
Appeal Decision

Hearing held on 16 May 2017

Site visit made on 16 May 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 22 June 2017

Appeal Ref: APP/N4205/C/16/3165494

Al Hira Banqueting Hall, 40 Mossfield Road, Farnworth, Bolton, Lancashire BL4 0AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr N Parvez against an enforcement notice issued by Bolton Metropolitan Borough Council
 - The enforcement notice was issued on 15 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use from social club (*sui generis*) to function suite (Use Class D2).
 - The requirements of the notice are to permanently cease to use the premises as a function suite.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be corrected in section 3 by deleting all of the words after the word “club”, and their substitution instead with the following words: “to a function suite for the hosting of celebrations for weddings, birthdays, engagements and other similar events”.
2. Subject to the correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

3. The appeal was originally submitted in respect of appeal grounds (a), (c) and (d). However, at the Hearing the ground (d) was formally withdrawn by the appellant.
4. Three earlier appeal decisions¹ in Bromley, Brent and Barnsley are referred to by the appellant to support his argument that the former working men’s club (WMC) in this appeal falls within Class D2 of the UCO².
5. However, the D2 reference in the main headers of those appeal decisions merely reproduces the descriptions of development as alleged by the Council in the enforcement notice (in Bromley), and as stated by the applicant and the

¹ APP/G5180/C/11/2167323, APP/T5150/W/15/3140911, APP/R4408/W/15/3138179,

² Class D2 of the Town and Country Planning (Use Classes) Order 1987 as amended.

Council in the Brent and Barnsley cases respectively. In each of those cases the matter of whether the use did in fact fall within Use Class D2 was not a point of dispute between the parties, or a question before the Inspectors, hence the question was not addressed in the appeal decisions. In short, the Use Class references were superfluous descriptors and not material to the decisions. The three appeal decisions do not therefore add any significant weight in support of this appeal.

Application for Costs

6. An application for costs was made by Mr N Parvez against Bolton Metropolitan Borough Council. That application is the subject of a separate Decision.

Appeal site and background

7. The Al Hira Banqueting Hall is a former social club now used as a function suite primarily for the holding of wedding and other types of celebrations. It is located within a cul-de-sac in a primarily residential area with a small open yard to the side and a small parking area to the rear.
8. The appellant is aggrieved that through previous contact with the Council, both in terms of advice received, and through the submission and approval of a planning application for conversion of the building to its current form, he was allegedly misled by the Council into believing that planning permission was not required for the current use. However, that is a matter between him and the Council and not one that I can take into account in determining this appeal.

The enforcement notice

9. Following the issue of the notice the Council came to the conclusion that the use as a function suite was *sui generis* and on that basis invited me to correct the allegation in the notice by removing the reference to the D2 Use Class of the UCO. In this regard, I have wide powers to correct and vary enforcement notices, provided that any corrections or variations of the notice would not result in any significant prejudice to any of the parties. I deal with this issue first.
10. Two alternative arguments are relied upon by the appellant in the submitted written evidence and as advanced on his behalf at the Hearing. The first is that the former use as a social club and the present use as a function suite are uses which both fall within the D2 Use Class (D2), and the change of use would thereby be excluded from the definition of development by virtue of Section 55(2)(f) of the Act. The second is simply that in planning land use terms there has been no material change of use between the former social club use and the present function suite use.
11. Given the appellant's position above, together with the burden of proof upon him to demonstrate either of those arguments, it is clear that he would not be prejudiced by the removal of the D2 reference in the allegation. In other words; its removal does not prevent him in any way from advancing those same arguments.
12. Similarly, since it is the appellant's view that the former social club use was also within D2, I consider that he would not be prejudiced by my removal of the *sui generis* reference to the former use. The removal of the two references would also not alter the Council's position that there has been a material

change of use from one use to the other as alleged in the notice. As such, both parties agreed at the Hearing that the references to *sui generis* and D2 were superfluous to their respective cases and that they could be removed. I have therefore corrected the notice by removing them.

13. I also discussed with the parties that I considered the term “function suite” to be somewhat vague, given that the word “function” could encompass many different types of events and uses. It was agreed that the current use of the building, and hence the deemed application for planning permission in respect of the appeal on ground (a), would be more accurately described as providing a function suite for the holding of celebrations for weddings, birthdays, engagements and other similar types of events, and that the notice could be corrected to that effect. I have therefore corrected the notice accordingly.
14. Long established case law³ sets out that for the purposes of assessing whether a material change of use has taken place, it is important to determine the appropriate planning unit at the relevant point in time.
15. In this regard the red line of the plan attached to the notice indicates that the land affected is the building itself along with a small enclosed yard area to the side. However, the parties acknowledged that a small area of land immediately adjoining the rear of the building had always been part of the former social club’s unit of occupation, and that it continued to be used for car parking in connection with the present use as a function suite. (A proposed parking layout for this area in respect of the ground (a) appeal indicates a capacity for ten parked cars). The parties agreed that this small parking area together with the building and side yard area formed the relevant unit of occupation for comparing the former and present uses⁴ and I have therefore determined the appeal on that basis.

The appeal on ground (c)

16. Section 174(2) of the Act sets out the scope for an appeal on ground (c). It states “that those matters (if they occurred) do not constitute a breach of planning control.” The reference to “those matters” is to the matters set out in the breach of planning control alleged in Section 3 of the notice.
17. In legal grounds of appeal such as this the burden of proof is upon the appellant, with the relevant test of the evidence being upon the balance of probability.

Whether there has been a material change of use

18. Class D2 (Assembly and Leisure) of the UCO includes use as a cinema, concert hall, bingo hall, dance hall (but not a night-club), swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms.
19. The parties described the various activities that characterised the use of the former social club, including for meeting, socialising, licensed drinking, playing games such as snooker, darts, bingo, dance/music events, and the holding of private parties including wedding celebrations. It seems to me that the internal

³ *Burdle & Williams v SSE* [1972] 1 WLR 1207

⁴ The enforcement notice plan red line does not need to be amended since the appeal on ground (a) is dismissed.

layout, range of activities and overall use of the former social club use is aptly summarised by the appellant⁵ as that of a typical WMC.

20. There is no express reference to a social club in Class D2 of the UCO. The use was not *recreation* within Class D2 given that the Court⁶ has made it clear that recreation purposes in the context of Class D2(e) only extends to include the carrying out of physical sport or physical recreation. While there may have been elements of such physical activities at various times, I consider that because of the mixed characteristics and nature of the social club's activities comprised in its overall use, there was no primary Assembly and Leisure purpose; that being a prerequisite for a club to fall into Class D2. In my view the social club use was *sui generis*; a use not falling into any of the Classes of the UCO.
21. A function suite for the activities described to me at the Hearing, and now in operation at the premises, is also not recreation for the purposes of Class D2(e) for the same reasoning outlined above. It is also a use not expressly referred to anywhere else in Class D2 or any other class. Thus, I find that it is also a *sui generis* use.
22. Accordingly, I reject the appellant's argument that the former and current uses fall within Class D2 such that the change of use does not amount to development pursuant to section 55(2)(f) of the Act. While I note the previous planning decisions made by the Council, and other appeals referred to by the appellant⁷, they do not lead me to reach any different conclusion on this matter which I have determined on the basis of the evidence before me.
23. Although I have found that the former and current uses were *sui generis* that does not inevitably mean that there has been a material change of use from one use to the other. I turn to this matter next.
24. The concept of a material change of use is not defined in any statute or statutory instrument. It is a question of fact and degree in each case. For there to be a material change of use there needs to be some significant difference in the character of the activities from what has taken place previously. The off-site impacts of any new activity should not be considered in isolation but they may also be relevant material considerations in making such a judgment⁸.
25. The appellant refers to *Wipperman*⁹, a case involving the use of land for two composite uses and which established that an intensification of one element of a dual or mixed use to the exclusion of the other can, as a matter of fact and degree, amount to a material change of use of the unit as a whole. But the mere cessation of one activity within a unit is unlikely, on its own, to be material.
26. As previously described, the social club use comprised a number of individual activities, including one activity for holding wedding and similar types of celebrations. On the balance of the evidence before me I consider that it was the mix of all of the previously described activities, taken together, that constituted the primary social club use. There is no convincing evidence that

⁵ Appeal Statement, Emery Planning, paras. 2.3-2.4

⁶ Rugby Football Union v SSTLR [2002] EWCA Civ 1169

⁷ Appeal Statement, Emery Planning: Appendices EP33-EP35

⁸ Hertfordshire CC v SSCLG & Metal and Waste Recycling Limited [2012] EWCA Civ 1473

⁹ Wipperman v SSE & Barking LBC [1965] 17 P & CR 225

wedding and other similar celebrations occurred with any great frequency or with substantial gatherings of people arriving at a particular time. This particular element of the mixed activities appears to have been a minor part of the overall use.

27. The current use is solely as a function suite for the holding of wedding and similar types of celebrations. In contrast to the former use all other activities within the social club umbrella have now ceased and, based on the schedule of events in 2016¹⁰ and all other evidence before me, the current use involves the arrival of significant numbers of people arriving at a specified particular time; such events occurring frequently. In my judgement the new use is materially different. In making this judgement I also attach due weight to the evidence of local residents which indicates that the new use has resulted in a significant increase in noise and disturbance, resulting mainly from the concentrated arrival and departure of large numbers of people, together with a substantial increase in attendance by car requiring on-street traffic management.
28. As a matter of fact and degree I find that the activities associated with the use as a function suite are significantly different in character and nature to the activities comprised in the previous use as a social club. As such, I find nothing inconsistent with *Wipperman* in reaching a conclusion that there has been a material change of use. Consequently, since the change of use has occurred without the benefit of planning permission it constitutes a breach of planning control.
29. The appeal on ground (c) therefore fails.

The appeal on ground (a)

30. I consider the main issues are firstly; the effect on the living conditions of occupiers of nearby local residents with particular regard to odours, and noise and disturbance, and secondly; parking capacity and the effect on highway safety.

Living conditions - odours

31. Although it does not form one of the Council's objections, I heard from one local resident at the Hearing that cooking smells are invasive. However, I noted during my visit to the appeal site that that a flue extraction system for fumes had been installed at the premises. Additionally, the Council's Environmental Health officer confirmed at the Hearing that the design and function of the flue was compliant with health and amenity standards and that any complaints regarding odours could be adequately controlled under Environmental Protection regulations. Given these factors I find that there would be no unacceptable impact on local amenity in respect of odours.

Living conditions – noise and disturbance

32. Complaints from local residents refer to excessive noise from within the building itself, from the side yard area, from the concentration of vehicles arriving and departing at the start and end of events, and from groups of people in attendance talking and socialising in the street outside. One resident submitted video recordings of events in 2016 as evidence of such effects.

¹⁰ Appeal Statement, Emery Planning: Appendix EP15

33. In this regard I note the commendable efforts of the appellant who has sought to minimise noise and disturbance impacts by making it clear in the contract booking conditions for events that there can be no outside drumming or fireworks. Signage to that effect has been installed on the frontage of the building. Also, traffic marshals are employed to organise parking and direct vehicles attending the events. Despite these efforts complaints persist of noise and disturbance from people gathering outside, and from vehicle movements and associated noise from car doors and engine noise.
34. The very fact that it is necessary to use traffic marshals is indicative to me that movement and parking of vehicles has been highly concentrated at specific times, and likely in my view to result in significant disturbance to local residents. The associated assembly and gathering of people outside the building would add to that disturbance. A condition requiring a travel plan was suggested to reduce the reliance on cars. However, it seems most likely to me that at best it could only seek to encourage, rather than secure, a reduction in the numbers of vehicles attending. Moreover, it would not mitigate at all the noise from people congregating outside of the building.
35. On the balance of all the evidence before me I am satisfied that noise from within the building and the side yard area could be adequately controlled by a planning condition requiring the approval and implementation of a noise management plan, together with the suggested condition limiting the use to the hours of 12:00 to 23:00.
36. However, given the appellant's own evidence of actual attendance figures, the potential maximum number of people who could arrive and congregate in the street at specific times of the day, and together with evidence in respect of noise from vehicle movements and parking, I consider that planning conditions could not adequately mitigate these particular noise impacts.
37. There is no dispute that the building could revert to its lawful use as a social club; a 'fall-back' argument advanced at the Hearing, and which would be unrestricted by any planning conditions. However, there is no convincing evidence before me that a reversion to a social club would result in the same level, or any greater level, of harmful impacts on residential amenity than the current use. This argument does not therefore persuade me that planning permission should be granted.
38. For these reasons I conclude that the current use results in significant harm to the amenity of nearby residents in conflict with the overarching aims and sustainability principles of the National Planning Policy Framework (2012). The appellant's survey evidence¹¹ in respect of parking capacity and vehicle numbers does not lead me to any different conclusion in respect of this matter.

Highway safety/parking capacity

39. The Council's reasons for issuing the notice at Section 4 refer to *additional traffic movements with associated noise and disturbance*. However, it does not say that the traffic movements result in any risk to highway safety. The evidence of local residents, while relating to vehicle movements and parking difficulties and inconvenience does not provide clear-cut evidence of an

¹¹ Appeal Statement, Emery Planning: Appendix EP1- Highways Advice Ltd
Final Comments, Emery Planning: Appendix EP1- Highways Advice Ltd

increase in risk to highway safety. Safety is first raised as an issue in the Council's appeal statement.

40. The appellant's evidence in respect of highway safety includes detailed survey and modelling evidence of predicted vehicle usage and parking capacity on the site itself (10 spaces available) and in the surrounding streets. While that evidence also indirectly supports his argument in respect of noise and disturbance, which I have already dealt with previously, it undoubtedly seeks to counter the Council's concerns in respect of highway safety.
41. Other than simply disagreeing with the overall conclusions of the appellant's highway evidence, the detailed evidence itself was not disputed by the Council at the Hearing, and no alternative evidence of the same or similar form was advanced by the Council. Consequently, on the balance of the evidence before me I find that there would be no unacceptable risk to highway safety.

Conclusion

42. I have found in support of the appeal in respect of odours and highway safety. I also take account of the appellant's investment in the business, its contribution to the local economy, and the provision of staff employment. However, all of these matters are significantly outweighed by the harm to the living conditions of local residents I have identified in respect of noise and disturbance.
43. For all the above reasons, I conclude overall that the use as a function suite results in a significant and unacceptable level of harm to the living conditions of local residents with regard to noise and disturbance. The use thereby conflicts with Policy CG4 of the Bolton Core Strategy Development Plan Document (2011) which, amongst other matters, requires that new development is compatible with surrounding land uses and does not generate unacceptable noise levels.
44. The appeal on ground (a) therefore fails.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Killian Garvey of counsel	Kings Chambers
Gareth Salthouse	Planning Consultant, Emery Planning
Andrew Burrows	Highways Consultant, Highways Advice Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Paul Bridge	Development Officer, Bolton Metropolitan Borough Council
Jackie Hurley	Environmental Health Officer, Bolton Metropolitan Borough Council
Sean Bamber	Highways Engineer, Bolton Metropolitan Borough Council

INTERESTED PERSONS:

Ian Edmundson	Local resident
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DOCUMENTS SUBMITTED AT THE HEARING

1. Submissions for the Appellant
2. Appellant's application for an award of costs
3. Judgment: *Hertfordshire CC v SSCLG & Metal and Waste Recycling Limited* [2012 EWCA Civ 1473]