



Appeal Decision

Site visit made on 20 February 2018

by **S J Papworth DipArch(Glos) RIBA**

an Inspector appointed by the Secretary of State

Decision date: 9 March 2018

Appeal Ref: APP/Q1445/W/17/3187835

The Hames, Ovingdean Road, Brighton BN2 7BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr C Phillips against the decision of Brighton & Hove City Council.
 - The application Ref BH2017/02197, dated 30 June 2017, was refused by notice dated 29 August 2017.
 - The development proposed is change of use of the existing residential garage to a food preparation area and hot food takeaway (A5) use.
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Decision

1. I dismiss the appeal.

Reasons

2. The site is within the Ovingdean Conservation Area and adjacent to a locally listed building. The main issue is the effect of the change of use on the character and appearance of the area and on the significance of an undesignated heritage asset.
3. Brighton and Hove Local Plan Policy HE6 concerns development within conservation areas where the character or appearance should be preserved, and proposals that are likely to have an adverse impact on the character or appearance of a conservation area will not be permitted. The supporting text includes the statement that particular attention will be given to the impact of proposed changes of use on a conservation area. City Plan Policy CP15 requires the City's historic environment to be conserved and enhanced.
4. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 132 of the National Planning Policy Framework 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. The more important the asset, the greater the weight should be. Undesignated heritage assets are addressed at paragraph 135.
5. The use takes place from a lean-to garage built against the end wall of the Olde Barn, which is a locally listed building and therefore an undesignated heritage asset. During non-opening hours the building has the appearance of a domestic garage, other than the menu left in place, and a sign to the west,

- while the pizza oven detailed on the drawings would be brought outside during opening hours.
6. The Ovingdean Conservation Area Character Statement identifies the historic part of the village, which appears to be centred on the area leading to the church, as it is surrounded on three sides by open downland. The appeal site is only a short distance from this historic core and only a limited amount of the more recent residential development described in the Statement intervenes although more exists on the far side of the road. The Statement refers to increasing traffic through the village, and it was noted that signs at the A259 roundabout prohibit heavy good vehicles.
 7. Outside the conservation area, there is a more suburban character and appearance to a network of residential roads, in which there are commercial and education uses. It is this marked change in the nature of the development that adds considerable significance to the conservation area as retaining the buildings, open spaces and open setting of a downland village. Despite the proximity of a suburban area of Brighton, the conservation area is hardly affected, visually or in its character, by that largely separate development.
 8. The introduction of the evening commercial use of the hot food takeaway would not sit well within this village setting, and whilst the Council refer to the locality as having a prevailing residential character, the numbers of dwellings really close to the site would mean that a viable business would have to attract custom from a greater catchment area. The nature of what amounts to a rural lane to the east of the site, and the location of the greater density of housing beyond, would likely result in car journeys and parking, in addition to the activity and sounds that would be associated with the business. Such parking would either risk an undue concentration of vehicles close to the site, or increased activity near and in the historic core.
 9. Mention has been made of fumes, smoke and odours, and whilst the appellant refers to a high cooking temperature, there is likely to be some odours detectable, but dissipating to an extent. However, the stated predominance of other sources of fumes and odours from barbecues and wood-burning appliances nearby is hardly likely to reach the intensity or duration through the year that a commercial activity could.
 10. It is the case that the village hall is nearby on the opposite side of the road and within the conservation area, but this has its own car park somewhat secluded from open view, and the traffic and activity associated with its use would be less intrusive. In any event, that is a pre-existing use and the hot food takeaway use of the appeal premises would be in addition to it. The addition of that use would cause visual harm to the locally listed building and harm to the downland village character and appearance of the conservation area, contrary to Policies HE6 and CP15.
 11. The level of harm is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
 12. Third party representation has set out benefits which include being a positive addition and welcomed asset to the local community, convenience for local people, high quality food in a central village location, support for local and

unique independent business in the area, lack of other businesses in the village, external works in keeping with the character of the area, additional traffic welcomed as it could be managed and would slow down the use of Ovingdean Road as a by-pass, discreet signage, the area being kept clean and tidy, and having a positive impact on the environment.

13. Some of these claims are not agreed with in this Decision for the reasons given previously, and the need for a commercial, rather than an essential, facility is not a reason to allow it when harm is caused. Slowing traffic through the possible introduction of an uncontrolled parking hazard cannot be justified. Whilst it is not doubted that the facility is useful, there is no compelling evidence that it has to be in this location where it causes harm.
14. In conclusion, the benefits identified do not outweigh the harm caused to designated and undesignated heritage assets, and the use does not accord with the policies of the Development Plan or the Framework, and the statutory tests in the 1990 Act would not be satisfied. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

