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## Penderfyniad ar yr Apêl

Ymweliad safle a wnaed ar 12/05/20

gan Hywel Wyn Jones BA(Hons) BTP  
MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 17.06.2020

## Appeal Decision

Site visit made on 12/05/20

by Hywel Wyn Jones BA(Hons) BTP  
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 17.06.2020

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### Appeal A: APP/A6835/A/19/3242507

Site address: Suzies Hand Car Wash, 108A-108B Chester Road East, Shotton, Deeside, CH5 1QD

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- 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 Davies on behalf of DMW Ltd against the decision of Flintshire County Council.
  - The application (ref: 060238), dated 15 July 2019, was refused by notice dated 14 November 2019.
  - The development is the change of use of land to use as a car wash (retrospective).
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### Appeal B: APP/A6835/C/20/3244725

Site address: Suzies Hand Car Wash, 108A-108B Chester Road East, Shotton, Deeside, CH5 1QD

**The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.**

- 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 Darren Davies against an enforcement notice issued by Flintshire County Council.
  - The enforcement notice, ref: SW1/Enf/195463, was issued on 13 December 2019.
  - The breach of planning control as alleged in the notice is: *Without planning permission the change of use of the Land to use as a commercial car wash, comprising:*
    - (i) *the washing and valeting of motor vehicles; and*
    - (ii) *the stationing of a portacabin/office (shown in the approximate position marked 'A' on the attached plan) to facilitate the washing and valeting of motor vehicles; and*
    - (iii) *the siting of three structures (shown in the approximate positions marked '1' '2' and '3' on the attached plan) for storage of materials associated with the washing and valeting of motor vehicles.*
  - The requirements of the notice are:
    - (1) *Permanently cease the use of the Land for the washing and valeting of motor vehicles; and*
    - (2) *Permanently cease the use of the Land for the stationing of portacabins to facilitate the use of the Land for the washing and valeting of motor vehicles; and*
    - (3) *Permanently cease the use of the Land for the stationing of structures for the storage of materials associated with the washing and valeting of motor vehicles; and*
    - (4) *Permanently remove from the Land the porta cabin shown in the approximate position marked 'A' on the attached plan; and*
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(5) Permanently remove from the Land the three structures shown in the approximate positions marked '1', '2' and '3' on the attached plan; and

(6) Permanently remove from the Land all building materials and rubble arising from compliance with requirements (4) and (5) above and restore the Land to its condition before the breach took place by levelling the ground.

- The period for compliance with the requirements is:
    1. In respect of requirement 5 (1) above, within 28 days after this notice takes effect.
    2. In respect of requirements 5 (2), 5 (3), 5 (4), 5 (5) and 5 (6) above, within 48 days after this notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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## Decisions

### Appeal A

1. The appeal is dismissed.

### Appeal B

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Procedural Matters

3. Although the drawings and the noise assessment that accompanied the application refers to the address as No. 104, the application and appeal forms confirm the site to be as described in the above banner heading.
4. Appeal A seeks retrospective permission for the change of use which had commenced prior to submission of the application. It also proposed to erect a building to act as a noise shelter. The deemed planning application arising from the ground (a) appeal against the enforcement notice (Appeal B) seeks permission for the same use and the appellant suggests that the noise shelter could be required by the imposition of a planning condition. Given the degree of commonality in the issues arising from the 2 appeals I have considered them together in my reasoning.
5. In its statement of case the Council refers to the fact that the car wash has been "moved within the site" since its decisions on this matter. My site visit revealed that the car wash operation had moved from the appeal site to a nearby location. As neither appeal has been withdrawn, I have proceeded to determine both as presented.

## Main Issues

6. The main issues are:
    - (i) the effect of the development on the living conditions of neighbouring residents, particularly in terms of any noise disturbance;
    - (ii) whether the development is acceptable within a floodplain, having regard to local and national planning policy; and
    - (iii) the effect of the development on the setting of the nearby listed buildings.
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## Reasons

### *Living Conditions*

7. The appeal site is a narrow one that fronts the busy Chester Road East. The part of the site which is used for car washing and valeting takes place at the rear of the site alongside an adjacent large industrial building which operates as a car servicing and parts business.
8. The appeal site is bounded on one side by a residential property (The Vicarage) and by a pair of semi-detached houses to the rear. The rear gardens of all 3 properties adjoin the operational part of the appeal site.
9. Car washing began on the site in 2011 and complaints were first received by the Council in 2012 regarding its operation. Several attempts were made to pursue planning applications to regularise matters during a period when site ownership changed. The subject activities involve jet washing and vacuum cleaning. A neighbour describes the intrusive noise caused by these activities and the associated disturbance caused by running engines, loud music and raised voices.
10. The storage and rest room building at the rear of the site masks the rear dwellings from much of the impact of the activities on site. In front of this structure there was a canopy, open on 3 sides which was used for valeting but which had been removed by the time of my visit. An open hardsurfaced area in front of the canopy, close to the side boundary with The Vicarage, was used for the car washing activity.
11. In a noise assessment submitted on behalf of the appellant it is acknowledged that noise from the car washing activities was at a level that had a significant adverse impact on the residential amenity of The Vicarage, as described by its occupier and the Council's Public Protection team. In response the scheme proposes to mitigate this impact by the installation of a building to screen sound. The appellant's appeal statement suggests that details of the sound-proofing quality of the proposed structure is provided on the submitted drawings. The drawings show a rather confined area where two cars could be washed within a new building with a corrugated tin roof and one side wall of 18mm plywood. The other side elevation would be open. The front elevation is shown to have a plywood 'temporary' (also described as 'moveable') sound screen. It is not clear what is meant by temporary, or how this would work in practise. The rear elevation appears to open onto the area of the canopy.
12. Background noise levels demonstrate that the rear part of the site and the neighbouring vicarage are a sufficient distance from road traffic to be fairly quiet at around 50<sub>LA90 (1hour)</sub>(dB). The washing and cleaning activities have been measured as producing noise levels of up to 81dBA. The assessment calculates that the level of additional noise above a 'low impact' is up to 21dB. In response it proposes the use of a roof and screens over the car wash area. No mention is made of the present vacuuming area. The screens and roof, it advises, should have a minimum mass and be free of gaps. It is estimated to reduce noise levels by 26dB resulting in noise levels at the neighbouring property some 9dB below the low impact target.
13. The Council's Public Protection division has advised that the noise assessment has not taken into account the extent to which noise will flank the proposed screens. The appellant's planning agent opines that a reduction of more than 15dB could be achieved with the proposed noise barriers but provides no technical assessment or specialist knowledge to support this assertion. The appellant does not dispute the

clear potential for noise to escape through gaps around the moveable front structure but points to the need for this screen to be moveable.

14. It seems to me that the concerns of the Council's specialist officer over the efficacy of the noise mitigating measures proposed are soundly based. I cannot, therefore, be reasonably satisfied that these measures would acceptably mitigate the noise generated by the activity to acceptable levels within the grounds of The Vicarage. The appellant suggests that any concerns in this respect could be addressed by requiring a noise management plan through a planning condition. However, as I have insufficient evidence that an acceptable plan could be secured, such a condition would be unreasonable.
15. Although not cited in the reasons for refusal the Council and a neighbouring resident refer to the impact of water and chemical spray. I consider that this harmful effect is a matter that could be effectively addressed by the installation of the proposed screening supported by a planning condition.
16. On this first main issue I conclude that the scheme has a significant adverse noise impact on the amenity of neighbouring residents which cannot be acceptably mitigated through planning conditions. Thus, the scheme conflicts with criterion c of Policy STR1, criterion d of Policy GEN1 and Policy EWP13 of the Flintshire Unitary Development Plan 2000-2015.

#### *Flooding*

17. The site lies within a Zone C1 flood risk area as defined in Technical Advice Note (TAN) 15: Development and Flood Risk. Planning Policy Wales, Edition 10 requires a precautionary approach to decision making in relation to flood risk.
18. As Natural Resources Wales (NRW) points out<sup>1</sup> TAN 15 clearly directs development away from Zone C and requires developments within Zone C1 to meet the justification criteria set out in paragraph 6.2. Whilst it explains that this is a matter for the Local Planning Authority to consider, neither the Council nor the appellant has considered the justification tests.
19. Paragraph 6.2 requires that a scheme should meet one of the its first 2 criteria. These are that it assists or is part of a local authority regeneration scheme or strategy to sustain an existing settlement, or that it contributes to key employment objectives. There is no evidence before me that the scheme satisfies either of these requirements. As the development provides employment opportunities in a sustainable location in accord with PPW and is on previously development land I consider that it meets the third test.
20. As the application is not accompanied by an assessment of flooding consequences it does not meet the last of the 4 tests. NRW has expressed significant concerns on the basis that, in the absence of a proportional Flood Consequence Assessment (FCA), it has not been demonstrated that the development would be able to acceptably manage flood risks over the lifetime of the development.
21. The appellant explains that despite several requests his first sight of the NRW consultation response to the application was at appeal stage. Whilst he points out that the scheme has not increased the extent of hardstanding and only proposes to erect a noise shelter, these considerations do not constitute exceptional circumstance

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<sup>1</sup> NRW provided 2 consultation responses to the Council on this matter. I have relied on the more recent response, dated 23 October 2019.

to the policy requirement to provide an FCA. There are consequences that have not been considered such as whether mitigating measures ought to be introduced to protect users and visitors to the site in the event of flooding, and the potential impact of an additional structure on the site in terms of flood flows within the site and potential displacement off-site.

22. The appellant explains that during his knowledge of the site it has not flooded. However, this does not demonstrate that it is not at risk of flooding in the future. The identified risk is based on detailed technical evidence which takes into account predicted climate change.
23. On this main issue, the appellant has failed to demonstrate a justification for developing in the floodplain or to show that the consequences of flooding could be acceptably managed. Thus, the scheme is contrary to TAN15 and in conflict with UDP policies GEN1 and EWP17.
24. I note the neighbour's concerns over waterlogging and potential pollution caused by the run-off of water used in the car wash and the lack of detailed information available on how this wastewater is disposed. However, I am satisfied that this is a matter that could be adequately dealt with by means of a planning condition.

#### *Listed Building Setting*

25. The appeal site lies near to 3 Grade II listed structures, namely the adjacent Shotton Vicarage, and St Ethelwold's Church and its boundary wall. The appellant explains that he was not asked by the Council to provide an assessment of the effect of the scheme on these assets. The Council, whilst citing the scheme's failure to properly assess the impact on the setting of these buildings as a reason for refusal, does not consider the issue to be one that would have merited taking enforcement action. Its conservation officer has advised that the proposed building would have a negligible impact and suggests that controlling the external finishes would avoid harming the setting of the protected buildings.
26. The Vicarage is an imposing two-storey detached dwelling set in spacious grounds. A single storey side projection lies between the two-storey element and a close-boarded timber fence and tall hedge separates the property from the appeal site.
27. The proposed noise shelter is shown as 3.2m high with a very shallow roof slope and as such would be no higher than the previous canopy which it would adjoin. It would be viewed against the side elevation of a much larger industrial building that defines one side boundary of the appeal site. Given this visual context, and the scope to control the external finishes of the structure through planning condition, I am satisfied that the physical presence of the proposed building would preserve the setting of The Vicarage. It follows that, given the greater separation distance of the Church and boundary wall that the setting of these protected historic assets would not be harmed.
28. As TAN 24: The Historic Environment explains, noise is a matter that can affect the setting of a historic asset. The introduction of an intrusive noise source in such proximity to this elegant dwelling and its generous grounds has, as the neighbour opines, the effect of disturbing the tranquillity that otherwise contributes to the building's setting. Accordingly, the development is at odds with UDP Policy HE2.

#### **Conclusion**

29. I have taken into account that the use provides employment and a service within a location well related to its customers, however this does not lead me away from my

findings that the impact of the scheme in relation to the main issues is unacceptable. I shall therefore dismiss both appeals and uphold the enforcement notice.

30. In reaching my decisions, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that these decisions are in accordance with the Act's sustainable development principle through their contribution towards the Welsh Ministers' well-being objective to build better environments.

*Hywel Wyn Jones*

INSPECTOR