
Appeal Decisions

Site visit made on 16 May 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 22 May 2017

Appeal A Reference: APP/Y0435/C/17/3167187

Appeal B Reference: APP/Y0435/C/17/3167210

21a Radcliffe Street, Wolverton, Milton Keynes MK12 5DQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Jeffrey Marland and Appeal B is made by Sawasdee Thai Day Spa against an enforcement notice issued by Milton Keynes Council.
 - The enforcement notice was issued on 15 December 2015. The Council's reference is 15/00331/UNAUTU
 - The breach of planning control as alleged in the notice is: The material (unauthorised) change of use of the single C3 residential dwelling house on the Land to a Thai massage therapy business (Sui Generis) without planning permission.
 - The requirements of the notice are: Permanently cease using the property on the land as a Thai massage therapy business (Sui Generis).
 - The period for compliance with the requirements is 2 calendar months from the effective date of the notice.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended (the Act) and Appeal B is proceeding on grounds (b) and (f). Since the prescribed fees have not been paid within the specified period in relation to Appeal B, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in relation to that appeal.
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Decision in Relation to Appeal A

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at 21A Radcliffe Street, Wolverton, Milton Keynes MK12 5DQ as shown on the plan attached to the notice, for use as a Thai massage therapy business (Sui Generis).

Decision in Relation to Appeal B

2. The appeal on ground (b) is dismissed. However, as the notice will be quashed as a result of my decision in relation to Appeal A I shall take no further action in respect of this appeal.

Appeal B on Ground (b)

3. An appeal on ground (b) is made on the basis that the alleged breach of planning control has not occurred as a matter of fact. When making an appeal on this ground the onus, on the balance of probability, rests with the appellant to demonstrate his/her case. The appeal in this case relates to No. 21A
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Radcliffe Street, a property which occupies the first and second floors above a commercial unit at No.21 Radcliffe Street. The entrance to the unit is to the side of No.21 and is actually on Aylesbury Street.

4. There is no dispute that the property was in use as a massage therapy business at the time the notice was served. Planning permission had not been granted for the use of the property for that purpose at the time the use commenced and a retrospective planning application was refused by the Council on 22 July 2016.
5. Planning permission was granted by the Council to convert the property to residential use in 2001 and Mr Marland has indicated that the conversion took place in 2005. He has also referred to issues relating to previous tenants and, on the balance of the evidence before me, the property was in use as a dwellinghouse prior to the change to the present use. The change from a dwellinghouse to a massage therapy business represented a material change of use for which planning permission was required. No planning permission had been granted and the evidence indicates that the breach of planning control did occur, as set out in the notice. Accordingly, the appeal on ground (b) must fail.
6. I note that there appears to have been some confusion with regards to the address of the property and correspondence regarding the Council's decision on the planning application may have been delivered inadvertently to a different property; No. 21A Stamford Road. The entrance door to that property is actually on Radcliffe Street so it is easy to see how such confusion could arise, particularly given that the access to the appeal site is from Aylesbury Street and not Radcliffe Street. Nonetheless, any administrative issues in that regard have no bearing on my decision in relation to ground (b) which is made purely on the basis of whether the breach of planning control occurred as a matter of fact.

Appeal A on Ground (a)

7. An appeal on ground (a) is made on the basis that planning permission should be granted for what is alleged in the notice. Having regard to the respective cases I consider that the main issues in relation to the appeal on ground (a) are:
 - i) The effect of the development on the demand for car parking within the local area; and
 - ii) The effect of the development on the supply of housing, having regard to the aims of the National Planning Policy Framework (the Framework).

Car Parking Demand

8. The reasons for issuing the enforcement notice refer to the demand for car parking stemming from the use, with particular reference to the level of demand within the evening period. No supplementary evidence, in the form of photographs or parking surveys has been provided by the Council, or other objectors to the scheme, to support an assertion that the use of the premises has led to any noticeable increase in the demand for parking in the area. Consequently, there is little firm evidence before me to add weight to those claims.

9. The property is located above a shop within a mixed commercial and residential area. Free car parking is available on all four sides of the adjacent public square and waiting times are limited to one hour from Monday to Saturday between the hours of 0800 and 1800. The time limited restriction will help to ensure that the turn-over of cars is relatively frequent, as one would expect for a local shopping parade where customers are likely to make relatively short trips to convenience stores or other services that are available. Parking is also available on the predominantly residential streets surrounding the square, including Aylesbury Street, Radcliffe Street and Buckingham Street.
10. In relation to the evening period, many of the shops and services, such as opticians and banks are likely to be closed and demand for car parking around the square may be reduced accordingly. Alternatively car parking in residential streets is likely to be in greater demand in the evening when people return from work. In other words, the demand for parking will be subject to ebbs and flows during the day and into the evening.
11. To my mind, the area is well served in terms of the range of parking that is available and those customers who arrive by car are unlikely to add significantly to the overall level of demand within the area. The scale of the premises is small and it is unlikely that large numbers of staff and customers would be on the premises at the same time. An off-street parking space for a member of staff is available in the yard to the rear. Consequently, in the absence of any evidence to the contrary, there is nothing to suggest that the use of the property has had an undue impact on local parking demand.
12. Policy T15 of the Milton Keynes Local Plan (2005) (the Local Plan) states, amongst other things, that on-site parking should not be reduced below maximum standards where it would be likely to lead to on-street parking problems that could not be resolved by on-street parking controls. In view of the above I am satisfied that the range of parking options is adequate to accommodate the use of the building and existing parking controls around the Square are sufficient to ensure the necessary turn-over of vehicles such that customers can park whilst visiting shops and services. As such, the modest impact of the additional commercial property will not have an undue impact and is consistent with the aims of policy T15.

Housing Supply

13. The Council has referred to the loss of a housing unit, with reference to the Framework but has not referred to any local policy that would seek to discourage the conversion of residential units in or adjacent to commercial areas into commercial uses. Equally, no information has been provided with regard to the level of need for housing in the local area or, more specifically, the need for the kind of housing that was provided by the unit prior to the change to the current use. Therefore, it is difficult to attach any weight to the Council's concerns in that regard.
14. Paragraph 47 of the Framework does require local planning authorities to boost significantly the supply of housing through a range of measures. However, the Framework does not explicitly state that applications to convert residential properties to commercial uses should be resisted. Paragraph 23 identifies that planning policies should be positive, promote competitive town centre environments and pursue policies to support their vitality and viability. The Council have not indicated that the commercial area around the Square

benefits from any local designation in terms of retail policy but it contains a good range of shops and services and clearly is of benefit, economically, to the local area. The expansion of the range of services on offer will have benefits in that regard.

15. Therefore, notwithstanding the general aims of the Framework to boost the supply of housing there is no over-riding presumption against the loss of a residential unit and the Council has not referred to any local policy that would seek to apply such a restriction. It seems to me that a degree of change is always likely in and around local centres, particularly between residential uses and commercial uses above retail units. The Framework encourages residential uses within local centres but not to the expense of all other uses. In this case, the loss of one unit represents a small loss in terms of the overall housing supply in the local housing market.
16. Therefore, I consider that the loss of a residential unit is acceptable having regard to the terms of the Framework, the nature of the area, the lack of any information regarding local housing need, and the lack of any local policy that would seek to preclude the development.

Other Matters

17. The site is located within the Wolverton Conservation Area. The Council is satisfied that the development has preserved the character and appearance of the Conservation Area and, having regard to the lack of any physical changes to the building and the fact that the site is within a mixed commercial and residential area, I see no reason to take a different position.
18. Third parties have referred to the nature of the business and the effect on the character of the area. There is no evidence before me to indicate that the services provided are illegal in any way or that the business provides anything other than massage therapy, as described in the alleged breach. I noted that the qualifications of members of staff were displayed internally on walls alongside charts depicting various massage techniques. Thus, whilst I note the concerns of neighbours, I find nothing to suggest that the nature of the business is unsuited to a mixed residential and commercial area.
19. Similarly the use is not one that is likely to generate any significant levels of noise either from within the unit or from comings and goings due to the modest scale of the premises. The impact on the living conditions of neighbouring residents in that respect is likely to be within acceptable limits.

Conclusion in Relation to Appeal A on Ground (a)

20. In view of the above I am satisfied that the development has not led to an undue increase in the demand for on-street car parking and that the loss of a residential unit is acceptable, having regard to the nature of the area and local and national planning policy. No other matters have been raised to indicate that planning permission should be withheld. No conditions have been suggested by any party in the event that I were to allow the appeal and, given that I have not identified any harm associated with the development, I am satisfied that none are necessary.
21. Accordingly, I conclude that Appeal A should succeed on ground (a) and planning permission will be granted.

Appeals A and B on Ground (f)

22. It is unnecessary for me to consider the appeals on ground (f) because the enforcement notice will be quashed as a result of my decision to grant planning permission for the development in relation to Appeal A on ground (a).

Chris Preston

INSPECTOR