

Case Officer: Matthew Chadwick

Applicant: Motor Fuel Group

Proposal: Retrospective application for 10 Recessed LED lights within soffit of forecourt canopy

Ward: Adderbury, Bloxham And Bodicote

Councillors: Councillor Chris Heath, Councillor Andrew McHugh, Councillor Mike Bishop

Reason for Referral: Called in by Councillor Heath due to public interest

Expiry Date: 17 February 2020

Committee Date: 13 February 2020

EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION

RECOMMENDATION: GRANT PERMISSION SUBJECT TO CONDITIONS

Proposal

Retrospective planning permission is sought for 10 recessed lights within the forecourt canopy for the petrol station

Consultations

The following consultees have raised **objections** to the application:

- Bloxham Parish Council

The following consultees have raised **no objections** to the application:

- CDC Environmental Health, OCC Highways

Three letters of objection have been received.

Planning Policy and Constraints

The application site is outside but abuts the Bloxham Conservation Area and is located opposite Killowen House, a grade II listed building.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance as listed in detail at Section 8 of the report.

Conclusion

The key issues arising from the application details are:

- Principle of Development
- Impact on the character of the area and heritage assets
- Impact on neighbour amenity

The report looks into the key planning issues in detail, and Officers conclude that the proposal is acceptable subject to conditions.

Members are advised that the above is a summary of the proposals and key issues contained in the main report below which provides full details of all consultation

responses, planning policies, the Officer's assessment and recommendations, and Members are advised that this summary should be read in conjunction with the detailed report.

MAIN REPORT

1. APPLICATION SITE AND LOCALITY

1.1. The application site is located in the south of the village of Bloxham on the east side of South Newington Road (A361). The site is used as a petrol station, currently run by Motor Fuel Ltd. The site is located in close proximity to the edge of the village, with only the dwellings at Hartshill Close to the south separating it from the open countryside. The petrol station is open 24 hours a day.

2. CONSTRAINTS

2.1. The application site is outside but abuts the Bloxham Conservation Area and is located opposite Killowen House, a grade II listed building. The site also lies in an area of potentially contaminated land, an area of naturally elevated arsenic and swifts have been located in proximity to the site, which are a protected species.

3. DESCRIPTION OF PROPOSED DEVELOPMENT

3.1. Planning permission is sought for the installation of ten lights in the canopy over the petrol station forecourt. The lights have been altered throughout the course of the application and anti-glare rings have been attached.

3.2. The Council commissioned a lighting report from an external lighting consultant 'Designs for Lighting' which was completed in August 2019. The applicant then altered the lights and the Council's Environmental Protection Officer measured the lights again in January 2020.

4. RELEVANT PLANNING HISTORY

4.1. The following planning history is considered relevant to the current proposal:

<u>Application Ref.</u>	<u>Proposal</u>	<u>Decision</u>
18/00814/ADV	1 x PID internally illuminated, 2 x Banners and 5 x free standing display - Retrospective	Application Refused
18/01112/ADV	1 x 5.0m PID - Price Identification Sign limited illumination between 9pm and 6am to price display digits, 2 x Free standing posters - Retrospective	Application Permitted
18/01113/F	New recessed forecourt canopy lights - Retrospective	Application Refused
19/00245/ADV	Retrospective - 2no externally illuminated fascia signs (Londis)	Application Permitted

4.2. Application 18/01113/F was dismissed at appeal (APP/C3105/W/19/3223256) as it was considered to cause harm to the character of the area and neighbour amenity.

5. PRE-APPLICATION DISCUSSIONS

5.1. No pre-application discussions have taken place with regard to this proposal.

6. RESPONSE TO PUBLICITY

6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was 17 April 2019, although comments received after this date and before finalising this report have also been taken into account.

6.2. The comments raised by third parties are summarised as follows:

- The lighting levels cause harm to neighbour amenity.
- The lighting levels cause harm to the conservation area and listed building.

6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

7. RESPONSE TO CONSULTATION

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

7.2. BLOXHAM PARISH COUNCIL: **Objects.** The development causes harm to the amenity of neighbours and the conservation area. It is applied to be used 24 hours a day and it should only be allowed between 6.30am and 11pm.

CONSULTEES

7.3. CDC ENVIRONMENTAL HEALTH: **No objections.** The lighting levels at 2 The Houses at the ground floor window was 1.04 lux, and at the first floor window was 0.94 lux. This does slightly exceed the post curfew level of 1 lux but the exceedance of 0.04 lux is not significant. The purpose of the post curfew level would be to protect bedrooms (pre-curfew up to 23.00 hours the level is 5 lux) and therefore it would not be unreasonable to expect someone to close the curtains of a ground floor window after 11pm if the light levels were a problem.

7.4. OCC HIGHWAYS: **No objections.**

8. RELEVANT PLANNING POLICY AND GUIDANCE

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy

framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- ESD13 – Local Landscape Protection and Enhancement
- ESD15 - The Character of the Built and Historic Environment

CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development
- C31 – Compatibility of proposals in residential areas
- ENV1 – Development likely to cause detrimental levels of pollution

8.3. Under Section 38 of the Planning and Compulsory Purchase Act 2004, a Neighbourhood Plan that has been approved at referendum also forms part of the statutory development plan for the area. In this case, the application site falls within the Bloxham Neighbourhood Plan and the following Policies of the Neighbourhood Plan are considered relevant:

- BL9 – Residential amenity
- BL10 – Bloxham Conservation Area
- BL11 – Residential design

8.4. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

9. APPRAISAL

9.1. The key issues for consideration in this case are:

- Principle of development
- Design, impact on the character of the area and heritage assets
- Residential amenity
- Highway safety

Principle of Development

9.2. Planning law requires that planning decisions are made in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 2 of the NPPF (2018) makes clear that it does not change the statutory status of the development plan as the starting point for decision making. However, the NPPF is a significant material consideration.

9.3. Retrospective planning consent is sought for lighting at the petrol station. There is no specific local or national planning policy which relates to the provision of lighting of petrol stations.

- 9.4. The acceptability of the development depends on its impacts, discussed in the following sections of this report.

Design, impact on the character of the area and heritage assets

Policy context

- 9.5. The site affects the setting of a Conservation Area and a Grade II listed building. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that in carrying out its functions as the Local Planning Authority in respect of development in a conservation area: *special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.* Likewise, Section 66 of the same Act states that: *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* Therefore, significant weight must be given to these matters in the assessment of this planning application.
- 9.6. Conservation Areas and Listed Buildings are designated heritage assets, and 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 the 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.* Policies ESD15 of the CLP 2031 Part 1 and BL10 of the BNP 2031 echoes this guidance.
- 9.7. Policy ESD15 of CLP 2031 Part 1 states that new development should be designed to improve the quality and appearance of an area and should integrate with existing streets and public spaces. New development should also seek to limit the impact of light pollution from artificial light on local amenity and intrinsically dark landscapes. Saved Policy C28 of the CLP 1996 echoes this guidance.
- 9.8. Policy BL10 of the BNP 2031 states that development shall be permitted within the conservation area where it can demonstrate that it preserves or enhances the character of appearance of the area.
- 9.9. Policy ESD13 of CLP 2031 Part 1 states that proposals will not be permitted if they would impact on areas judged to have a high level of tranquillity or be inconsistent with local character.

Assessment

- 9.10. The application site is located in a sensitive location, in close proximity to listed buildings, the Bloxham Conservation Area and on the edge of the village near to the open countryside. The previous application on the site for lighting (18/01113/F) was refused due to its impact on the rural character of the area and on the setting of the grade II listed building Killowen House and the Bloxham Conservation Area.
- 9.11. The recommended average levels for a petrol station forecourt taken from the British Standard document for lighting is 150 lux. Under the lights in the previous application, these had an average of 324 lux when measured from within the forecourt. The lighting report for this application also found that the lighting at the windows of Killowen House was also in excess of recommended levels, both when all the lights were functioning and when the flood lighting was turned off.

- 9.12. The Council's lighting report prepared by Design for Lighting for this application shows that the lighting levels of the forecourt have been significantly reduced and this lighting report was undertaken before the anti-glare rings were attached to the lights. Whilst in the centre of the forecourt the lux level is 253, this reduces significantly to the edge of the forecourt where the lux levels are all between 20.5 and 121.1. The Environmental Protection Officer has offered no objections to these levels.
- 9.13. The lighting levels on the front windows of Killowen House are all below the recommended levels, both when all the lightings were functioning and when the two lights closest to the road were turned off, which happens after 11pm.

Conclusion

- 9.14. The luminance levels and spill of the lighting have been significantly reduced from the previous application. Whilst the luminance levels in the centre of the forecourt do exceed the recommended levels, the levels on the edge of the forecourt fall well below the highest recommended level and the Environmental Protection Officer has offered no objections to this. As a result, it is considered that the development as amended does not cause harm to character and appearance of the area, the setting of the listed building or the conservation area and that the development complies with Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 Part 1 and Policy BL10 of the Bloxham Neighbourhood Plan.

Residential amenity

Policy context

- 9.15. Policy ESD15 of the CLP 2031 states that new development should consider the amenity of both existing and future development and should limit the impact of light pollution on local amenity. Saved Policy C28 of the CLP 1996 echoes this guidance.
- 9.16. Saved Policy C31 of the CLP 1996 states that in existing residential areas, any development which is not compatible with the residential character of the area or would cause an unacceptable level of nuisance will not normally be permitted.
- 9.17. Policy BL9 of the BNP 2031 states that all development shall ensure that the living conditions of neighbouring residents are not materially harmed.
- 9.18. Paragraph 170 of the NPPF states that planning decisions should prevent new and existing development from contributing to unacceptable levels of pollution.

Assessment

- 9.19. There are several residential properties within close proximity of the application site. These include 1, 2 and 3 The Houses, 1 and 2 Hartshill Close and Killowen House. It is considered that Killowen House and 2 The Houses are the properties most affected by the lighting given the lack of landscaping, screening and the proximity to the lighting. The impact on 2 The Houses has increased since the previous application, as the trees that previously screened the house from the site have been removed.
- 9.20. The lighting assessment prepared by Designs for Lighting on behalf of the Council looked at the impact of the lights on both Killowen House and 2 The Houses. The 'Guidance On Undertaking Environmental Lighting Impact Assessments' produced by the Institute of Lighting Professionals states that in areas of low district brightness, light intrusion into windows should not exceed 1 lux. The light levels

recorded at Killowen House were all below this, with the highest level being at a ground floor window being 0.9 lux. As the levels are now all below the recommended levels, the impact on Killowen House is therefore considered to be acceptable.

- 9.21. The levels in the Designs for Lighting assessment for 2 The Houses slightly exceeded the recommended levels. At a first-floor bedroom window the lux level was 1.0 and at a ground floor living room window it was 1.13. As stated earlier in the report, the lights were subsequently altered with anti-glare rings fitted and the Council's Environmental Protection Officer ("EPO") went out and measured the lux levels again in January 2020.
- 9.22. The measured level at the ground floor window was 1.04 lux, and at the first-floor window was 0.94 lux. Although the light spill level at the ground floor window of 2 The Houses still slightly exceeds the post curfew level of 1 lux, the exceedance of 0.04 lux is not considered to be significant. The EPO advises that the purpose of the post curfew level would be to protect bedrooms (pre-curfew up to 23.00 hours the level is 5 lux) and therefore it would not be unreasonable to expect the resident to close the curtains of a ground floor window after 11pm if they thought the light levels were a problem.

Conclusion

- 9.23. The lighting levels at Killowen House and 2 The Houses are now, on balance, considered to be acceptable. The levels at the ground floor window would slightly exceed the recommended levels set out in 'Guidance On Undertaking Environmental Lighting Impact Assessments'; however, the exceedance would not be significant and would not affect a bedroom window. It is therefore considered that the development complies with Policy ESD15 of the Cherwell Local Plan 2011 Part 1, Saved Policy C31 of the Cherwell Local Plan 1996, Policy BL9 of the Bloxham Neighbourhood Plan and Government guidance contained within the NPPF.

Highway safety

- 9.24. The Highways Officer has offered no objections to the scheme. Given that the lighting levels would not be harmful, the development would not affect the safety of the local highway network and as a result the proposals would be acceptable in this regard.

10. PLANNING BALANCE AND CONCLUSION

- 10.1. The lights as amended do not cause not cause harm to character and appearance of the area, the setting of the listed building or the conservation area and are considered to be acceptable in this regard. On balance, although the lights do exceed the recommended levels the lights set out in 'Guidance On Undertaking Environmental Lighting Impact Assessments', this exceedance is not significant and is therefore considered not to cause harm to the amenities of neighbours. It is therefore considered that the development is acceptable, subject to the conditions set out below.

11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY)

CONDITIONS

Compliance with Plans

1. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Location and Block Plan (PA01).

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

2. Notwithstanding the annotation shown on drawing number PA01, the two lights on the northernmost part of the canopy shall be turned off at 11pm and not turned back on again until 7am.

Reason - In order to safeguard the amenities of the area and the amenities of neighbouring occupiers and to comply with Policy ESD15 of the Cherwell Local Plan 2011 Part 1, Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

CASE OFFICER: Matthew Chadwick

TEL: 01295 753754