

Item No. 6

Enforcement No: E/08/0222

Type:	Unpermitted Building	Date of Complaint:	09/09/2010
Developer:	Marstons Pub Company		
Breach:	Unauthorised erection of a smoking shelter to the rear of the building.		
Location:	160 Railway Hotel, Charnwood Road, Shepshed, Leicestershire, LE12 9NR		
Parish:	Shepshed	Ward:	Shepshed East
Case Officer:	Mr J Short	Extension:	4736

Description of the Unauthorised Development

This matter concerns a timber constructed smoking shelter that has been erected to the rear of an existing single storey extension to the rear of the public house. The shelter is 3m high, 7m deep and 5.5m across. The shelter is constructed primarily of timber with a poly-carbonate roof and is partially glazed on the south elevation. The public house occupies a prominent position on Charnwood Road and the shelter to the rear is easily visible from the road across the largely open carpark. There are two residential properties to the rear of the site, in close proximity to the shelter. Planning permission for the smoking shelter was refused (P/08/2985/2 refers) on 20th January 2009 and a subsequent application (P/09/2233/2) for a revised design was refused on 25th January 2010.

Development Plan Policies

Borough of Charnwood Local Plan (adopted 12th January 2004)

Policy EV/1- Design - Seeks to ensure a high standard of design for developments which respects and enhances the local environment including the scale, location and character of existing settlements and safeguarding the amenities of adjoining properties.

Policy EV/39 – Development and Pollution – Seeks to ensure that residential amenity is not harmed by nearby development that causes pollution in the form of excessive noise, disturbance, dust, smoke or other polluting effects.

Other Policies

PPS 23 - Planning and Pollution Control - Emphasises that the planning system has an important role to play in determining the location of development which may give rise to pollution. The Borough Council is concerned to ensure that conflicts between potentially polluting activities and other land uses is minimised. Certain developments can have a potential impact on health, the natural environment or

general amenity through releases to water, land or air, or because of noise, dust, vibration, light or heat.

PPG 18, Enforcing Planning Control, gives advice about planning enforcement. It advises that the decisive issue in considering enforcement action should be whether the breach of control is unacceptably affecting public amenity or the existing use of land or buildings.

Other Material Considerations

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

The issue of **human rights** is a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 1998 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified”. It is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the balance points to protecting the visual amenity area and the residential amenity of the occupiers of neighbouring properties.

Relevant Planning History

The smoking shelter was erected in the Summer of 2008 without the benefit of planning permission.

A planning application (P/08/2985/2 refers) was submitted to retain the structure in November following an enforcement complaint in September of that year. This application was refused on 20th January 2009 for the following reasons:

“1. It is the opinion of the local planning authority that the shelter, by reason of its height, design and articulation with the rear wing of the Public House, is a conspicuous and incongruous feature on the building and an intrusive feature in the street scene to the detriment of visual amenity. As such, its retention is contrary to saved policy EV/1 of the adopted Borough of Charwood Local Plan.

2. Furthermore, in the absence of any significant sound attenuation or measures to discourage prolonged use of the shelter, the local planning authority considers that, due to the likely intensity of use, particularly during unsocial hours, the smoking shelter is detrimental to the amenities of the residents of neighbouring dwellings by reason of noise and disturbance. For this reason, the proposal is contrary to the intentions of saved Policy EV/39 of the Borough of Charnwood Local Plan which seeks to ensure development respects

and enhances the local environment and minimises poor environmental amenity caused by excessive noise and disturbance”.

An application (P/09/2233/2 refers) for a revised smoking shelter were submitted in November 2009. This application showed a revised design by way of a reduced roof height. However, the appearance of the proposed structure is still not considered acceptable and the proposal did not address any of the noise attenuation concerns that resulted in the refusal of P/08/2985/2. The application was refused on 25th January 2010 for the following reasons:

“1. It is the opinion of the local planning authority that the proposed shelter, by reason of its design and articulation with the rear wing of the Public House, would appear as an incongruous feature on the building and an intrusive feature in the street scene to the detriment of visual amenity. As such, the proposal is contrary to saved Policy EV/1 of the adopted Borough of Charnwood Local Plan.

2. Furthermore, in the absence of any significant sound attenuation or measures to discourage prolonged use of the shelter, the local planning authority consider that, due to the likely intensity of use, particularly late evenings and at weekends, the smoking shelter would be detrimental to the amenities of the residents of neighbouring dwellings by reason of noise and disturbance. For this reason, the proposal would be contrary to the intentions of saved Policy EV/39 of the Borough of Charnwood Local Plan which seeks to ensure development respects and enhances the local environment and minimises poor environmental amenity caused by excessive noise and disturbance.”

The following advice was given on the refusal notice for P/09/2233/2:

A smaller smoking shelter located further away from adjacent residential properties and designed to be compatible with its surroundings is likely to overcome these reasons for refusal.

Responses of Statutory Consultees

N/A

Consideration of the Planning Issues

It is considered that the shelter is an incongruous feature on the building and an intrusive feature on the street scene to the detriment of visual amenity and fails to respect the local environment as it does not minimise the harm to local amenity caused by excessive noise and disturbance.

RECOMMENDATION:

- 1) Authorise Enforcement Notice to secure the removal of the smoking shelter.**

It is **RECOMMENDED** that the Committee: authorise the Director of Development and the Director of Governance and Procurement to take

enforcement action under the Town and Country Planning Act 1990 and to institute and conduct any legal proceedings necessary to secure compliance with the enforcement notice;

Reason:

- a) It is considered that, by reason of its design, size and materials, the shelter is an incongruous feature on the building and an intrusive feature on the street scene to the detriment of visual amenity and fails to respect the local environment as it does not minimise the harm to local amenity caused by excessive noise and disturbance, therefore, conflicting with saved policy EV/1, EV/39 and PPS 23.
- a) The Council do not consider that planning permission should be given, for the smoking shelter because planning conditions could not overcome these objections.

Confirm that the notice will require the following steps to be taken:

- a. Dismantle the smoking shelter.
- b. Remove any resulting debris from the land.

Give the following period for compliance with the notice:

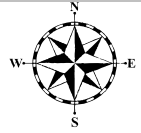
1 month



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Enforcement No:

E/08/0222

Location:

160 Railway Hotel, Charnwood Road, Shepshed, Leicestershire, LE12 9NR

Scale:

1:1250

