
Appeal Decision

Site visit made on 11 October 2016

by Daniel Hartley MTP MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 October 2016

Appeal Ref: APP/W4223/W/16/3153881

Kenmow Young and Wild Ltd, Beal Lane, Shaw, Oldham OL2 8PF

- 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 S Marsh against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/338453/16, dated 2 December 2015, was refused by notice dated 30 June 2016.
 - The development proposed is part change of use of general industrial premises (class B2 General Industrial) to a retail unit (Class A1 Retail) and external alterations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal upon (i) the safe movement of pedestrians and highway safety and (ii) the living conditions of the occupiers of nearby residential properties (including the facing residential property) in respect of noise and disturbance.

Reasons

Site, proposal and background

3. The appeal site relates to a brick built industrial building which is adjacent to a Metrolink station and is positioned on Beal Lane. Opposite the site is a detached dwelling (Station House) and there is a short terrace of dwellings fronting Beal Lane situated across the access to the Metrolink car park from Station House.
4. It is proposed to use part of the building (known as Kenmow Young and Wild Ltd) for A1 retail purposes (a sandwich/snack shop is mentioned by the appellant) which would be about 30 square metres. It would include ancillary storage and some minor external alterations.
5. Planning permission has already been approved for the same proposal (planning permission ref No PA/337667/15) albeit with customer access taken solely from the elevation facing the Metrolink platform. I have no reason to disagree with the Council that use of the appeal building for retail purposes would be acceptable in principle and that the external alterations would cause

no harm to the character and appearance of the area: the extant planning permission is a weighty material planning consideration.

6. Given the above, the main issue relates to the proposed shop entrance on the elevation facing Beal Lane.

Pedestrian and highway safety

7. The shop entrance facing Beal Lane would be in very close proximity to the access from the Metrolink stop. In addition, there is a signal controlled pedestrian crossing directly outside the proposed entrance. The footway is approximately 2.3 metres wide at this point, but reduces to about 1.8 metres due to the position of a traffic signal post.
8. I note that on the 6 July 2016 the appellant undertook to survey the area between 0700 – 0745 hours. The evidence indicates that at this time there were not significant crowds of people waiting to use the pedestrian crossing, or walking to the Metrolink stop. However, the survey data relates to limited snap shots in time, and I cannot be sure whether use of the Metrolink (particular at peak times) will not increase year on year and/or that shift or working patterns may alter in the immediate area. In addition, the survey does not include an assessment of activity throughout the whole day and of course the shop may attract customers other than those that use the nearby Metrolink. In any event, I consider that given the relatively narrow area of pavement, and proximity of the proposed shop entrance to the pedestrian crossing, even small numbers of people waiting or congregating in this area, coupled with customer access and egress into the proposed shop, would lead to unacceptable pedestrian conflicts.
9. I have grave concerns that owing to the volume of people that would likely congregate within a relatively confined area (including possible queuing into the proposed shop for those waiting for drinks and snacks), it is possible that some pedestrians would be forced into the road. It may only take one person to do this for an accident to happen: such an impact would be severe in my view. I note the appellant's suggestion that the shop entrance door could open inwards, but I am not persuaded that this would adequately overcome my concerns.
10. For the above reasons, I conclude that proposal would not accord with the highway safety aims of Policy 9 of the Oldham Local Development Framework: Joint Core Strategy and Development Management Policies Development Plan Document 2011 (DPD) and the National Planning Policy Framework.

Living Conditions

11. When the planning application was originally submitted the appellant indicated that he did not want the same hours of use and door opening planning condition restrictions to be imposed in respect of this proposal. The Council determined the planning application accordingly. The appellant has now confirmed that he would be content for an hours of use and a door opening planning condition to be imposed, if necessary. The appellant has indicated that if an hours of use restriction is necessary they would be content to restrict the opening hours to 0700 – 2000 each day.
12. I have taken into account the conclusions reached my colleague who determined planning appeal reference APP/W4223/W/16/3150681 which

related to an appeal against the imposition of two planning conditions for a similar use of the appeal premises: one relating to keeping all door openings within the building closed except for access and egress and the second relating to use of the retail unit between 0700 - 1800 only. Whilst, this appeal proposal is slightly different to the aforementioned planning permission, in that a customer entrance is proposed facing Beal Lane, I nonetheless consider that my colleague's conclusions are equally relevant to this appeal.

13. I do not consider that use of a retail shop in itself would be a significant source of noise. The nearest residential properties are positioned some distance from the appeal site and separated by a relatively busy road. Taking this into account, as well as use of the nearby Metrolink, I do not consider that in the day time any sound or other activity emanating from the proposed shop would result in significant harm being caused to the living conditions of the occupiers of nearby residential properties. However, I concur with the views of my colleague that the general volume of traffic, and number of tram passengers using the station are very likely to tail off during the evening, leading to a much quieter background noise environment later at night. Consequently, I consider that it would be necessary to restrict the hours of use for the proposed shop. Had the proposal been acceptable in all respects, I would have imposed the same hours of use planning condition as detailed in APP/W4223/W/16/3150681. Subject to the imposition of such a planning condition, I do not consider that it would have been necessary to have also imposed a planning condition requiring external doors to be closed other than for access and egress.
14. For the above reasons, and subject to the imposition of an hours of use planning condition, I do not consider that the proposal would give rise to unacceptable levels of noise or disturbance for the occupiers of nearby residential properties. Therefore, I conclude that the proposal would accord with the amenity aims of Policy 9 of the DPD. Policy 16 of the DPD is not particularly relevant in terms of this issue, although there would be conflict with it in so far that for the above reason the proposed local facility would not be appropriate within the existing built up area.

Conclusion

15. Whilst I have concluded that subject to the imposition of an hours of use planning condition the proposal would not cause harm to the living conditions of the occupiers of nearby residential development, it would nonetheless cause severe harm to the safe movement of pedestrians. This is an overriding concern and I therefore conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR