, cladding of structure, new timber fencing to boundary, alterations to fenestration, railings and installation of extractor vent, and return the premises to its condition prior to the breach commencing and remove all the demolished materials and rubble from the premises arising in compliance with this requirement.
  OR
  c) Make alterations to the premises so as to bring the premises into physical conformity with the approved planning scheme with planning reference number PL/2017/00988/COU as shown on the two approved drawing numbers 5497/01J and 5497/03A attached to this notice.
- The period for compliance with the requirements is one month for requirement a) and 6 months for requirements b) and c) from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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 corrections and variations in the terms set out below in the Formal Decision.**

## Procedural Matters

1. The appeal is made by Mr John Martin of Skogen Limited. He has provided a statement to say that he is the father of the owner of Skogen Limited, Mr Scott Buchanan Martin. Mr Scott Martin is stated as being the applicant on the

decision notices relating to the two most recent planning applications for the site, referred to below. Mr John Martin indicates that Skogen are the occupiers of the premises. I noted during my site visit that Skogen was the name advertised for the premises. On this basis I have regarded the appellant as Skogen Limited, as referred to on the front cover of the appellant's statement of case and hearing statement, and I am satisfied that this company was the recipient of the notice and entitled to make the appeal, being 'the owner or any occupier' in the list of persons served with a copy of the notice.

2. With regard to the planning history relevant to this appeal, planning permission was granted in 2011 for the 'change of use from A2 to A3 (from bank to café bar)'. The appellant has included a copy of this decision notice in appendix 1 of its hearing statement. Whilst the appellant as referred to this as application reference PL/2011/00171/CU, the reference given on the decision notice is 2011/598.

3. After the appellant secured an interest in the site in 2017, an application was made and a conditional permission granted (Council reference PL/2017/00988/COU) on 19 July 2017 for extensions and alterations to the premises, as well as the 'change of use to mix A3/A4'. A subsequent planning application (Council reference PL/2018/02828/PPFL) sought permission for alternative alterations and extensions to the premises, as well as a 'change of use to A3/A4'. This application was refused on 7 December 2018. The plans submitted with the 2017 and 2018 applications are referred to in the enforcement notice. I have had regard to the above planning history in reaching my decision in this case.

4. On a separate matter, in the appellant's hearing statement reference is made to the lack of an officer report in respect of the planning application reference PL/2018/0282/PPFL. Whilst this is noted, the appeal before me is not in respect of the refusal of that application. The appellant has attached to its statement (appendix 10) two officer reports in which reasons for the issue of the enforcement notice that is the subject of this appeal are explored. Whilst I acknowledge that the reasons given in the report are limited, they reflect those given in the enforcement notice. Accordingly, whether or not the appellant had access to an officer report relating to the PL2018/0282/PPFL planning application is not relevant to the validity of the enforcement notice in question.

5. Since the issue of the enforcement notice and the subsequent appeal, The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) have amended The Town and Country Planning (Use Classes) Order 1987 as amended (the Order). One of the changes introduced by the Regulations is to remove the former A4 use class 'Drinking establishments' so that drinking establishments no longer fall within any use class identified in the Order. The changes came into effect on 1 September 2020. The views of the parties were sought on the amendment to the Order and the implications for this appeal. As well as the amendments to the Order, I have also had regard to the comments received.

6. Finally, under the appellant's ground (c) appeal it is suggested that the matters alleged in the notice do not constitute a breach of planning control as the use of the premises for a mixed café and drinking establishment has the benefit of the permission granted by the approval of the 2011/598 planning application. Whilst my conclusion in respect of the ground (c) appeal is that the 2011

permission did not grant consent for the mixed café and drinking establishment use, I must nevertheless address the appellant's assertion that the premises was previously operated as 'a bar (i.e. a drinking establishment)'. I have, therefore, considered this matter under a ground (d) appeal[1], i.e. that at the date the notice was issued no enforcement action could be taken against the breach. My consideration of this ground of appeal is, however, only confined to the matter of the material change of use as there is no suggestion that the operational development is immune from enforcement action.

## The Notice

7. The notice alleges both a material change of use and operational development in breach of planning control. With regard to the operational development, the notice is directed at works to extend and alter the premises. A list of 'unauthorised development' is provided in paragraph 3 (i) and this is repeated at paragraph 5 (b) with a requirement to 'demolish' those items listed. Having regard to these paragraphs of the notice, I am not satisfied that these clearly describe the operational development to which the notice relates and what the recipient of the Notice must do to comply with it. Whilst I acknowledge that paragraph 3 (i) refers to plan number 5497/06 F (which forms part of the refused 2018 scheme) to illustrate the unauthorised works alleged to have been undertaken, I am not certain that this provides any meaningful assistance. For example, the plan does not assist in locating the cladding referred to in paragraph 3 (i) and the requirement at paragraph 5 (b) to 'demolish….alterations to fenestration' could be regarded as confusing.

8. My concerns as set out above are not shared by the appellant. Indeed, having considered the appellant's evidence, I am satisfied that it is aware of what is the subject of the notice and what it should do to comply with it. The appellant made both the 2017 and 2018 planning applications and confirms that it undertook the recent works to the site. Accordingly, I am satisfied that the appellant can recall the condition of the site prior to the alleged unauthorised works taking place and understands what works have been undertaken without the benefit of planning permission. I am satisfied that I can correct the Notice to overcome the issues I have identified without causing injustice to any party.

9. In addition to the above, requirement 5 (c) of the notice is provided as an alternative to requirement (a) and (b). It requires the works necessary to bring the development into accordance with the scheme permitted by the approval of the PL/2017/00988/COU planning application. It is clear that the intention of this requirement is also to bring the development within the control of the conditions of that planning permission. As such, and for the avoidance of any doubt, I will vary the notice so as to specify this.

10. Part 3 (ii) of the notice describes the mixed use as 'including' a café and drinking establishment use. This suggests that there may be other uses forming part of the mixed use. However, neither party has referred to any other uses taking place on the site. As such, I will vary part 3 (ii) of the notice to remove the word 'including'. This part of the Notice also refers to use classes within the Order, without making reference to the Order itself. I will add reference to the Order for the avoidance of doubt.

[1] Under section 174(2)(d) of the Town and Country Planning Act 1990 as amended

11. Use class A4 is referred to in Part 3 (ii) of the notice. As noted above, the Order has been amended so as to remove use class A4 (drinking establishments). I will, therefore, vary the notice to remove reference to use class A4.

12. Finally, requirement 5 (a) of the Notice will also be varied so as to refer to the full description of the mixed use and the full title of the Order. The requirement to return the premises to 'the lawful use….within use class A3 (restaurants and cafes)' will also be removed as it is not necessary to require the use of the premises to return to a particular use.

13. I am satisfied that no injustice will be caused by any of the corrections or variations specified above.

**Ground (c)**

14. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant. The appellant's ground (c) appeal is directed at the alleged material change of use referred to in the enforcement notice and not the operational development. As such, I have not considered the operational development referred to in the notice under the ground (c) appeal.

15. In the appellant's statement of case it is suggested that the mixed café and drinking establishment use (falling within use class A3 and A4 respectively of the Order) had the benefit of the planning permission granted by the approval of the PL/2017/00988/COU planning application. However, the appellant's position on the ground (c) appeal changed in its hearing statement. There the appellant accepts that the 2017 planning permission has not been implemented. Accordingly, I have not considered this element of the appellant's case under ground (c) further.

16. Instead, the appellant now suggests that the current mixed café and drinking establishment use has the benefit of the permission granted by the approval of the 2011/598 planning application. The appellant asserts that, at the time the 2011 permission was granted (11 August 2011), the Order had not been amended to reduce the scope of class A3 from 'food and drink' to 'restaurants and cafés', and introduce use class A4 'drinking establishments'. This is not, however, correct. These amendments to the Order came into force on 21 April 2005 by virtue of The Town and Country Planning (Use Classes) (Amendment) (England) Order 2005. As such, at the time the 2011 permission was granted, use class A3 (as specified in the description of the proposal) only related to a 'use for the sale of food and drink for consumption on the premises' and not to the drinking establishment use.

17. Whilst I acknowledge that the description of the development approved by the 2011 permission included the word 'bar', it does not follow that permission was granted for a drinking establishment use alongside the café use. The proposal is not described in the 2011 decision notice as a mixed use as a café **and** bar or, indeed, as a mixed A3 and A4 use. Furthermore, it is of note that reference is made in the description of the proposal to use class A3, and not to use class A4, which at the time squarely related to a drinking establishment use.

18. For the above reasons I find that, on the balance of probability, the 2011 permission did not grant consent for a mixed use as a café and drinking establishment. That the approved layout for the premises shows a 'counter' and a separate 'kitchen'[2] does not alter my findings in this regard. It is commonplace for restaurants and cafés to have a serving counter separate to the kitchen in the premises.

19. On the basis of the evidence before me, I conclude that on the balance of probability the material change of use specified in the notice constitutes a breach of planning control since there is no planning permission for it. As a consequence of this the appeal on ground (c) fails.

**Ground (d)**

20. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. As noted above, my consideration of this ground (d) appeal is confined to the matter of the material change of use of the premises to a mixed use as a café and drinking establishment. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach[3]. The test in this regard is the balance of probability and again the burden of proof is on the appellant.

21. The appellant's evidence suggests that the 2011 permission for a 'change of use from A2 to A3 (from bank to café bar)' was implemented in late 2011 and that, prior to this, the premises had been used as a bank. It is suggested that the premises became vacant in approximately 2015. It is the appellant's case that from 2011 the premises operated as a drinking establishment.

22. If the premises was used as a drinking establishment, as suggested by the appellant, or as a mixed use comprising a café and drinking establishment, there is no suggestion that such a use existed prior to late 2011. The enforcement notice was issued in January 2019. As such, the mixed use of the premises as alleged in the enforcement notice had not, on the balance of probability, begun more than 10 years prior to its issue. It therefore follows that the Council could take enforcement action in respect of the breach of planning control (i.e. the alleged mixed use) when it did. For this reason, the appeal on ground (d) fails.

**Ground (a) and the deemed application for planning permission**

***Main Issues***

23. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated three substantive reasons for issuing the enforcement notice.

24. The third of these reasons is that, without the necessary planning conditions, the development would cause material harm to amenity. The Council have not, however, expanded on this in its appeal statement by identifying the particular harm to amenity that it suggests is caused. The section of the Council's appeal

[2] As shown on the drawings in appendix 1 of the appellant's hearing statement.
[3] In accordance with section 171B of the Town and Country Planning Act 1990 as amended.

statement that refers to 'impact on residential amenity' is an extract of the officer report prepared in respect of the PL/2018/02828/PPFL planning application, which considers the material change of use in the context of the planning application, but does not assist in identifying the harm that results from the uncontrolled material change of use.

25. In view of the above, I have had to interpret the Council's third reason for issuing the enforcement notice. In doing so I note that the Council's appeal statement identifies residential units above the parade of shops on Station Approach, which I noted on my site visit. It also suggests there is regular pedestrian and vehicle activity close to the boundaries of the site that result from the nearby railway station, which is in close proximity to the rear of the site. Furthermore, in the section of the notice that identifies harm to amenity, the Council suggest the development is contrary to Policy P14 (Amenity) of the Solihull Local Plan December 2013 (SLP), which refers to harm that results from smell, noise or atmospheric pollution.

26. Having regard to the above, and noting the two other reasons the Council have given for issuing the enforcement notice, the main issues I have identified in this case are as follows:

- The effect of the development on the character and appearance of the surrounding area, and whether or not the development preserves or enhances the character or appearance of the Station Approach, Dorridge, Conservation Area (SADCA) heritage asset (including consideration of benefits arising from the development[4]); and
- The effect of the development on residential amenity and the amenity of the area as a whole.

***Reasons***

*Character and Appearance:*

27. The appeal site is within a high street location and comprises a triangular shaped plot at the junction of Grange Road and Station Approach. It is occupied by a building that has been extended and altered as described in the corrected and varied enforcement notice. There are hard surfaced terraces to the front of the building and there is a small coppice of trees to the rear, on the adjoining land.

28. The site is outside of but adjacent to the boundary of the SADCA, which consists of the row of properties and public house opposite the appeal site, on Station Approach, and the railway station to the rear of the site. The properties within the SADCA form a distinctive and fairly well preserved collection of early 20th century buildings. The features of these buildings are striking, not least due to the uniformity in their design and use of materials. The wide pavements and fairly open road layout also contribute to their significance. These buildings also provide a particularly attractive and positive addition to the wider high street area.

29. In addition to the above and within the immediate vicinity of the appeal site is a short row of commercial properties on the opposite side of Grange Road.

[4] As required by paragraph 196 of the National Planning Policy Framework.

Although not within the conservation area, this short row of single storey retail units add to the pleasantness of this area.

30. As the principle elevations of the properties along Station Approach and Grange Road, described above, face towards the appeal site and the junction on which it sits, the site is squarely within the immediate setting of these properties. Indeed, the site is particularly prominent within this setting and sits within an important approach to the conservation area as identified in the SADCA Appraisal.

31. Judging from the photographs provided of the building and the appeal site prior to the works subject of the enforcement notice taking place, it is my view that the appeal site would not have made a positive contribution to the surrounding area and the setting of the adjoining heritage asset. The building was plain and utilitarian in its design, and its appearance would have jarred with the striking design and detailing of the properties within the SADCA. Notwithstanding this, I can see that the single storey building had a compact footprint and that there was less hard surfacing than is on site today. Having regard to the photographs provided, the building and the site would have been subservient in its character when compared to the surrounding built development, particularly that on Station Approach. Accordingly, I am of the view that the impact the appeal building would have had within its setting would have been limited due to its small size and low level design.

32. I note that the Council's principal concerns with regard to the development subject of the enforcement notice are in respect of the addition of the first floor extension. With regard to this element of the development, I find that the size of the extension and its width across the span of original building renders it an overtly prominent addition. It is particularly bulky and the use of light timber cladding and contrasting vibrantly coloured window frames add to the prominence of this extension. It adds an overbearing third storey onto the building when viewed from Grange Road and its relationship to the railway bridge is awkward.

33. Whilst I acknowledge that the approved scheme also includes a first floor element, the extension on site is much greater in size and is far more prominent. The glass balustrade enclosing the open first floor terrace does not overcome this. Neither would the addition of trailing landscaping. This first floor extension is, therefore, an unwelcome addition to the host building.

34. When considered within the context of the appeal site, the extension results in a building that is no longer subservient to the surrounding built development, particularly when viewed along with the two terrace rows either side of the appeal site (i.e. along Station Approach and Grange Road). Whilst not within the SADCA boundary, the building has become an incongruent element within its setting and is an undesirable contrast when compared to those properties within the conservation area, as well as those along Grange Road.

35. Added to this, the loss of so much of the landscaping on the site is unfortunate, and its replacement with hard paved terraces does not result in an attractive element of the current scheme. I acknowledge, however, that additional landscaping could soften the appearance of these outside areas and could be required by condition. Notwithstanding this, the terraces have been enclosed with fencing, which I consider to be an unwelcome element of the current scheme, particularly because of its height. It interrupts views across the site

and is in stark contrast to the otherwise open aspect of the surrounding area. Whilst I acknowledge the appellant's reasons for its erection, as opposed to the use of railings to enclose this front area, these do not justify such a detrimental feature within the street scene.

36. With regard to the other elements of the development that are the subject of the enforcement notice, I acknowledge that the single storey extension to the rear and side of the building have increased its presence on the site. Nevertheless, these extensions are not particularly prominent in view of their low level and location. I note the Council suggest that the cladding used on these extensions and on small areas of the original building does not accord with the details approved in the 2017 scheme. I have not, however, been provided with the approved details. Although the finish of the timber cladding is light, I do not find the materials used on these low level elements of the building objectionable and a darker stain could be required by way of a condition. Similarly, the change in fenestration in the front and side elevation of the original building is satisfactory.

37. Whilst I note the Council's objection to the enclosed waste storage area, this is adjacent to a secondary elevation of the building and is inconspicuous in its appearance. There is no evidence that would lead me to conclude that the appellant would not maintain this area going forward.

38. With particular regard to my findings in respect of the first floor extension and timber terrace enclosure, the development subject of the enforcement notice is detrimental to the appearance of the building and unsympathetic to the character of the surrounding area. For the reasons given above, the development subject of the notice causes harm to both the character and appearance of the SADCA heritage asset and the wider area in this location.

39. In reaching the above conclusion, I have had regard to the significant number of representations that suggest that the development is acceptable in terms of its size, scale and appearance, and that it makes a positive contribution to the character of the SADCA and the wider village centre. I acknowledge that the site and building would not have made a positive contribution to the area, including the setting of the heritage asset, in its previous condition. Whilst the development subject of this appeal may well have improved the previously unkempt appearance of the site, for the reasons given above I am unable to conclude that the site makes a positive contribution or preserves local character and distinctiveness.

40. Particular reference has been made by the appellant to the scheme of development granted planning permission by the approval of the PL/2017/00988/COU planning application. Indeed, many of the supporters of the appeal allege that the Council are attempting to revoke the 2017 permission and have objected to this. Whilst the enforcement notice, as corrected and varied, is aimed at all of the recent alterations and extensions to the appeal building, including those at ground floor, the requirements of the notice refer to the approved 2017 scheme and acknowledges this as a genuine fall back option. I have viewed the 2017 scheme in the same vein; reaching my decision having regard to the development approved by that permission.

41. I acknowledge the proximity of the modern development, including Sainsburys, along nearby Station Road and to the rear of Station Approach. However, this does not have the same close relationship as the appeal site does with the

principle elevations and frontages of the conservation area properties. The railway station's lift tower is within close proximity to the site, but is in a less prominent location than the development subject of this appeal.

42. My attention has been drawn to the railway bridge that is within the immediate setting of the appeal site. Whilst the bridge appears to be in need of painting, it is a functional feature that is clearly related to the nearby railway station. It is, therefore, part of the historic fabric of the area and does not have a negative effect on the setting of the SADCA, which includes the railway station itself. With regard to the advertisement hoarding, whilst such features may not make a positive contribution to the setting of the heritage asset, their presence does not justify the harm I have identified as a result of the development subject of this appeal.

43. The presence of the above mentioned development, other recent development in the area and other items that have been drawn to my attention do not alter my conclusions with regard to the effect of the development subject of this appeal on the character and appearance of the area and the setting of the SADCA heritage asset.

44. I have identified harm with regard to the effect of the development on the significance of the SADCA, although the harm caused to the heritage asset in this case would be less than substantial. In these circumstances, paragraph 196 of the National Planning Policy Framework (the Framework) makes it clear that where less than substantial harm to the significance of a designated heritage asset would occur then this has to be weighed against the public benefits of the proposal.

45. The appellant has highlighted job creation in the local area and a positive contribution to the vitality and viability of the village centre as benefits of the scheme. Indeed, I acknowledge the significant number of letters of support for the business. Whilst these public benefits would of course exist if the appellant were to implement the approved 2017 scheme, I acknowledge that they are likely to be greater with the increase capacity provided by the first floor addition.

46. The appellant suggests that the first floor element would allow for better control of the use of the upper floor, compared to the approved open terrace. Whilst this may well be a public benefit of the scheme, I note that a condition has been imposed on the 2017 permission that only allows the use of the roof terrace on a temporary basis. The Council could prevent the use of the roof terrace in the long term, should its use become problematic. This public benefit of the development is, therefore, limited.

47. I am not persuaded that the fencing enclosure of the front terrace would provide a greater degree of site security and less incidents of anti-social behaviour than the approved railings. Furthermore, whilst I note that the scheme has been designed to control pests and rodents, the effect of such matters is dealt with under separate legislation.

48. Having regard to the above, I conclude that there are some public benefits to the development that weigh in its favour, but these are limited. Furthermore, the Framework makes clear in paragraph 193 that great weight should be given to the conservation of a heritage asset. Accordingly, I find that the harm

that would occur to the SADCA is not outweighed by the public benefits outlined above.

49. To conclude on this first main issue, the development subject of the enforcement notice has an unacceptable effect on the character and appearance of the surrounding area. Furthermore, it neither preserves nor enhances the character or the appearance of the SADCA heritage asset[5]. The development does not, therefore, accord with policies P15 (Securing Design Quality) and P16 (Conservation of Heritage Assets and Local Distinctiveness) of the SLP as its scale and massing does not respect the surrounding built and historic environment, and it fails to conserve and enhance local character.

*Amenity:*

50. I note that Policy P14 of the SLP seeks to protect and enhance the amenity of existing and potential occupiers of houses, businesses and other uses by prohibiting development that would be significantly harmful because of smell, noise or atmospheric pollution. Notwithstanding this, the Council have confirmed that it does not object to the mixed use of the premises as a café and drinking establishment, provided that appropriate conditions can be imposed to control the use. A list of conditions has been suggested by the Council, which refer to plans approved by reason of a condition discharge application reference PL/2017/02352/DIS.

51. I have no reason to disagree with the Council in that it is possible to control a mixed café and drinking establishment use of the site in order to achieve compliance with Policy P14. I have not, however, been provided with the details approved in the condition discharge application referred to above. Without these details I cannot be satisfied that the development would have an acceptable effect on residential amenity and the amenity of the area as a whole and, therefore, accord with the aims of Policy P14 of the SLP.

52. Whilst I acknowledge that these details could have been requested from the parties, this was not sought as it would not have overcome my overall conclusions on the ground (a) appeal and the deemed planning application.

*Other Considerations and the Planning Balance:*

53. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the development fails to accord with the development plan. It is, therefore, necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

54. I have already had regard to the public benefits of the scheme, as set out in consideration of the first main issue above. In addition to this, I acknowledge the appellant's suggestion that the viability of the business would be uncertain in the event that the appeal is dismissed. I have not, however, been provided with any comparative viability studies to show that the business would be unviable if operated within the building as extended and altered in accordance

[5] The general duty as respects conservation areas in exercise of planning functions - Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended

with the approved scheme, or that the cost of carrying out the work necessary to comply with the approved scheme would render the business unviable. Neither has it been suggested that it would not be possible to find another occupier of the premises. Accordingly, I can only attach limited weight to the appellant's contentions regarding the viability of the business going forward in the event that the appeal fails.

55. In addition to the representations objecting to the development subject of the appeal, including that from the Knowle, Dorridge and Bentley Heath Neighbourhood Forum, I note the significant volume of support for the appeal. A substantial number of these are briefly stated and a substantial number are also from customers of the premises who are concerned that it will close if the appeal fails. There is also concern that the site would become derelict and return to its former condition in this case. Whilst I have had regard to the representations in support, these do not in themselves outweigh the harm I have identified in this case. This is particularly so as I have been provided with insufficient evidence that the viability of the business would be uncertain should the appeal fail, as set out above, or that the premises will remain vacant and fall into disrepair.

56. A number of supporters of the development have suggested that the Council was unduly influenced in its decision to initiate enforcement action by the presence of a nearby public house, but there is no evidence before me to support that.

57. I accept that the development could be regarded as compliant with a number of the development plan policies, including those in The Knowle, Dorridge and Bentley Heath Neighbourhood Plan, details of which have been provided by the appellant. However, I can only regard this as having a neutral effect in this balancing exercise, rather than it weighing in favour of the scheme.

58. Having regard to the above, I conclude that the material considerations in favour of the development are not of sufficient weight to indicate that determination of this ground (a) appeal and the deemed planning application should be made otherwise than in accordance with the development plan.

*Could planning permission be granted for any part of the matters stated in the notice as constituting a breach of planning control?:*

59. Notwithstanding my conclusion that permission should not be granted for the development as a whole (as alleged in the enforcement notice), section 177(1)(a) of the Town and Country Planning Act 1990 as amended provides that, on determination of an appeal under Section 174, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to any part of the land to which the notice relates. Applying the wording of Section 177(1)(a) to this case, I must consider whether I could grant planning permission for any part of the matters constituting a breach of planning control alleged in the notice.

60. The enforcement notice has been constructed so as to be directed at two matters; those being a material change of use and operational development. I have concluded that the development as a whole would cause harm to the character and appearance of the surrounding area, as well as the setting of the

SADCA heritage asset. For this reason I conclude that permission should not be granted for the breach of planning control alleged in the notice consisting of the operational development.

61. As for the material change of use, if compliance with requirement 5 (c) (as corrected and varied) is achieved, the mixed use of the premises as a café and drinking establishment would, as a result, benefit from the planning permission granted by the PL/2017/00988/COU permission.

62. With regard to the mixed use of the building that would remain without the operational development referred to in the enforcement notice[6], I note that there are no objections from the Council to this prospect. However, no conditions have been suggested that would ensure the use would operate so as to have an acceptable effect on residential amenity and the amenity of the area as a whole, in accordance with the aims of Policy P14 of the SLP. In the absence of appropriate conditions, I am not minded to grant permission for the breach of planning control alleged in the notice consisting of the material change of use.

*Conclusion on the appeal on ground (a) and the deemed planning application:*

63. I have found that the development conflicts with the development plan when read as a whole. I have not been advised of any material considerations, which includes the identified benefits of the scheme, of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Neither can I be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. Accordingly, I conclude that planning permission ought not to be granted. As a consequence, the ground (a) appeal fails.

**Ground (g)**

64. By appealing under ground (g) it is the appellant's case that the period specified in the notice falls short of what should reasonably be allowed. The notice requires the material change of use to cease in one month and the works to comply with requirement 5 (b) or 5 (c) in 6 months. The ground (g) appeal is in respect of the 6 month period. The appellant has suggested a 12 month period for compliance, whereas the Council have confirmed they are satisfied with a period no longer than 9 months.

65. The appellant suggests that a period longer than 6 months is required to, essentially, find contractors to undertake the required works and for those contractors to schedule and undertake those works. Whilst I acknowledge that the works required to comply with either 5 (b) or 5 (c) would not be insignificant for any contractor, the appellant has not suggested that there is a particular problem in this area securing a contractor to undertake these works, or that the conditions on site make these works more difficult than would normally be expected. Six months is a substantial period and not an unreasonable period for such works to be completed.

66. As the appellant has not provided any substantiated evidence to show that the requirements of the notice cannot be complied with within 6 months, I have no reason to conclude that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal fails.

[6] i.e. the building that would remain following compliance with requirement 5 (c) only of the notice.

## Conclusions

67. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

## Formal Decision

68. It is directed that the enforcement notice is corrected by:

- The deletion from part 3, paragraph (i) of the words 'The unauthorised development of the erection of a timber framed single storey extension plus first floor extension, cladding of structure, forming of new timber fencing to boundary, alterations to fenestration, erection of railings, installation of extractor vent (as shown on the enclosed refused plan number 5497/06 F, as refused by application reference PL/2018/02828/PPFL)' and their substitution with 'The erection of a first floor extension above the building on the premises; the erection of a single storey extension to the rear of the building; the erection of a single storey extension to the side of the building facing Station Approach; the cladding of the building with timber; the alteration and installation of new windows and window frames in the front elevation of the building and the side elevation of the building facing Grange Road; the erection of an extractor vent on the side elevation of the building facing Grange Road and on the rear elevation of the building; the erection of timber fencing along the boundary of the premises with Grange Road and Station Approach; the erection of railings to the side of the building adjacent to Grange Road and around the terrace to the front of the building. These extensions and alterations are shown on the plan hereby attached to this notice and numbered 5497/06 F; and'; and

- The deletion from part 3, paragraph (ii) of the words 'an A3 café to a mixed use including A3 café and A4 drinking establishment' and their substitution with 'a use as a café falling within Use Class A3 of the schedule of The Town and Country Planning (Use Classes) Order 1987 as amended (the Order) to a mixed use as a café and drinking establishment'.

69. It is directed that the enforcement notice is varied by:

- The deletion from part 5, paragraph (a) of the words 'A3 and A4 use, and return to the lawful use of the premises within use class A3 (restaurants and cafes) of the Use Classes Order 1987 (as amended)' and their substitution with 'café and drinking establishment use';

- The deletion from part 5, paragraph (b) of the words 'Demolish: the timber framed single storey extension, first floor extension, cladding of structure, new timber fencing to boundary, alterations to fenestration, railings and installation of extractor vent' and their substitution with 'Remove from the premises the extensions to the side, rear and first floor of the building; remove the timber cladding from the building on the premises; remove the windows and window frames from the front and side elevation of the building; remove from the building the extractor vent; remove from the premises the timber fencing; remove from the premises the railings;'; and

- The deletion from part 5, paragraph (c) of the words 'Make alterations to the premises so as to bring the premises into physical conformity with the

approved planning scheme with the planning reference number PL/2017/00988/COU as shown on the two approved drawing numbers 5497/01J and 5497/03A attached to this notice' and their substitution with 'Remove from the premises the first floor extension above the building and make alterations to the premises so as to accord with the scheme of development approved by the planning permission reference PL/2017/00988/COU and the conditions and limitations of that planning permission'.

70. Subject to the corrections and 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 Town and Country Planning Act 1990 as amended.

*J Moss*

INSPECTOR