



Appeal Decisions

Site visit made on 19 November 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal A: APP/W4705/C/19/3227785

38 Manningham Lane, Bradford BD1 3EA

- 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 Amrit Haire, Power Centre (UK) Ltd against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The enforcement notice was issued on 21 March 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land as a banqueting facility.
- The requirements of the notice are i) Cease the unauthorised use of the land as a banqueting facility; ii) Remove from the land all equipment and signage associated with the unauthorised banqueting facility use.
- The period for compliance with the requirements is one calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld (however see Conclusion and Formal Decision).

Appeal B: APP/W4705/W/19/3229590

38 Manningham Lane, Bradford BD1 3EA

- 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 Tony Singh, Pearl Banquet Ltd, against the decision of City of Bradford Metropolitan District Council.
- The application Ref 19/00934/FUL, dated 28 February 2019, was refused by notice dated 16 May 2019.
- The development proposed is Revised (retrospective) application for the change of use from a restaurant / café (Use Class A3) to banqueting facilities (Sui Generis Use Class).

Summary of Decision: The appeal is allowed and planning permission granted subject to the conditions set out below in the Formal Decision.

Appeal A

The appeal on ground (f)

1. The ground is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. The ground (f) appeal is that at the time the enforcement notice was issued, a planning application for the same use was pending¹, that was considered likely to be approved. The enforcement action was therefore unnecessary.

¹ Ref 19/00934/FUL

2. The objective of the notice is to discontinue the use of the land. It follows that the purpose of the notice is to remedy the breach. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by discontinuing the use of the land. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.

The appeal on ground (g)

3. The appeal on ground (g) is that the time given to comply with the requirements is too short, on the basis that the aforementioned planning application could not be decided before the enforcement notice comes into effect.
4. However the planning application in question forms the basis of Appeal B, which will therefore be determined at the same time as this appeal. If Appeal B is successful, Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. The permission would therefore override the notice and there would be no requirement for compliance with it.
5. Conversely if Appeal B was to be unsuccessful, the appellant has given no explanation as to why one month would not be a reasonable period within which to comply with the notice. Therefore the timing of the enforcement notice relative to the planning application would not, in its own right, provide a basis for extending the compliance period. The ground (g) appeal therefore fails.
6. Therefore for the reasons given above I consider that Appeal A should not succeed.

Appeal B

Main Issues

7. The main issues are the effect of the development on i) highway and pedestrian safety and ii) the living conditions of local residents with particular regard to noise disturbance.

Reasons

Highway and Pedestrian safety

8. The appeal site fronts onto Manningham Lane, a busy 'A' classified road, to the north west of the city centre. There are a number of side streets leading off Manningham Lane, in relatively close proximity to the site, the nearest of which are Brearton Street and Trafalgar Street, with Eldon Place on the opposite side.
9. The appeal site itself provides some 18 car parking spaces, which are marked out on the forecourt at the front of the building. They are reached via a short one-way system through access to the forecourt area from Brearton Street, with egress directly onto Manningham Lane.
10. The venue caters for large functions including weddings and parties. The Council and appellant dispute the guest capacity of the venue, with the Council referring to signage captured in a previous Google Street View image referring to seating for 800, and the appellant citing the capacity as 400. From my visit

I was able to inspect the seating arrangements in the banqueting hall and it seemed to me that provision for a maximum of some 400 guests is likely to be an accurate assessment.

11. I have had regard to the appellant's transport statement which includes reference to a travel survey undertaken at the time of a previous function in October 2018. This indicates the likelihood of groups of guests sharing cars, and I have no reason to dispute a typical occupancy level of 3 persons per vehicle. Nevertheless it is clear that if all guests attending a large event were to arrive by car, the demand for parking would considerably outweigh that available on the site.
12. From the information provided it appears that an event may occur on any day of the week and may continue for several hours. Furthermore, comments from local residents indicate that events have resulted in parking congestion around the site, making it difficult for local residents to park and manoeuvre and delaying the flow of through traffic on Manningham Lane.
13. It was clear from my visit and from the transport statement, that traffic regulation orders are in place, prohibiting the stopping of vehicles, with the exception of busses, outside the site and the parking of vehicles further along this road. There are also restrictions in place, notably permit holder only parking on certain parts of Brearton Street, with limits on the duration of parking on other parts of that road and at certain times on Trafalgar Street and Eldon Place. It seems to me that any abuse of these traffic regulation orders through unauthorised parking or waiting could be enforced against by the Council, thus deterring its occurrence in future.
14. Although it is undisputed that the parking provision on the site would fall short of the Council's maximum standards, this in itself does not make the proposal unacceptable. I have no reason to dispute that there are a number of larger designated car parks located further afield. Whilst use of this parking provision would be less convenient, I do not consider it would render the venue inaccessible to guests, particularly when weighed against the prospect of incurring parking penalties.
15. It is undisputed that two designated car parks within 400 metres of the site may shortly be lost to alternative development or made available for private use, resulting in the loss of more than 200 spaces. However from the information before me I am not persuaded that there would be a shortage of parking, taking into consideration the venue capacity and likelihood of car sharing. Furthermore it seems to me that the site is well served by bus services, stopping directly outside or close to the venue. Its relatively central location also means that it would be accessible to many people by rail and by walking. Some guests may, for greater convenience, choose to travel by taxi, whereby the dropping off and collection of guests would be expected to result in only fleeting delays to traffic.
16. It therefore seems to me that there would be a number of genuine travel choices open to users of the venue, that would provide an alternative to driving there, thus helping to ease both the overall demand and potential for unauthorised parking in the locality. I have also taken into account that it is undisputed that the existence of similar venues in the locality are likely to result in a cumulative impact on parking demand. This however, in my view, is

more likely to further dissuade the use of private vehicles given the accessibility of the location by alternative forms of transport.

17. I have had regard to the accident history in relation to the local highway. This indicates a relatively low number of incidents in recent years and I concur with the view, taking into account that the banqueting function at the site has been operational for some time, that it raises no material issues with regard to this proposal. Furthermore, I consider it likely that a substantial amount of traffic associated with the use would occur outside peak travel times, thus reducing any potential disruption to the flow of traffic.
18. Some third parties objecting to the development have referred to impairments to driver visibility caused by the letting off of fireworks outside the venue. Whilst I have no reason to doubt such occurrences, there is nothing to persuade me that they are common or that any impacts are more than fleeting, such that there would be material harm to highway safety. The question of adequate access for the emergency services, should this ever be required, was also raised. However this was not a specific reason for the Council opposing the development and I have no information that would lead me to take a contrary view.
19. I am also mindful that the Council's highway authority has raised no objection to the proposed development and drawing the aforementioned considerations together I conclude that, with the enforcement of parking restrictions, the proposal would not be expected to result in harm to highway and pedestrian safety or material harm to the free flow of traffic. Accordingly there would not be conflict with Policies TR2, DS4 and DS5 of the City of Bradford Core Strategy 2017 (CS) or with the National Planning Policy Framework (the Framework) insofar as they seek to manage parking demand, support sustainable travel and promote a safe and secure environment.

Living Conditions

20. The Council has concluded that the proposal would result in an unacceptable impact in terms of noise disturbance when taking into account the proximity of various noise sensitive uses, in particular residential properties on Brearton Street.
21. The main sources of noise associated with this type of use are likely to arise outside the venue as a result of the coming and going of guests and internally from music associated with the operation of the venue.
22. From my visit it was evident that there are houses on Brearton Street in close proximity to the site, and it is evident that several residents have objected to the planning application, based on their past experiences. However it appears that parking restrictions in Brearton Street, either prevent non-permit holder parking altogether or allow it for relatively short periods only. It therefore seems to me that with the enforcement of such restrictions, the street would not be conducive to accommodating guest parking.
23. The proposed use would operate potentially into the late evening and there would inevitably be noise arising from time to time, associated with the use, with engines being revved and car doors being closed. I recognise that unrestricted parking is available in other nearby streets. It is also likely that some groups of departing guests would congregate in the vicinity of the

premises and that loud conversations and laughter may be heard, particularly taking into account the celebratory nature of the occasion and the potential for house windows to be open. However, it seems to me that such disturbance would be focussed around the beginning and ending of events and would therefore be relatively short in duration. I have also taken into account that the parties would be agreeable to the imposition of a condition which would prevent events from continuing after 23:00 hours.

24. It is also undisputed that planning permission was granted in October 2013 for the use of the premises as a restaurant. Whilst this type of use might be expected to accommodate fewer guests in comparison to a function room, I consider that there would nevertheless be some disturbance from time to time associated with groups of guests visiting the restaurant. This potential fallback position therefore lends some weight in favour of the proposed use. Furthermore the appellant, within the noise impact assessment, has expressed a commitment to managing events so as to deter incidences of anti-social behaviour that may arise outside the premises, to assist with the orderly dispersal of guests. Moreover within the Council's officer report it is accepted that Environmental Protection and Anti-Social Behaviour legislation would give the Council some control over such matters should they arise.
25. In terms of noise generated from music being played within the venue I have had regard to the assessment provided by the appellant, in relation to which a simulated event was held. I have no reason to dispute the finding that noise generated was generally found to be barely audible outside the venue and generally inaudible at the nearest residential properties. Various mitigation measures are proposed including that external doors should remain closed, when not in use. I am satisfied that mitigation measures can be enforced through the imposition of an appropriate condition.
26. Drawing all the above considerations together and taking into account that the Council's environmental health officer has not objected, I conclude that the development would not result in undue harm to the living conditions of local residents with regard to noise disturbance. Accordingly I find that there would not be conflict with Policy EN8 of the CS or with the Framework insofar as they seek to protect the living conditions of residents.

Other Matters

27. I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the effect of the proposal on the setting of the building at 32 -36 Manningham Lane, known as Connaught Rooms, which is Grade II listed. It seems to me that the special interest of this building derives from its age, form and appearance. The elements of setting that contribute to its significance include its relationship with the street. Although the appeal site lies adjacent to this building and there is inter-visibility between the two, the proposed development would not involve any physical changes to the appearance of the building. In this context, I consider that neither the significance of the listed building nor its setting would be harmed.

Conditions

28. I have had regard to the conditions proposed by the Council within the officer report. Given that the proposed use has already commenced, there would be no need to impose a standard commencement condition in this case.

Conditions are required restricting the hours of operation of the business, and operation in accordance with the management measures set out within the noise impact assessment in the interest of the living conditions of residents. A condition requiring the retention of the parking area to the front of the premises is required in the interests of highway safety and parking demand. A condition confirming the plans is required in the interests of certainty.

Overall Conclusion

Appeal B

29. For the reasons given above I conclude that the appeal should be allowed.

Appeal A

30. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the material change of use of the land as a banqueting facility, because this benefits from planning permission and is therefore lawful for planning purposes. For the avoidance of doubt this means that the enforcement notice ceases to have effect so long as the planning permission is extant and is complied with.

Formal Decisions

Appeal A

31. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

32. The appeal is allowed and planning permission is granted for Revised (retrospective) application for the change of use from a restaurant / café (Use Class A3) to banqueting facilities (Sui Generis Use Class) at 38 Manningham Lane, Bradford BD1 3EA in accordance with the terms of the application, Ref 19/00934/FUL dated 28 February 2019, and the plans submitted with it, subject to the conditions below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall only take place between 11:00 to 23:00 hours.
- 2) Within a period of one calendar month from the date of this decision notice (unless otherwise agreed in writing by the Local Planning Authority) the measures for dealing with excessive noise (including embedded mitigation

and management measures) outlined in the submitted noise impact assessment by RSK Environment Ltd (Project No: 297320-01(00) dated February 2019) shall be implemented in full and thereafter retained, whilst ever the use hereby approved subsists.

- 3) The car parking areas shown on the approved plans shall be retained and kept available for the parking of vehicles whilst ever the approved use subsists.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Existing and Proposed Ground Floor; Block Plan; Existing and Proposed First Floor.

END OF SCHEDULE OF CONDITIONS