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## Appeal Decision

Site visit made on 22 August 2019

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> October 2019

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**Appeal Ref: APP/Y2736/W/19/3229895**

**5 Church Street, Norton, Malton, North Yorkshire YO17 9HP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by C & A Brack (Mr C Brack) against the decision of Ryedale District Council.
  - The application Ref 18/01307/FUL, dated 26 November 2018, was approved on 22 January 2019 and planning permission was granted subject to conditions.
  - The development permitted is described as *Retention of site for use as a hand car wash with retention of associated equipment to include two containers, car port, two static signs and entrance/exit gates (revised opening time details to approval 18/00784/FUL dated 08.10.2018)*.
  - The condition in dispute is No 1 which states that: *The development, use or works hereby permitted shall be discontinued and the land reinstated to its former condition at or before 22<sup>nd</sup> January 2022, unless an extension of the period shall first have been approved in writing by the Local Planning Authority.*
  - The reason given for the condition is: *To enable the Local Planning Authority to access the development site and consider other factors such as flooding prevention.*
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### Decision

1. The appeal is allowed and the planning permission Ref 18/01307/FUL for the use of the site as a hand car wash with the siting of associated equipment at 5 Church Street, Norton, Malton, North Yorkshire YO17 9HP granted on 22 January 2019 by Ryedale District Council is varied by deleting condition No 1.

### Main Issues

2. The reasons for imposing the condition were to enable the Council to access the development site and consider other factors such as flooding prevention. It has not been suggested how imposing a temporary permission would enable the Council to access the site. The Council's Appeal Statement refers both to flooding risks and the impact of the development on the Norton Conservation Area. Therefore, the two main issues arising in the appeal are whether the condition is necessary and reasonable to protect the public interest arising on the grounds of:
  - (i) Flood risks; or
  - (ii) The Conservation Area.

## Reasons

### *Flood Risks*

3. The River Derwent flows to the other side of the railway line that is adjacent to the site, and the site lies in Flood Zones 2 and 3. A Flood Risk Assessment ('FRA') has been supplied by the appellant, and the Environment Agency raise no objection to the proposal. The Council's officer report ('OR') makes little reference to flood risks other than to say that the impacts had been considered previously on an earlier application. The Council's Appeal Statement ('AS') suggests that the land is not suitable for permanent development, although does not explain further.
4. As a 'less vulnerable' use, and the FRA having met with no objection from the Environment Agency, I have no evidence upon which to conclude that the development would increase flood risks at the site or elsewhere, or that any conflict with Policy SP17, 'Managing Air Quality, Land and Water Resources', of the Ryedale Local Plan Strategy of 5 September 2013 would arise.

### *The Conservation Area*

5. The site lies within the Norton Conservation Area. The desirability of preserving the importance of such a designated heritage asset acquires considerable importance and weight in assessing development proposals, and I have paid special regard to the statutory duties as well as to the advice in the National Planning Policy Framework ('the Framework') in this respect.
6. The development is already *in situ* and has been the subject of several temporary permissions since 2011. The siting of the containers, car port and gates were permitted on appeal in January 2013. The Inspector then noted that the character of the Conservation Area to the east of the appeal site is essentially defined by the way in which traditional buildings attractively enclose Church Street, and I concur with this assessment. The immediate vicinity of the appeal site is rather more utilitarian in character. The site lies opposite a petrol filling station, adjacent to public conveniences, and near to a busy road and rail junction.
7. The Council's OR again makes little reference to the impacts on the Conservation Area save to say that the impacts had been previously assessed and no material change warranting reconsideration had arisen. The Council's AS disputes that the use of the site is compatible with the character and appearance of the Conservation Area on a permanent basis, referring to the 2013 Inspector's decision (Ref APP/Y2736/A/12/2183589, a copy of which has been supplied in the course of the appeal) which cited the temporary nature of the use as a factor in preserving (but not enhancing) the character and appearance of the Conservation Area.
8. The PPG sets out<sup>1</sup> that under section 72 of the Town and Country Planning Act 1990 a local planning authority may grant planning permission for a specified temporary period only. Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.

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<sup>1</sup> Paragraph: 014 Reference ID: 21a-014-20140306

9. A temporary planning permission may also be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use'). It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently.
10. The previous Inspector's comments were made in the context of an appeal concerning the siting of associated equipment with the use that already benefitted from a temporary permission. The previous Inspector recorded that the original temporary permission had been granted by the Council in 2011 on the basis that it would make productive use of a development site that would otherwise lie vacant. The Council contends that the acceptability of the land use centres on the temporary nature of the use, and that when the use was originally permitted in 2011 it was considered to be a short term solution rather than a desirable long term use for the site.
11. However, no evidence is put forward that this is a 'meanwhile' use, making a temporary use of vacant land or buildings prior to some longer-term proposals coming forward. There is no evidence before me that the planning circumstances are expected to change in any particular way in 2022. The appeal proposal seeks a planning permission, not a licence. There are no current proposals to bring the site forward for any other use. There is no evidence that a permanent permission for the current use of the site, involving the siting of some associated equipment that could be dismantled and removed from the site with relative ease, would prejudice any redevelopment proposals coming forward, or that the prospects for any such proposals are made more likely by the restriction of a temporary permission.
12. Therefore, there is nothing before me to suggest that, if the existing use were discontinued, the site would do anything other than lie vacant. The same circumstances as pertained in 2011 still exist.
13. Like the previous Inspector, I consider that it cannot reasonably be said that the use and the retention of the associated equipment enhance the Conservation Area. Against a background of the site history and an otherwise vacant site, however, I consider that the character and appearance of the Conservation Area would be preserved by the development being made permanent. There are 2 aspects to my reasoning on this.
14. The first aspect relates to the site history. The temporary permission for the use has been renewed more than once, and the present date upon which its cessation is required falls in 2022, some ten years since the use began. As a result of the oft-renewed temporary permissions to date, the use of the site has acquired an air of permanence, and I consider that its current use and appearance have come to form part of, rather than temporary exceptions to, the character and appearance of the Conservation Area. In that context I do not consider that removing the 'temporary' condition would result in any detriment to the character or appearance of the Conservation Area.
15. The appellant refers to a lack of investment in the site as a result of the precarious nature of the permissions. However, I agree with the Town Council that there are no express investment proposals in evidence, and thus I cannot

conclude that the appearance of the site would necessarily be improved if the appeal were to be allowed. On the other hand I cannot conclude that the character or appearance of the Conservation Area would be harmed, or otherwise not be preserved, if the existing status of the site were to be retained and the 'temporary' condition removed. There is no evidence before me that a permanent permission would prejudice any future opportunities for redevelopment or any consequent enhancement of the Conservation Area.

16. The second aspect relates to the apparent 'fall back' position of an otherwise vacant site. The rather utilitarian character of the site's immediate surroundings means that the use of the site for its present purposes does not appear incongruous in its context. It is largely shielded from view by a high close-boarded fence. It makes productive use of the land. Against the background that the site would otherwise lie unused and empty, I do not consider that the existing use or the physical manifestations of it adversely affect the character or appearance of the Conservation Area. The effect of the temporary condition is to have at most a neutral impact on the Conservation Area. As the Council appear to have previously accepted, it is better to have this use on the site than no use at all.
17. Therefore, on this issue I find that the temporary condition is not necessarily or reasonably required in order to prevent harm to the character or appearance of the Conservation Area, and that those aspects of the Conservation Area would be preserved if the condition were removed. There would be no conflict with Ryedale Local Plan Strategy Policy SP12, relating to heritage matters, or with the Framework advice on such matters found in Chapter 16.

### **Other matters**

#### *Traffic impacts*

18. Neither the Council nor the local highway authority raise any objection to the proposal on highway safety or congestion grounds. The Town Council has submitted a detailed objection enclosing traffic survey results. I saw at my site visit that Church Street became rather congested in the vicinity of the site, with a four-way road junction and a railway crossing nearby. When the railway barrier came down for a passing train, I saw (in mid-afternoon) that the queue of west-bound traffic backed up as far as the Railway Tavern at the junction with Wold Street.
19. The appeal site appeared busy at the time of my visit, with a number of cars in attendance and at least 3 employees at work. However, I am unable to conclude from my observations or from the evidence before me that the existence of the car wash at the site gives rise to an unacceptable increase in traffic movements. There is no evidence before me of the number of vehicles detouring to the site, rather than calling in when passing by anyway. Accordingly, I do not find that the access to or movement within the site by vehicles would have a detrimental impact on road safety or traffic movements, or that any other conflict with Ryedale Local Plan Strategy Policy SP20 would arise.

### **Conclusion**

20. For the above reasons I conclude that Condition No 1 is neither necessary nor reasonable in the interests of preserving the character or appearance of the

Conservation Area, or on flooding or traffic grounds. The appeal proposal complies with the development plan for the area without that condition.

21. No other matters of sufficient weight have been raised to warrant setting aside the development plan for the area. Consequently, the appeal is allowed and the permission is varied by the deletion of Condition No 1.

*Laura Renaudon*

INSPECTOR