



Appeal Decisions

Site visit made on 26 November 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2019

Appeal A Ref: APP/W1905/C/18/3213933

Lea House Hotel, 1 Rye Road, Hoddesdon, Hertfordshire EN11 0JB

- 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 Guiseppe Ferraro against an enforcement notice issued by Broxbourne Borough Council.
 - The enforcement notice was issued on 12 September 2018.
 - The breach of planning control as alleged in the notice is:
Without planning permission the material change of use of the premises from hotel (bed and breakfast) to mixed use as a hotel (bed and breakfast) and restaurant with take-away element, including erection of rear and side extraction flues.
 - The requirements of the notice are:
 - (i) *Cease the use of the premises as hotel (bed and breakfast) and restaurant with take-away element, and*
 - (ii) *Revert the use of the premises to its lawful use as a hotel (bed and breakfast); and*
 - (iii) *Remove the extraction flues located on the side and rear elevations of the building; and*
 - (iv) *Permanently remove from the land all rubble, rubbish or debris arising from compliance with the above.*
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/W1905/A/18/3212317

Lea House Hotel, 1 Rye Road, Hoddesdon EN11 0JB

- 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 G Ferraro against the decision of Broxbourne Borough Council.
 - The application Ref 07/18/0134/F, dated 13 November 2017, was refused by notice dated 29 March 2018
 - The development proposed is described thus: "This is a bed and breakfast and will remain so. On another level of the property will be a café and restaurant with adequate seating. I have had a flue installed for the wood burning oven, for which this application is for as well as a change of use."
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Decisions

Appeal A

1. It is directed that the enforcement notice be varied by the deletion of requirement (ii) and the renumbering of requirements (iii) and (iv) as (ii) and (iii). Subject to these variations the appeal is dismissed and the enforcement

notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Procedural matters

Appeal A

1. The requirements of the notice place a positive obligation to use the premises as a hotel (bed and breakfast). This requirement is excessive as it is permissible not to use the premises at all; the notice is aimed only at requiring the cessation of the restaurant with take-away use. I shall therefore vary the notice using my powers under s.176(1)(b) to limit the scope of the requirements of the notice to remedy the breach.
2. The appeal form indicates that the appeal is made by a company San Guiseppe". However, there is no indication that "San Guiseppe" is a limited company, and I shall therefore treat the appeal as being made by Mr Ferraro.

Appeal B

3. The application form indicates that the application was made by a company "San Guiseppe Pizzeria and Italian Cuisine". However, there is no indication that this is a limited company, and I shall therefore treat the application and appeal as being made by Mr Ferraro.
4. The Council's decision notice describes the proposal as "change of use of ground floor to A3 (restaurant) with extraction flues to rear and side". This is a more concise description of what is proposed and I shall deal with the appeal on this basis.

Appeal on Ground (e) – that the notice was not served as required by the Act

5. Section 172(2) of the Act says that a copy of an enforcement notice shall be served -
 - (a) on the owner and on the occupier of the land to which it relates; and
 - (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
6. The appellant says that the notice was not served on the Hong Kong and Shanghai Banking Corporation who hold a mortgage on the property, and therefore have an interest in the land.
7. However, the Council has submitted a copy of the letter accompanying a copy of the enforcement notice which was served on HSBC at its Securities Processing Centre, PO Box 6304, Coventry CV3 9JY. There is no evidence that they did not receive the notice. The covering letter contains a mistake in identifying the date that the notice comes into effect, referring to 15 October 2015, rather than 15 October 2018. However, as 2015 date preceded the date of issue of the notice by some years, and the correct date is referred to in the notice, it would have been obvious that the incorrect date was a typographical

error, and I consider that the Bank would not have been prejudiced by the error.

8. Accordingly the appeal on ground (e) fails.

Appeal A - ground (a) that planning permission should be granted and Appeal B

9. As the matters at issue are the same for both these appeals, it is appropriate that they be dealt with together.

Main Issues

3. The main issues are:

- i) the effect of the restaurant and takeaway use on the living conditions of nearby residential occupiers, with particular regard to smell, noise and disturbance and parking, and
- ii) the effect of the restaurant and takeaway use on highway safety and the free-flow of traffic.

Reasons

Living conditions

- 4. The appeal site is occupied by a two-storey detached building, located on the corner of Rye Road and Bosanquet Road. It has a lawful use as a hotel (bed and breakfast), and that use is carried out on the first floor of the property. The whole of the ground floor has been given over to use as a restaurant and kitchen. The surrounding area is primarily in residential use, with the exception of a church on the eastern side of the junction of Rye Road with Bosanquet Road.
- 5. Policy RTC7 of the Borough of Broxbourne Local Plan Second Review (LP) deals with proposals for Class A3 and similar uses, including takeaways. It says that applications for such uses may not be permitted where, amongst other things, there would be a material adverse effect upon the amenity of residential and other occupiers by reason of noise, smells and general disturbance generated by the proposed development. Policy RTC3 of the emerging Broxbourne LP (eLP) aims to steer evening economy uses to identified centres, which do not include the appeal site. That policy and RTC4, which deal with takeaways, set out criteria against which proposals will be assessed, which are similar to those in the adopted Policy RTC7.
- 6. On the day of my visit the restaurant was set out with 28 chairs on 6 tables, although I appreciate that the number of covers on any one day is likely to vary depending on the numbers of customers and the size of the parties. The large number of pizza boxes ready by the counter suggests that the takeaway element is substantial.
- 7. The entrance to the restaurant/takeaway opens out directly onto the footway on Rye Road. There is little on-site parking (a matter to which I shall return below), so patrons will inevitably leave to find their cars, or to walk home, using Rye Road or Bosanquet Road to do so. Smokers will be likely to congregate immediately outside the premises, or on the terrace fronting Bosanquet Road, adjacent the junction with Rye Road.

8. Although Rye Road is a busy through-route, I consider it likely that it would be quieter in the evenings, when ambient noise levels would be low. Noise from customers leaving the restaurant, perhaps in high spirits, or from smokers outside the premises, would be likely to result in a degree of disturbance, which would be more intrusive the later it gets in the evening. I consider that the use would be likely to materially harm neighbours' living conditions through noise and disturbance.
9. In respect of smoke and smell, LP Policies SUS5, SUS6 and SUS9 deal with air quality and pollution. Whilst I have been provided with details of the fume extraction equipment, no empirical evidence of the effectiveness of that equipment has been provided. Several local residents have submitted representations referring to either smoke and/or smell from the flues, particularly when the oven is fired up. I saw on my visit that there were extensive sooty deposits on the oven chimney, but I do not know whether they were recent. Two nearby residents say that smoke and smell are not now a problem. Anecdotal evidence is therefore inconclusive and as there is no substantive evidence on this matter, I am unable to conclude that the use results in material harm to neighbours' living conditions, or conflicts with the policies referred to above, or with Policies EQ1, EQ2 and EQ4 of the eLP, which also deal with air quality and noise.
10. However, because of my concerns about noise and disturbance, I conclude that the use as a restaurant and takeaway materially harms the living conditions of nearby residents, and conflicts with LP Policy RTC7. The Council alleges a conflict with LP Policy SUS7, which deals with Air Quality Management Areas, but there is nothing in evidence which suggests that the site falls within such an area, and therefore I find no conflict with this policy.

Highway safety

11. Policy T11 of the LP provides that car parking will be assessed in relation to the Council's maximum standards. It indicates that a reduced level of parking provision will be likely to be acceptable in certain circumstances, including where the development is located on an accessibility corridor, as is the case here. For restaurants, the standards seek 1 parking space per 5m² of floorspace plus 3 spaces per 4 employees. The Highway Authority's undisputed assessment indicates that a total of 14 spaces are required to meet the standard.
12. Whilst there are some parking spaces within the curtilage of the site, these are not used, and so customers and staff are wholly dependent on on-street parking. At the time of my visit, the roads nearby were nearing full capacity for on-street parking, although I understand that the area is under pressure from commuters using the nearby train station, and so are likely to be under pressure in the daytime for this reason. Even so, most of the properties on the opposite side of Rye Road have no off-street frontage parking, and therefore occupiers are likely to be highly reliant on on-street parking. In my experience, takeaway customers in particular often tend to park as close to the premises as possible and some will block drives and park in potentially dangerous places, thinking that their doing so will only be of a short duration. This kind of parking is especially disruptive to nearby residents.
13. Whilst I have had regard to the evidence of the appellant about customer numbers and those who arrive by car, I consider that even those numbers

could give rise to serious disruption to local residents, and the numerous objections from people living nearby reinforces my concern. I have also given consideration to requiring that the spaces within the yard be used for parking. However, there is no certainty that they would be used, and in any event, the number of spaces would still be well below the Council's standard, even allowing for a reduction because of the site's position on an accessibility corridor. I therefore find that the use as a restaurant and takeaway results in material harm to highway safety and the free flow of traffic and conflicts with LP Policy T11, as well as with Policy RTC7, which includes a criterion about parking demand. I find no conflict with eLP Policy TM2 as it is aimed at developments which create a severe impact on the highway network. However, there would be a conflict with eLP Policy TM5 which deals with parking.

Other matters

14. The appellant has referred me to a number of restaurants and take-aways further to the west along Rye Road which are close to residential properties. I do not know the planning circumstances of these premises, but a key distinguishing feature is that they are all within rows of established commercial premises, where nearby residential occupiers might expect there to be a degree of disturbance and there would not be the same expectation of peace and quiet that might be expected in an almost wholly residential area. They also have dedicated parking, either on the forecourt or in bays in front of the parade. There are no evening parking restrictions on the opposite side of the road either. I therefore consider that these do not serve to justify the use in this location.
15. The requirements of the enforcement notice engage with the right to respect for property, under Article 1 of the First Protocol, which is a Convention right enshrined into UK law by the Human Rights Act 1998. However, this right is not absolute, and interference may be justified in the public interest. In this case, upholding national and local planning policy, and the importance of protecting the living conditions of others are matters of legitimate public interest.
16. There are no lesser steps which could be taken to meet the policy and conservation area objectives, and whilst I recognise that the interference with the appellant's right would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.
17. The use as a restaurant and takeaway provides local employment and contributes to a modest degree to the local economy. I have not been told whether it would be possible to relocate the business to suitable premises elsewhere, and thus I cannot be certain that compliance with the notice would necessarily result in the closure of the business. However, even if it were, I consider that the harm that I have identified outweighs the economic benefits.

Conclusion on ground (a) and Appeal B

18. For the reasons given above, I conclude that the appeal on ground (a) fails and that Appeal B is dismissed.

Appeal on ground (f) – that the requirements of the notice are excessive

19. The notice as varied by me does no more than require the breach of planning control to be remedied, and therefore the steps to be taken do not exceed what is necessary to put right the breach of planning control. As I have found that the use is unacceptable in this location, there are no conditions which could be imposed, or lesser steps which could be taken, which would address the harm that I have identified. Accordingly, the appeal on ground (f) fails.

Overall conclusions

20. For the reasons given above, I conclude that, subject to variation, the enforcement notice should be upheld, and that the deemed application for planning permission under s.177(5) of the Act should be refused. Appeal B is dismissed.

JP Roberts

INSPECTOR