

SOLIHULL METROPOLITAN BOROUGH COUNCIL

Appeal by Skogen Limited against an enforcement notice issued by Solihull MBC relating to an unauthorised change of use and associated alterations and extensions.

Land at : 2 Station Approach, Dorridge, Solihull. B93 8JF.

LPA Appeal Ref : AP/2019/00008/ENF

PINS Ref : APP/Q4625/C/19/3223403

Statement of Case of the Local Planning Authority

1. Appeal Site and Surroundings

The appeal relates to a former bank building on a small parcel of land in Dorridge village centre, bounded by Station Approach, Station Road, and a railway line and station. Prior to its current use and recent development, the building traded as a café bar following a change of use approval in 2011. The associated open space included 2 trees which have been removed. Two more trees on land to the south are the subject of a tree preservation order. Immediately facing the appeal site, on the opposite side of Station Approach, is the Station Approach Dorridge Conservation Area.

2. Relevant Recent Planning History

- Application ref PL/2017/00988/COU - Construction of timber framed single storey extensions, cladding of structure and forming of new timber fencing to front entrance/boundary and around flat roof, use of roof as roof terrace with construction of access stairwell, alterations to fenestration, erection of railings and change of use to mix A3/A4.- approved 19.07.2017.
- Application ref PL/2018/01289/COU - Change of use to A3/A4 and construction of timber framed single storey extensions plus first floor extension, cladding of structure and forming of new timber fencing to boundary, alterations to fenestration (Resubmission of planning approval PL/2017/00988/COU).- withdrawn 31.07.2018.
- Application ref PL/2018/01228/MINFOT - Construction of timber framed single storey extensions plus first floor extension, cladding of structure and forming of new timber fencing to boundary, alterations to fenestration, and change of use to A3/A4 (Resubmission of planning approval PL/2017/00988/COU).- withdrawn 04.05.2018.
- Application ref PL/2018/02828/PPFL - Construction of timber framed single storey extensions plus first floor extension, cladding of structure, forming of new timber fencing to boundary, alterations to fenestration, erection of railings, installation of extractor vent, change of use to A3/A4. (Resubmission of previous approval PL/2017/00988/COU). – refused 07.12.2018.

3. Relevant Planning Policy

Solihull Local Plan (2013)

The policies contained within the adopted development plan that are relevant to this appeal are: -

Policy P14 (Amenity), which states, inter alia, that "***the Council will Permit development only if it respects the amenity of existing and proposed occupiers and would be a good neighbour***";

Policy P15 (Securing Design Quality) which states, inter alia, that all development proposals will be expected to achieve good quality, inclusive and sustainable design, which “**Conserves and enhances local character, distinctiveness and streetscape quality and ensures that the scale, massing, density, layout, materials and landscape of the development respect the surrounding natural, built and historic environment**”, and

Policy P16 (Conservation of Heritage Assets and Local Distinctiveness) which states, inter alia, that “**Development will be expected to preserve or enhance heritage assets as appropriate to their significance, conserve local character and distinctiveness and create or sustain a sense of place.**” and

“**All applications and consents that affect the historic environment will be expected to have considered and used the evidence in the Solihull Historic Environment Record to inform the design of the proposal. This should be explained in the accompanying Design and Access Statement or, for significant proposals, in a Heritage Statement.**”

National Planning Policy Framework

Part 12 of the NPPF (Achieving well-designed places) states at para 127 that planning decisions should ensure that developments ;

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁶; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Para 130 goes on to state that “**Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions ...**”, and

“**Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).**”

Knowle, Dorridge and Bentley Heath Neighbourhood Plan

The Knowle, Dorridge, and Bentley Heath Neighbourhood Plan was adopted in the spring of 2019 – after the refusal of the retrospective planning application and service of the enforcement notice. This now forms part of the development plan and adds an additional layer of policy consideration.

Policies of relevance to this appeal are as follows :

Policy VC2 : Conservation Areas – “**Within the conservation areas, there will be a presumption in favour of retaining existing buildings, gardens, trees and green open spaces that contribute positively to the character and appearance of the areas. New development shall seek to conserve and enhance the Conservation Areas and their heritage assets. Building design, signage, advertising and street furniture shall be in keeping with the character of the area.**”

Policy VC3 : Heritage Assets – “Designated heritage assets including listed buildings, conservation areas and archaeological features must be protected, conserved and enhanced in accordance with national and local planning guidance and policies.

Non-designated assets include those buildings on the local list, in Appendix 5, “positive buildings” identified in the Knowle Conservation Area Appraisal 2007 and any future Conservation Appraisals. When considering development affecting non-designated heritage assets a balanced judgement will be taken having regard to the scale of any harm or loss and the significance of the building or structure.

Proposals for the change of use of a building or structure on the local list, or a positive building, will be required to demonstrate how this would contribute to its conservation whilst preserving or enhancing its architectural or historic interest.

Applications proposing demolition that materially affects the heritage value of the asset will be required to demonstrate that the viability of continued beneficial use, restoration or conversion has been fully investigated and that there are no reasonable alternatives. Where demolition is unavoidable, provision must be made for an appropriate level of recording of the building or structure as relevant.”

Policy D1 : Character and Appearance – “Planning applications for a new development, including extensions, shall demonstrate that it would be of a high standard of design and preserves or enhances the character and appearance of the Area. In KDBH, the following are some of the criteria that will be used, when relevant, to assess the acceptability of the design of development:

- * be in harmony with the village character and sit well in the landscape
- * where on the edge of the built up area, achieve a sensitive transition between the built environment and the open countryside
- * protect, enhance and maximise the value of key natural environment characteristics

including the canal, mature hedgerows and large mature trees that define the natural landscape character

- * reflect layouts characteristic of the surrounding area*
- * be of a density characteristic of the Area*
- * be in keeping with the scale, siting and appearance of nearby buildings*
- * preserve or enhance the character and appearance of the streetscene or the area within which it is located, taking into account matters such as building lines, established plot widths, parking, access and the arrangement of front gardens, walls, railings and hedges*
- * echo obvious local characteristics (such as the form and type of development, roof style, fenestration, materials, means of enclosure, landscaping and hard surfacing)*
- * use external finishes that respect local traditions in the use of brick, tile and render with wood for decoration or other materials of construction*
- * provide parking spaces and garages of a size capable of accommodating a modern family car*
- * feature green spaces*
- * provide good quality public realm with well maintained streets and spaces.*

The recommendations and findings of the "Heritage and Character Assessment" 2017 and the "Masterplanning Design and Design Coding Study" 2017 will be taken into account in the assessment of development. Extensions (such as side and roof extensions) must be proportionate in scale and respect existing style characteristics.

This Policy is intended to apply to all new development. It is not intended to stifle innovative design where this would be appropriate in the local context."

Policy E2 : New Development in Village Centres – “*Proposals for the erection or change of use of buildings within the village retail centres will be supported subject to:*

- * the scale of development being proportionate to its location*
- * there being no unacceptable impact on the character and appearance of the area, particularly if located in a Conservation Area*
- * there is no material harm to residential amenity*
- * an overall mix of uses is maintained consistent with policy E1*
- * adequate provision is made for car parking and servicing*
- * compliance with policies in national guidance and the Solihull's Local Plan."*

4. Response to Grounds of Appeal

The Ground (a) Appeal

The operational development which is the subject of this appeal was the subject of retrospective planning application PL/2018/02828/PPFL, refused on 07.12.2018. The proposed development, which was a re-submission of planning approval PL/2017/00988/COU, was a full application for the change of use of the premises from A3 to a mix of A3 and A4 together with extensions and alterations, and was largely retrospective. The main differences between this proposal and the previously approved scheme approved were as follows:

- First floor extension,
- Timber storage area
- Change to balustrading
- Change to cladding

The officer report for that application included an assessment of the development which remains a full and detailed explanation of the Council's position. The main body of that assessment is reproduced below as follows :

Principle of development

Policy P17 of the Solihull Local Plan (2013) identifies Dorridge as one of a number of local centres within the Borough. P17 states that local centres need to be developed and sustained in a way which ensures their continued sustainability and economic success. The scale and nature of new development should reflect the centres role and function in serving local needs, the opportunity to reduce the need to travel or the need to sustain the economic viability and vitality of the centre.

Planning permission has already been granted for the change of use to A3/A4 together with two extensions and cladding which at the time of the original application were considered to provide a facility for local residents that would complement the range of existing entertainment/leisure facilities that are currently on offer within the local centre of Dorridge. The mixed A3/A4 use, instead of just A3, was considered to have the potential to enhance the range of facilities on offer within the local centre and also encourage visits to the centre, which was considered to contribute to the economic success of the local centre as a whole.

The main consideration for this application, therefore is whether the proposed changes, would be acceptable.

Impact upon the setting of the conservation area

Policy P16 of the Solihull Local Plan (2013) expects developments to preserve or enhance heritage assets as appropriate to their significance. Similarly, the NPPF at paragraph 184 requires that heritage assets be conserved in a manner appropriate to their significance.

Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 places a duty on the LPA to pay special attention to the desirability of preserving or enhancing the character or appearance of the

conservation area. The NPPF notes that adverse impacts upon heritage assets can arise from impacts upon settings, and not just direct impacts.

The application site is located adjacent to but not within Station Approach Dorridge Conservation Area; the boundary of the conservation area lies on the opposite side of Station Approach to the east, and to the south around the railway station building. The nearby heritage assets also include the single storey shops with Art Deco inspired glazed façade tiles on the opposite side of Station Road.

NPPF paragraph 190 requires that LPA's should identify and assess the particular significance of any heritage asset that may be affected by a proposal including by development affecting the setting of a heritage asset as the case in this instance.

Paragraph 193 of the NPPF states that 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. The Councils Heritage Assets team are of the opinion that the scheme would generate harm to the setting, and to the significance and appreciation of the conservation area. This case would produce 'less than substantial' harm.

Paragraph 194 states that "any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

Paragraph 196 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The public benefits of the scheme, including bringing the building back into use, are not considered sufficient to outweigh the harm caused by the proposal.

Paragraph 200 of the NPPF states that 'local planning authorities should look for opportunities for new development within Conservation Areas... and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably. The proposed scheme would not achieve this.

The significance of Station Approach Dorridge Conservation Area as a Designated Heritage Asset (DHA) lies within its distinct, striking and

attractive group of early 20th century properties of the Forest Hotel (c.1878), 1 to 23 Station Approach (1901-1902) and the station building (1878). These exhibit a consistent standard of design and details, including the use of red brick, plain tiles, applied timber details, coved canopies above shopfronts and dressed stone cills and stringcourse at the station building. The relationship of the buildings to the railway station and the evidence that they provide of the growth around the important transport node typical of the later 19th and early 20th century remains absolutely evident. The position of the group on the locally high point and the slope up from Station Road increase their positive impact on local character and distinctiveness.

The application site building is a post war structure of a simplistic form, with no architectural or historic interest and offering no positive contribution to the setting of the conservation area (DHA). Its form has now been altered by the work recently undertaken. The garden areas that lie broadly to the north and south of the site make positive contribution to the setting of the conservation area, as do the mature trees alongside Station Approach although this has been diluted the removal of plants and trees.

The Conservation Area Appraisal logically identifies the approach from Station Road into Station Approach as an 'Important Approach', and by virtue of that as an important view. Whilst the historic buildings to the north (left) of the viewer are the key visual appeal of this approach with the station building as the backdrop, the prominent application site and building are part of the enclosure of the view to the south (right) for viewers, and have a significant impact upon the appreciation of the conservation area. The original building was of a scale and massing that avoided excessive impacts upon this view and this key point to appreciate the significance of the conservation area and heritage assets within it.

The application site occupies part of the triangular wedge referred to above. For this reason it was previously considered important to retain the landscaped areas and trees and ensure that any work to the front garden area at the road junction did not compromise the setting of the conservation area. It was queried whether the proposed railings around this garden area were necessary; they were and so it was suggested that they be set in to allow for a soft landscape screen to reduce their visual impact, with the detail to be secured by condition as part of a hard and soft landscape scheme. A timber clad fence that was to have extended alongside part of this garden area and was subsequently omitted from the scheme. The scheme was also amended so that the main single plane frontage that faced Station Approach was afforded some articulation in order to soften its appearance on the setting of the conservation area. The approved scheme also includes 'guarding' (solid timber fence) to the perimeter of the roof terrace and stair tower at 1.5m in height. The current proposal is now to have a glass screen instead towards Station Road which would be no more obtrusive than the approved option.

The proposed timber storage area at road level alongside Grange Road is not desirable. A lightweight structure in this shaded position alongside the road seems a structure that would quickly deteriorate and that will appear as a service structure with access forecourt in a very prominent position. This ground has been described as 'redundant' on the plan but prior to site clearance was planted with shrubs that helped to reduce the start appearance of the building at this point. The Council's Heritage Officer considers that the removal of the planting would be detrimental to the views into the conservation area at a point where the west end of the parade of shops is visible. As discussed in the landscape section of this report, the Council had no powers to prevent the removal of these plants as part of the site clearance, however, if it is felt that area should be replanted then this could be requested through the hard and soft landscaping condition. The store building itself would have its own obtrusive impact on this corner which would add to the impact of the existing building that is already at odds with the character and appearance of the conservation area beyond.

The roof top structure and enclosure would also have additional negative impact on the setting of the conservation area. Treating the CGI from the 2017 application as accurate in depicting the timber railing to the deck it usefully shows the trees would still be visible in part through the gaps between the rails. That element of the view has now disappeared and instead glazed openings with a timber fascia above replace it. The impact will be different again when the interior of the upper building is lit. The timber clad lightweight first floor structure is at odds with the traditional solidity of the surrounding brick and tile buildings that typify the conservation area, and with the weight of the blue brick railway bridge abutments and flanking wall and the cast iron bridge panels and structure. It is acknowledged that the approved scheme is of a contemporary design, however, the revisions would create a building with additional bulk and mass that would appear out of context in this sensitive and prominent location. The frosted glass inserts on the Station Approach elevation provide little relief from the impression of a full timber skin, especially at oblique angles. The current finish may be bold and factory fresh and over time, provided the materials are in accordance with those approved under condition, the timber should weather down to silver-grey which would achieve a certain change in its impact.

The proposed boundary treatment to the front of the site would be 1.5m in height. At this height there would be much more limited views into the front of the site and a significant reduction in permeability and views across it, the additional height in the boundary treatment (when compared to 1.1m previously approved) adds to the bulk and massing of the overall development and further detracts from the character of the area and the setting of the conservation area.

In conclusion, therefore, the proposed revisions to the approved scheme would create a building of greater scale and massing which

would have an adverse impact upon the character and appearance of the conservation area. The proposals would create a greater amount of harm within the ‘less than substantial’ sliding scale to the significance of the designated heritage asset than previously identified. It would now fail to preserve the character and appearance of the conservation area because of the additional visual impacts of the extended first floor building form and the poor appearance of the basement store addition adjacent to the bridge. In addition, adverse impacts upon the designated heritage asset may occur due to the appearance of the additional roof level room when lit at night from inside and out, depended upon the type and intensity and the internal fixtures and fittings seen through the glazing.

As ‘less than substantial’ harm to the significance of the designated heritage asset has been identified, any public benefits of the proposal would need to be weighed against the harm. As identified at the time of the original application, the public benefits are perceived to be bringing a vacant property back into use, the securing of a viable use that would be appropriate to a local centre and providing a facility that would contribute towards sustaining the continuing success of the centre.

Whilst these public benefits were considered sufficient to outweigh the less than substantial harm identified to the original scheme, as explained above, the revisions are considered to create a greater amount of harm than the previously approved scheme. Whilst the public benefits carries some positive weight, it is noted that there would be no visual or design based public benefit, and given the modest quantum of development proposed, the combined weight of the public benefits identified would likely be moderate. The magnitude of the harm in this case would be greater than that previously found. In accordance with the Framework therefore the public benefits required to outweigh that harm should also be greater. The proposal would therefore fail to meet the provisions within Policy P16 Conservation of Heritage Assets and Local Distinctiveness of the Local Plan and the NPPF 2018.

Significant weight is given to this in the planning balance.

Streetscene/character of the area

Solihull Local Plan 2013 Policy P15 expects all development proposals to achieve good quality, inclusive and sustainable design, which meets a number of key principles, including (i) conserves and enhances local character, distinctiveness and streetscape quality and ensures that the scale, massing, density, layout, materials and landscape of the development respect the surrounding natural, built and historic environment.

Many of the objections received raise concerns about the appearance of the resulting building as a result of the additional enclosed floor space at first floor but also because of the materials.

The existing building is unobtrusive being single storey, set behind the landscape garden with the backdrop of the station and railway bridge behind. The additional roof top extension would increase the mass and bulk of the building so that it would be much more prominent from certain parts of the village centre, including Station Approach and also from the opposite side of Station Road. Whilst a stair tower had previously been approved together with a freestanding timber screen and balustrading these were of a scale and design that was considered acceptable. The additional height, bulk and mass of the roof top extension would mean that the building now sits well above the railway bridge structure.

The roof top extension does not sit well on the existing building and detracts from the character of the street scene.

Whilst the existing building had a large floor to ceiling height windows the large expanse of glazing at the first floors would be uncharacteristic of the area and adds to the harm caused.

There has been much criticism about the materials used. Materials were subject to condition and larch timber boarding was approved to weather naturally or a natural finish (Osmo or equivalent). The applicant has advised that the cladding is not as per the details agreed by condition. The profile of the timber is different and further information as to type of wood use and how it has been treated is awaited at the time of writing the report. As discussed above the cladding currently appears bold and factory fresh but depending on what wood has been used and how it has been finished it may soon weather down to a silver-grey – you will be updated on this matter at your meeting.

Therefore, notwithstanding the outstanding matter of the materials, the proposed alterations by reason of the height, bulk, mass and appearance of the roof top extension would be considered out of character to the immediate surrounding area. This harm is afforded significant weight in the planning balance.

Impact upon residential amenity

Solihull Local Plan Policy P14 seeks to protect and enhance the amenity of existing and potential occupiers of houses, businesses and other uses.

The application site is located opposite a parade of commercial premises, some with residential units above and short distance from the Forest Hotel. Due to the local centre location and close proximity to the railway station and bus stop there is regular pedestrian and vehicular activity beyond (but close to) the boundaries of the site. There is an established night time economy at this local centre as evidenced by the uses of some units opposite the application site and further afield (but still within the local centre).

SMBC's Public Protection Officer's have made no objection to the development subject to the conditions previously recommended. However, these recommended conditions limiting the time of use of the roof terrace were not imposed as it was not considered viable to the business and instead a temporary condition for the roof terrace was imposed instead.

The first floor extension would enclose much of the roof terrace and glazed balustrading at 1.1m height is proposed to the roof terrace, which has been implemented, instead of the 1.5 high perimeter timber guarding as previously approved. As the Committee Report to the approved application detailed the balustrading to the roof terrace had been the subject of much discussion and amendment as the original proposed height was 1.8m but that had been reduced to 1.1m in order to overcome concerns relating to visual amenity and impact on the setting of the designated heritage asset but this was then amended again at the request of SMBC Environmental protection Officer who advised that the guard should be at least 1.5m in height to offer some form of noise barrier and to discourage patrons from leaning on the guard. Also, the large sliding glazed doors could be opened all year round which could cause nuisance to residents opposite by noise outbreak.

Furthermore, the frontage has been completely hardsurfaced and it would be reasonable to assume that this would also be used for outdoor seating. This part of the site is within the red line of the application site and thus outdoor seating would be permitted without any further planning permission.

The previously approved opening hours, are between 07:00 and 23:00 Monday to Thursday, 07:00 and midnight on Friday and Saturday and 09:00 and 23:00 on Sundays and Bank Holidays.

Given that the first floor is now mostly enclosed, if permission were granted a condition could restrict the hours of operation and it is considered that the proposal would not therefore result in any further significant noise and disturbance than the previously approved scheme.

Landscape

Policy P10 of Solihull Local Plan 2013 seeks to protect and enhance landscape features and Policy P15 seeks to safeguard important trees.

The small area of garden location at the junction of Station Approach and Grange Road has been cleared. It was noted at the time of the previous application that the trees and plants are not scheduled for removal and the garden was attractive, however, none of the trees in this area were subject to TPO's. This area of land has always been within the application red line and site clearance prior to commencement of development is out of the Council's control. However, it was acknowledged that the drawings submitted for the previous application suggested potential alterations to the garden at the junction of Station

Approach but due to the insufficient detail submitted with the application a condition was imposed to secure hard/soft landscaping detail. This would still be considered relevant should this application be approved and any such scheme could include new soft landscape where required.

The TPO Lime tree referred to in the Officer Report for the original application is in fact located between the station and the application site (ref: TPO/00138). Indeed the reference to this tree was with regard to the extensions located to the rear and side of the building which, under normal circumstances, would be within the root protection area (RPA) of this tree but due to the existing retaining walls and other engineered structures, which are likely to have acted as root barriers, the Council's Landscape Architect concluded that the potential conflict between foundations and roots would likely be significantly reduced and as such was considered acceptable.

There has been no objection raised by the Landscape Architect subject to conditions.

Highways

Policy P8 of Solihull Local Plan (2013) expects all development proposals to have regard transport efficiency and highway safety.

At the time of the previous application representations were received that raised concerns about lack of car parking at the site, increase in traffic flows, existing traffic issues with traffic on Station Approach and limited local parking provision.

As was noted previously, a single off street parking space served the former use, which will be lost. A double yellow TRO is in place along the application site side of Station Approach. Parking is permitted on the opposite site, although limited to 1 hour Monday-Saturday 08:00 – 18:00. Buses and trains serve this location throughout the day.

There remain no objections to the proposed change of use. The Council's Highway Engineer does not expect the additional enclosed floor space to have materially great impact on traffic and parking demand as the available floor area considered previously has not altered.

The redundant footway crossing would still need to be reinstated with full height kerbs, to protect the safety of pedestrians along this stretch of footway.

Taking into account the above there would be no sustainable reasons which would warrant the application being refused on highway grounds; the application site is in a sustainable location well served by public transport and there are adequate public parking facilities within a short

distance of the site and as such the proposal is considered to fully comply with SLP Policy P8.

This is afforded neutral weight in the planning balance.

CONCLUSION

In conclusion, therefore, the proposed revisions to the approved scheme would result in a building of a scale, design and massing which would have an adverse impact upon the setting of the adjacent conservation area. The proposal would result in harm to the significance of the designated heritage asset that would not be outweighed by public benefits and consent should be refused.

In addition to the above, it is noted that the appellant's grounds of appeal contend that the building, as built, has a lesser mass than that approved, and seeks to demonstrate that by reference to comparative floor areas. However floor area is not the key determinative factor of mass. As mentioned above, the differences from the approved scheme include a first floor extension, new timber storage area, change to balustrading, and change to cladding, and the Council maintains that these, collectively, do indeed result in a building of materially different scale, design and massing.

The Council's Conservation Planner provided a detailed consultation response to the retrospective application in December 2018 and that response is at **Appendix 1** to this statement.

The aforementioned retrospective application was also the subject of a significant level of public interest and third party representations, including a number of written objections, copies of which are at **Appendix 2**.

The Ground (c) Appeal

Planning permission PL/2017/00988/COU was for "*Construction of timber framed single storey extensions, cladding of structure and forming of new timber fencing to front entrance/boundary and around flat roof, use of roof as roof terrace with construction of access stairwell, alterations to fenestration, erection of railings and change of use to mix A3/A4.*"

It is a matter of fact that this permission was not implemented. Instead, a materially different scheme has been developed (hence the retrospective application). That scheme is unauthorised. This encompasses the change of use as well as the operational development. The two cannot be separated in this regard because both were covered by a single permission – if that permission has not been implemented, and no other permission has been issued, then the change of use is also strictly unauthorised as a matter of law – there is no implemented planning permission on which it can rely. This was tacitly accepted by the appellant by the fact that the last retrospective application was for the operational development and "change of use to

A3/A4". Presumably this would not have been included in the application description if it were not considered to be necessary.

It is for this reason that the change of use was included in the enforcement notice and the requirements therein. Whilst there remains no objection in principle to the new use of the premises, that use was previously approved subject to conditions. If it were to be allowed to accrue immunity, and thus lawfulness, through the passage of time, this would result in a use which is not the subject of any enforceable conditions – including those which were originally imposed to protect amenity (e.g. through the control of opening hours). This could result in material harm in the future. It was therefore considered necessary to require the cessation of the unauthorised change of use for this reason – although the Inspector of course may decide to grant planning permission for the change of use by allowing the appeal in whole or in part, and in so doing create a new opportunity to impose suitable conditions to control the operation of the use of the premises. This was not an option open to the Council.

If, however, the Inspector takes a different view on this point of law and, notwithstanding the above, is satisfied that the change of use can separately rely on the 2017 permission, and that the conditions attached thereto are enforceable, despite the fact that the operational development is not that which was approved under that permission, then the Council would of course have no objection to the Inspector exercising his/her discretion to amend the enforcement notice accordingly.

The Ground (g) Appeal

With regard to the ground (g) appeal, it has long been generally accepted (in accordance with the old enforcement PPG) that an enforcement notice should not normally set a compliance period longer than 12 months, and such a long period would normally relate to an unauthorised residential unit/use where compliance with a notice would require someone to lose their home and need to find another. 3 months would be a typical compliance period for householder development, and commercial developments generally fall somewhere in-between, e.g. around 6 months. No detailed information has been submitted with the appeal to demonstrate convincingly why it would not be possible to comply with the notice within such a period. If, despite this, the Inspector is minded to exercise his/her discretion to vary the compliance period, the Council would respectfully suggest that a period of no more than 9 months should be considered.

Suggested Conditions

If the Inspector is minded to allow the appeal, the local planning authority would suggest, without prejudice, the imposition of the following conditions :

1. The premises shall not operate other than in accordance with the scheme for the storage of refuse previously approved in discharge of condition 9 of

planning permission PL/2017/02352/DIS (details received by the LPA by email 06.11.2017 from Cross & Craig).

2. The premises shall not operate other than in accordance with the scheme for the control of noise previously approved in discharge of condition 8 of planning permission PL/2017/02352/DIS (details received by the LPA by email 06.11.2017 from Cross & Craig).
3. No air conditioning/mechanical ventilation shall be installed at the premises other than in accordance with the details previously approved in discharge of condition 10 of planning permission PL/2017/02352/DIS (details received by the LPA by email 06.11.2017 from Cross & Craig).
4. The premises shall not be open to customers outside the hours of 07:00 and 23:00 Monday to Thursday, 07:00 and midnight on Friday and Saturday and 09:00 and 23:00 on Sundays and Bank Holidays.
5. Within 3 months of the date of this decision, a detailed soft landscaping/planting scheme shall be submitted for the written approval of the local planning authority. Such scheme shall include proposed; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); trees, hedgerows & shrubs to be retained and removed; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme and timetable.
6. All soft landscape works shall be carried out in accordance with the approved details and timetable/programme. If, within a period of 5 years from the date of planting of any plant, that plant or any plant planted in replacement for it, is removed, uprooted, destroyed, dies or becomes seriously damaged or defective, another plant of the same species and size as that originally planted shall be planted at the same place within the next planting season (October-March), unless the Local Planning Authority gives its written consent to any variation.

Conclusion

Having regard to all of the above, it has been demonstrated that: planning permission should be refused for the reason set out in the refusal of the retrospective planning application, and for the reason for issuing the enforcement notice; that there has been a breach of planning control; and that no persuasive case has been presented to justify varying the compliance period of 6 months.

The Inspector is therefore respectfully requested to dismiss this appeal and uphold the enforcement notice.