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## Appeal Decision

Site visit made on 25 February 2019

**by Sukie Tamplin DipTP PgDip Arch Cons IHBC MRTPI**

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

**Decision date: 01 March 2019**

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**Appeal Ref: APP/Q1445/C/17/3191836**

**The Hames, Ovingdean Road, Ovingdean, Brighton BN2 7BB**

- 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 Chris Phillips against an enforcement notice issued by Brighton & Hove City Council.
  - The enforcement notice was issued on 6 December 2017.
  - The breach of planning control as alleged in the notice is: Without planning permission a material change of use from a residential garage (Use Class C3) to hot food takeaway (Use Class A5) with food preparation.
  - The requirements of the notice are to cease the use of the property as a hot food takeaway (Use Class A5) with food preparation.
  - The period for compliance with the requirements is 4 weeks.
  - The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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**Decision: The appeal is dismissed, and the enforcement notice upheld.**

### Background and procedural issues

1. Planning permission for the same development was refused by the Council and subsequently dismissed at appeal<sup>1</sup>. That decision is a material consideration, but I have determined the enforcement appeal in the light of its own merits.
2. On the day of my visit I saw that the use had ceased, and according to a notice on the site, it has been relocated elsewhere. However, this does not alter the requirement to determine this appeal as the Enforcement Notice remains extant.
3. The appeal site is within Ovingdean Conservation Area (the CA) and I have a duty under S72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) to consider the effect of the development on the character and appearance of that area.

**The appeal on ground (a) and the deemed application for planning permission.**

#### *Main Issue*

4. The main issues in this ground of appeal are the effect of the use of the garage as a hot food takeaway with food preparation on development on:

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<sup>1</sup> APP/Q1445/W/17/3187835 decision dated 9 March 2018

- the character of Ovingdean Conservation Area by reason of the introduction of commercial activity.
- the effect on the amenity of neighbours by reason of traffic, noise, loss of privacy and cooking smells.

## **Reasons**

### *Character*

5. The subject of the enforcement action is the operation of a Pizza takeaway business (Class A5 hot-food take-away). The appellant prepared the food on site and the business was open on 3 nights a week. The business operated from what appears to have been a domestic garage, close to the appellant's property, but the lean-to garage is attached to a locally listed barn occupied by neighbours. The business also spilled onto the hardstanding outside the garage and photographs have been submitted showing a 'mobile' pizza oven and its attendant flue on the forecourt. Two 'A' boards are also visible on the submitted photograph and these appear to show opening hours and the available menu.
6. As I have noted above the use appears to have ceased and it appears that there is common ground that there were no permanent physical alterations to the garage building in association with the use.
7. Ovingdean Conservation Area is a tranquil rural enclave characterised by residential properties and former agricultural buildings. Whilst I appreciate my visit was just one snap shot in time I found that it is a peaceful calm backwater which has escaped the commercialisation and activity of the surrounding coastal towns and villages. I saw little or no evidence that the narrow road in the village core is used as a rat-run by traffic.
8. The appellant says that there are commercial uses in the general area, but from what I saw these are unlikely to create any discernible activity and, in any event, any such effects would be likely to be in the daytime only. Whilst the village hall may be used on occasion in the evenings, this building has a community rather than a commercial function and its carpark is set back from the village street and would be unlikely to generate disturbance regularly through the evening. Accordingly, it is likely that evenings hereabouts would be calm and undisturbed by commercial activity.
9. Accordingly, given the reported popularity of the take-away business the effect on the rural residential character, by reason of increased activity would be harmful and would fail to preserve or enhance the CA. Thus, this first issue weighs against permission.

### *Amenity*

10. Residents have objected to the operation of the take-away on the appeal site because of the alleged noise, cooking smells, loss of privacy and increased traffic. I do not find the argument that the operation of a commercial business is similar to domestic activity to be cogent because the nature of a commercial use is different from occasional domestic barbecues and social events. This is because it is regular and visitors to the premises would be unlikely to have the same attitudes to neighbours as residents.

11. Moreover, because cooking appeared to take place in the open conditions limiting noise and emissions would be unlikely to be effective. Even if some cooking occurred inside the garage there appears to be little or no method of suppressing smells and I saw that above the garage there are domestic windows in the neighbouring property which are said to be bedrooms. Consequently, there would be harm to amenity resulting from noise, cooking smells and commercial activity which also weighs against permission.

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

12. I have found that the effect of the Class A5 pizza business is harmful to the residential and rural character of the Conservation Area because of the incongruous and alien activity it would generate. Consequently, it fails to accord with the aims of saved heritage policies HE6 and QD27 of the Brighton and Hove Local Plan (BHLP) and Policy CP15 of the Brighton and Hove City Plan Part One. These policies seek, amongst other matters, to conserve and enhance the historic environment, including conservation areas, and to ensure that development likely to have an adverse impact is not permitted.
13. Although there is harm to the character of the Conservation Area that harm is less than substantial. In such circumstances the NPPF<sup>2</sup> says that the harm should be weighed against the public benefits of the proposal<sup>3</sup>. However, whilst the business has provided a service to customers these benefits could equally accrue in other less vulnerable locations outside the CA. Therefore, the benefits of the development do not outweigh the harm and conflict with the heritage objectives of the NPPF.
14. I also find conflict with the aims of saved BHLP policies QD27 and SU10 which seek to minimise harm to living conditions of existing and future occupants by way of noise, smells and disturbance. Consequently, the use does not accord with the adopted development plan and other material considerations do not outweigh my findings. Accordingly, the appeal will not succeed.

### **Decision**

#### **Appeal APP/Q1445/C/17/3191836**

15. The appeal is dismissed, the notice is upheld, and planning permission is refused for the application deemed to have been made under S177(5) of the 1990 Act for a material change of use from a residential garage (Use Class C3) to hot food takeaway (Use Class A5) with food preparation.

*Sukie Tamplin*  
INSPECTOR

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<sup>2</sup> National Planning Policy Framework

<sup>3</sup> Paragraph 196 of the NPPF

