

**Motor Fuel Ltd**  
**Bloxham Service Station**  
**South Newington Road**  
**Bloxham**  
**OX15 4QF**

**18/01113/F**

**Applicant:** Motor Fuel Group

**Proposal:** New recessed forecourt canopy lights - Retrospective

**Ward:** Adderbury, Bloxham And Bodicote

**Councillors:** Cllr Mike Bishop  
Cllr Chris Heath  
Cllr Andrew Mchugh

**Reason for Referral:** Called in by Councillor Heath for the following reason: public interest

**Expiry Date:** 16 August 2018

**Committee Date:** 14 February 2019

**Extension of time:** 20 February 2019

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## **EXECUTIVE SUMMARY OF PROPOSALS AND RECOMMENDATION**

### **RECOMMENDATION: REFUSE PERMISSION**

#### **Proposal**

Retrospective planning consent is sought for the installation of eight canopy lights to light the petrol station forecourt.

#### **Consultations**

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

- Bloxham Parish Council

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

- CDC Conservation

Seven letters of **objection** have been received.

#### **Planning Policy and Constraints**

The site abuts the Bloxham Conservation Area and is located in close proximity to a grade II listed building, Killowen House.

The application has also been assessed against the relevant policies in the NPPF, the adopted Local Plan and other relevant guidance.

#### **Conclusion**

The key issues arising from the application details are:

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

The report looks into the key planning issues in detail, and Officers conclude that the proposal is unacceptable for the following reasons:

1. Harm to rural character of the area, the setting of the nearby listed building and conservation area
2. Harm to the amenity of neighbours due to light intrusion

**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 situated 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.

### **2. CONSTRAINTS**

- 2.1. The application site 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. Retrospective planning consent is sought for the installation of eight canopy lights to illuminate the petrol station forecourt. The description of development has been changed during the course of the application, as the floodlights fixed to the building on the site had been included; however, these lights are deemed to be immune from planning enforcement due to the amount of time they have been located at the site.
- 3.2. There are a number of other lights that are currently illuminated at the site which do not benefit from planning consent; however, these are not included within this application. The applicant has been asked whether they wished for these to be included within this application but advised that these lights would be removed and as a result they have not been assessed in this application.
- 3.3. The applicant was asked to submit a comprehensive lighting report for the entirety of the lighting at the site by the end of August, but this timescale was not complied with. In order to be able to make a complete assessment of the lighting at the site, the Council commissioned a lighting report to be undertaken and this has been taken into consideration for this application.
- 3.4. The applicant has submitted an amended lighting scheme following concerns being raised by the case officer regarding the luminance of the lights based on the findings of the Lighting Survey. This amended scheme seeks to reduce the lighting levels.

### **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

## 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 in the most recent round of consultation is 06.02.2019, although any comments received after this time will still be taken into consideration.

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

- The lighting is too bright and causes a nuisance to neighbouring properties.
- The lighting causes harm to the setting of the conservation area and nearby listed buildings.
- The lighting causes harm to the rural character of the area.
- The flood lights on the shop are harmful to the amenity of neighbours (these lights are immune from planning enforcement due to the amount of time they have been erected for).
- The other lighting at the site is not included in the application.

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** on the grounds of there being insufficient information, the light levels being too high and not all of the lighting being included. It

is also stated that deliveries should be restricted to daylight hours (no comments have been received on the lighting report at the time of writing this report).

### CONSULTEES

- 7.3. CDC CONSERVATION: **Comments** that the forecourt lighting has the potential to be detrimental to character of the area particularly after dark, and that the level of lighting should be controlled so that the situation is not made worse than previously.
- 7.4. CDC ENVIRONMENTAL HEALTH: **Objects**, stating that the lighting on the site should be in line with recommendations set out within the lighting report prepared by Design for Lighting.

## **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

### BLOXHAM NEIGHBOURHOOD PLAN (BNP 2031)

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

### 8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Human Rights Act 1998 (“HRA”)
- Equalities Act 2010 (“EA”)

### 8.4. Council Corporate Priorities

Cherwell District Council and South Northamptonshire District Council’s Joint Corporate Strategy for 2018-19 sets out the councils three strategic priorities which form our overarching business strategy. Below these are the key actions for the year

2018–19. This is a strategy which looks to the future taking into account the priorities and aspirations of the communities who live and work in the districts.

The three corporate priorities are to ensure the Districts are “Protected, Green & Clean”, are places which support “Thriving Communities & Wellbeing”, and are Districts of “Opportunity & Growth”. All three priorities are of significance to the determination of planning applications and appeals. Below these priorities, the key actions which are of most relevance to planning applications and appeals are: (1) deliver the Local Plans for CDC & SNC; (2) increase tourism; (3) protect the built heritage; (4) reduce our carbon footprint & protect the natural environment; (5) mitigate the impact of High Speed 2; and (6) deliver affordable housing.

The remaining key actions are also of significance to the determination of planning applications and appeals in particular delivering the Bicester, Banbury, Kidlington, Brackley, Towcester and Silverstone Masterplans.

The above corporate priorities are considered to be fully compliant with the policy and guidance contained within the National Planning Policy Framework and National Planning Practice Guidance.

## **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

### 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. No change of use would result from the development and therefore the broad principle of development is considered to be acceptable, subject to the other material considerations set out below.

### 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 Conservation Officer has raised concerns that the new brighter canopy lights that have been installed can be detrimental to character of the area particularly after dark.
- 9.11. The lighting report commissioned by the Council and produced by 'Designs for Lighting' finds that the lighting within the forecourt has an average of 324 lux, whereas the recommended average levels for a petrol station forecourt taken from the British Standard document for lighting is 150 lux. The report also states that the colour temperature of the lights is higher than would be recommended in a rural setting. The lighting report also took measurements from the windows of Killowen House, the Grade II listed building directly opposite the application site, with all of the lighting on the site operating and also with all of the lighting operating with the exception of the flood lights on the shop. The report 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. The impact on the amenities of the occupiers of this dwelling will be covered in the next section of this report; however, this evidence is useful in showing that the current lighting levels are excessive in this sensitive area and spill out significantly from the application site itself, whereas the sole purpose of the lights is to illuminate the application site.
- 9.12. To the south of the application site along the A361 itself there is no further building development, with a single street lamp located at the junction of the South Newington Road and Tadmarton Road and Hartshill Place located to the east of the garage. As a result of this lack of built development and artificial lighting, the locality has a rural character and is a naturally dark landscape.

#### *Conclusion*

- 9.13. It is recognised that there will be some lighting associated with the petrol station use on the site which has been in situ for a number of decades. However, the lighting that has been installed far exceeds the brightness level that is required and has an urbanising effect upon the area. As a result, it is considered that the development causes significant harm to the rural character of the area and the naturally dark landscape, the setting of the Bloxham Conservation Area and of Killowen House.

### Residential amenity

#### *Policy Context*

- 9.14. 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.
- 9.15. 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.
- 9.16. Policy BL9 of the BNP 2031 states that all development shall ensure that the living conditions of neighbouring residents are not materially harmed.
- 9.17. Paragraph 170 of the NPPF states that planning decisions should prevent new and existing development from contributing to unacceptable levels of pollution.

#### *Assessment*

- 9.18. There are a number of 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 is the property most affected by the lighting given the lack of landscaping, screening and the proximity to the lighting.
- 9.19. As previously discussed in this report, an assessment has been undertaken of the light levels at Killowen House when all the lights on the site were functioning and when the flood lighting was turned off, with the remaining lights being left on. This section of the report will comment on the situation when the flood lighting was off, as this is immune from planning enforcement as detailed earlier in this report.
- 9.20. 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 levels of light at Killowen House all exceeded this, with the highest level of 1.4 lux and the lowest level of 1.1 lux. Lighting level readings were also taken from 1 The Houses to the south of the site. Higher levels were recorded in a hallway window; however, the light spill did not cause an impact to a habitable room.
- 9.21. An alternative lighting scheme has been submitted, which would reduce the lighting levels from the canopy lights. Specifically, from a range of levels from between 122 and 195 lux reducing to a lower level after a period of inactivity on the forecourt, to between 33 and 69 lux. However, at full brightness the majority of these levels would still be in excess of the 150 lux that is specified in the lighting report and the colour temperature has not been altered. No justification has been submitted from the applicant as to why these levels are still in excess of the recommendations set out in the lighting report. At the time of writing this report, the Environmental Health Officer has not commented on these amended proposals. However, given that the report identifies that the canopy lighting is too bright on both the forecourt and at the windows of Killowen House, this is sufficient evidence to show that the excessive

illuminance is causing harm to the amenities of the occupiers of Killowen House. An update will be provided.

### *Conclusion*

- 9.22. The lighting that has been installed is excessively bright over the level that is required for the petrol station to function and is causing harm to the amenities of the occupiers of Killowen House, with excessive light intrusion in the windows facing South Newington Road.

### Human Rights and Equalities

- 9.23. The Human Rights Act 1998 (“HRA”) sets out fundamental freedoms which have been laid out by the European Convention on Human Rights (“ECHR”). In making any decisions, Cherwell District Council (“the Council”) should have due regard to and take into account any implications that may arise under the HRA. As a public authority, it is unlawful for the Council to act in a manner which is incompatible with the ECHR.

- 9.24. The rights under the ECHR which the Council views as being the most likely to affect planning matters are Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

### *Article 8 and Article 1 of the First Protocol*

- 9.25. Officers have considered the duties under both Article 8 and Article 1 of the First Protocol and have resolved that the application could potentially interfere with the private and family life of neighbours and, therefore, might fail to protect neighbours’ property. Officers consider that this is in breach of Article 1 of the First Protocol because the development is affecting the entitlement of the occupiers of Killowen House to the peaceful enjoyment of their possessions, due to the excessive light intrusion into their property.

### *Duty under The Equalities Act 2010*

- 9.26. S149 of the Equalities Act 2010 (“EA”) sets out what is known as the Public Sector Equality Duty (“PSED”). Under the PSED, the Council, as a public authority, must have due regard to the need to, inter alia, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and has to foster good relations between persons who share a relevant protected characteristic and persons who so not share it. The protected characteristics to which the PSED refers are: (a) age; (b) disability; (c) gender reassignment; (d) pregnancy and maternity; (e) race; (f) religion or belief; (g) sex; (h) sexual orientation.
- 9.27. Officers have considered the application and resolved that none of the protected characteristics is affected or potentially affected by the application.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The excessive illuminance of the lighting causes harm to the rural character of the area, the setting of the listed building and Bloxham Conservation Area and to the amenities of the occupiers of Killowen House and therefore the development fails to comply with the relevant Development Plan policies and guidance listed at section 8 of this report. There are no other material considerations that outweigh this conflict and the harm caused, and therefore permission should be refused.



## **11. RECOMMENDATION**

### **RECOMMENDATION - REFUSAL FOR THE REASONS SET OUT BELOW**

1. The canopy lighting, due its excessive illuminance, has an urbanising and harmful 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. As such, the proposal has a visually intrusive impact, harmful to the intrinsic character of the surrounding area. Therefore, the development is contrary to Policies ESD13 and ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, saved Policy C28 of the Cherwell Local Plan 1996, Policy BL11 of the Bloxham Neighbourhood Plan 2015-2031 and Government guidance contained in the National Planning Policy Framework.
2. The canopy lighting, due its excessive illuminance and resulting light spill, causes harm to the amenities of the occupiers of Killowen House due to the amount of light intrusion into the windows of the house facing South Newington Road. This harm significantly and demonstrably outweighs the benefits of the lighting, not least because the level of lighting has been shown to exceed that which is required for the purpose of illuminating the petrol station forecourt. Therefore, the development is contrary to Policies ESD15 of the Cherwell Local Plan 2011 - 2031 Part 1, saved Policies C28 and C31 of the Cherwell Local Plan 1996, Policy BL9 of the Bloxham Neighbourhood Plan 2015-2031 and Government guidance contained in the National Planning Policy Framework.

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