



Appeal Decision

Site visit made on 22 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 11 November 2019

Appeal Ref: APP/C4615/C/18/3216892

**The Former Rollers Arms Public House, Foundry Street, Coseley, Bilston
WV14 8XW**

- 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 Sandro Feng (Skyline Property Investments Ltd) against an enforcement notice issued by Dudley Metropolitan Borough Council.
 - The enforcement notice was issued on 22 October 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, and within the last four years, the conversion of the Land to a House in Multiple Occupation.
 - The requirements of the notice are: (i) Cease the use of the Land as a House in Multiple Occupation including vacating all the currently occupied rooms; (ii) Remove all domestic fixtures and fittings which have been installed in order to facilitate the Multiple House Occupation Use, including all cooking facilities, washing facilities, showers and WCs.
 - The period for compliance with the requirements is: Six months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by deleting "Six months" in the sentence under section 6 and replacing that with "9 months". Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Ground (c)

2. The burden of proof to show that there has not been a breach of planning control rests with the appellant. In this case, it is argued that the former first floor flat could have been converted to a small House in Multiple Occupation (HMO) as permitted by Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015. For that to be the case, the flat would have needed to be a Class C3 dwellinghouse use in the first place. The appellant asserts that it was because it was rented out separately from the rest of the public house and Council tax records show that it was rated separately from the pub. Consequently, its lawful use was C3.
3. Public houses very often have landlord or managers accommodation part and parcel of the overall premises, usually on an ancillary basis meaning that there is one A4 planning unit. In this case, there is no evidence that the flat had its

own separate access. Based on a plan showing an existing layout dated 3 April 2017, only one set of stairs is shown to upstairs and access to that was via a door into a ground floor room linked to what was probably the main bar area. There is nothing to show that the first-floor accommodation functioned separately from the pub. It seems more likely given the layout that it was part of the main use as a public house.

4. Moreover, in previous information supplied to the Council on planning application forms, the appellant has declared that the previous lawful use of the land was a public house (A4) and that there were no existing residential units such as a flat or maisonette. The Council tax record does show that there was residential accommodation at the Rollers Arms in Council Tax Band A between 1993 and 2015, but that only demonstrates a tax liability. It does not show the flat was rented out separately. There is also no information about who lived in the flat or that they were not linked with running the public house.
5. As a matter of fact and degree, the appellant has not shown that the flat was a functionally and physically separate planning unit thus giving it a lawful C3 use meaning that it had planning permission change its use to a small HMO under the GPDO. It seems that the Rollers Arms has a lawful A4 use. S55(1) of the 1990 Act defines material changes of use as development and s57(1) defines that planning permission is required for development. There is no claim that a material change of use has not occurred. In the absence of planning permission for that, there has been a breach of planning control.
6. Consequently, the ground (c) appeal cannot succeed.

Ground (a)

7. The main issue is the effect of the change of use on the living conditions of the occupiers of the HMO, with regard to potential noise and disturbance from neighbouring industrial/commercial land uses.
8. The appeal property backs onto an industrial area with a variety of employment uses. There are other commercial/employment uses surrounding the site. A previous planning application to change the use of the building to a HMO was refused (P17/0478) and dismissed at appeal (APP/C4615/W/18/3196550). The previous Inspector found there was insufficient evidence that the development would provide satisfactory living conditions for future occupants due to the potential level of noise generated by the surrounding industrial and commercial units. The appellant has submitted a Noise Impact Assessment (NIA).
9. Based on on-site monitoring, the NIA found that noise from constantly running plant, taken to come from a MOT garage at the rear of the appeal property, was 10db greater than background noise level which indicates a significant adverse impact from noise. The plant noise also operated at night. The NIA suggests that a suitably specified fence could be erected between the garage and the new dwellings. This, the NIA states, may effectively mitigate the noise and would be expected to provide up to 10dB of sound reduction to the most affected rooms at the rear of the site.
10. Although the appellant's agent appears to have applied a full 10db reduction in noise as a result of the fence, the NIA is not as unequivocal. Moreover, by taking account of the effective screen height of a such a fence, this indicates that the noise reduction effect would be reduced to first floor windows. It is

not clear to what level. It is also accepted that residents of the property would hear noise from commercial uses when windows were open. In order to maintain the internal noise levels, the NIA refers to windows remaining closed. Consequently, it would be expected that attenuated means of background ventilation would be required. There is no information of what that system would be, and, in my view, it would be unreasonable to require residents to keep windows closed in hot stuffy weather. It would also be difficult and unreasonable to enforce.

11. Whilst it appears that there is more information in front of me about noise compared to the previous Inspector, in view of the above findings I am not satisfied that the evidence robustly shows residents of the HMO would not be exposed to undue noise and disturbance arising from neighbouring industrial/commercial land uses.
12. I acknowledge that there are other dwellings in the area. One of those is quite close and it also backs onto the same industrial park. However, it does not back directly onto the MOT garage and there is an intervening commercial building. The lack of any apparent complaints from residents about noise from industrial activity does not show that the proposed change of use would be acceptable given its individual site circumstances.
13. The change of use of the building to a HMO does not accord with the amenity protection aims of planning policies D2 and D5 from the Dudley Borough Development Strategy. I note that the Council has previously raised concerns about how potential complaints from future residents could lead to restrictions on the activities of nearby businesses. However, that has not been specified as a reason why the enforcement notice was issued. I have therefore not had regard to policy Del 2 from the Black Country Core Strategy. The scheme may accord with other development plan policies referred to by the appellant, but that does not bring the appeal scheme into line with the development plan taken as a whole. It is also not sustainable development as envisaged by the National Planning Policy Framework given its environmental harm.
14. The ground (a) appeal fails.

Ground (f)

15. An enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. The notice alleges the conversion of the property to a HMO. The steps in the enforcement notice require that use to cease and for the fixtures and fittings installed to facilitate that use to be removed. As such, the purpose of the notice is clearly to remedy the breach of planning control by restoring the land to its condition before the breach took place.
16. The steps do not, as asserted by the appellant, require all fixtures and fittings to be removed. It is only those domestic ones that have been installed to facilitate the unauthorised use. As I read step (ii) it would allow any original such features to remain and the lawful use of the premises is also not precluded. The steps require no more and no less than what is necessary to remedy the breach of planning control. As such, they are not excessive.
17. The ground (f) appeal also fails.

Ground (g)

18. Having regard to the appellant's concerns that evictions can take longer these days due to changes in housing legislation, I consider that 9 months would be a more reasonable compliance period. However, it should be no longer than this due to concerns about the living conditions of the existing residents.

19. To this extent the ground (g) appeal succeeds.

Conclusion

20. I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gareth Symons

INSPECTOR