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## Appeal Decision

Site visit made on 10 December 2019

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 January 2020**

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**Appeal Ref: APP/P4415/C/19/3230358**

**10c Dale Road, Rawmarsh, Rotherham S62 5AB**

- 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 Hooman Raki against an enforcement notice issued by Rotherham Metropolitan Borough Council.
  - The enforcement notice was issued on 22 May 2019.
  - The breach of planning control as alleged in the notice is *Without planning permission:*
    - (i) *the unauthorised change of use of the land to A4 micro pub, and*
    - (ii) *the erection of two areas of decking (identified in blue on the attached plan).*
  - The requirements of the notice are to cease the use of the premises as a micro pub and remove the 2 areas of decking to the front of the premises.
  - The period for compliance with the requirements is 28 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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### Summary Decision

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

### Preliminary Matter

2. No representative of the Council attended the scheduled site visit, and I proceeded in their absence having been given access to the property by the appellant.

### The appeal on ground (a) and the deemed planning application

3. The main issue arising is the effect of the development on the living conditions of nearby residents, with particular regard to noise and disturbance.
4. A planning application for a development similar to what has taken place was recently refused by the Council under reference RB2018/1774 and subsequently dismissed on appeal under reference APP/P4415/W/19/3230361. The principal difference between the 2 schemes was that the refused application excluded one of the 2 decking areas that have been constructed to the front of the property.
5. As noted by the previous Inspector, the appeal property is a small single-storey building lying within a 'Mixed Use Area' as defined by the Rotherham Local Plan. Its present use does not amount to a use expressly supported by policy SP65 (Development within Mixed Use Areas). That policy does not however preclude other forms of development, which are to be considered on their merits.

6. Policy SP52 is also referred to in the Council's reasons for issuing the notice. This policy is concerned with developments likely to cause pollution, and is permissive only of those where mitigation measures will minimise potential impacts to levels that protect health, environmental quality and amenity. Particular consideration will be given to (among other matters) amenity and potential noise, with the supporting text noting that residential uses are particularly sensitive to noise.
7. The previous Inspector noted the proximity of the appeal site to residential properties, including those accommodated within the building to the south of the site and yard area, and those in the upper floors above Nos. 8 and 10 Dale Road. The site is accessed from the east via a gap in the buildings fronting onto Dale Road, and is surrounded by dwellings as well as commercial premises. It constitutes a small public house consisting of one principal room with internal seating for around 30 patrons. A bar with several taps is situated at the southern end of the room, with a games machine nearby. Externally, seating areas either side of the door allow for additional customers.
8. A planning condition is suggested to require the sound insulation of the southern wall of the building, to minimise the noise impacts to the adjoining occupiers. Like the previous Inspector, I consider that this could have some beneficial effects although would be unlikely to overcome entirely the concerns of neighbouring residents about the noise emanating from the premises. The external seating areas are different in their details from what was under consideration by the previous Inspector, and constitute a larger area. I consider as a result that the likely noise impacts from these areas would be more detrimental to the neighbours' living conditions than found by the previous Inspector, and contrary to the requirements of policy SP52. The outdoor seating areas would result in unacceptable noise and disturbance to neighbouring residents.
9. I have nonetheless considered whether to grant permission in part. The Council's notice refers to the two distinct elements, constituting the change of use of the building and separately the construction of the two decking areas. Without one or both of the decking areas and with sound insulation, the potential for noise transmission from the premises could be reduced. However, even without the seating areas it is not clear how noise and disturbance from patrons congregating outside the building, or on their way to or from it, would be avoided.
10. The appellant in any event does not propose the removal of the decking areas in their entirety. The proposal is to remove the area of decking adjacent to the lobby, and to enclose the second area with a 2m high fence with access restricted from within the building. Like the previous Inspector, I have no compelling evidence of the extent to which the impacts on nearby residents' living conditions would be ameliorated by these measures, and cannot conclude that these measures, together with the other aspects proposed by the Council's suggested planning conditions, would produce acceptable impacts.
11. I have considered the Inspector's decision to allow a micropub in Adlington brought to my attention by the appellant, but have no sufficient details of that case to consider their comparability. I note however that the permission there was subject to a planning condition requiring a noise management plan, which the appellant here does not propose. I have also considered the fallback

position of an unrestricted garage/workshop use. Although unrestricted, I do not consider that such a use would be likely to produce significant noise or disturbance to neighbouring residents in the evenings, and so the appeal proposal cannot be said to be preferable to it.

12. I therefore find that the development that has been carried out cannot be made acceptable for the living conditions of the neighbouring residents with particular regard to noise and disturbance, and that it is contrary to policy SP52 of the local development plan. Therefore the appeal on ground (a) fails and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **The appeal on ground (g)**

13. The appellant considers that the 28 day period for complying with the notice is unreasonably short. In order to terminate staff employment contracts, inform suppliers and wind down the business, a period of 12 months is sought.
14. However, no details are given of the terms of any staff or supplier contracts, and in the absence of any evidence to the contrary it does not appear to me that the business could not be closed within the period specified in the notice. Therefore, I find that the period specified in the notice does not fall short of what should reasonably be allowed. I shall not extend the period for compliance, and the appeal on this ground does not succeed.

### **Conclusion**

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

### **Formal Decision**

16. 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.

*Laura Renaudon*

INSPECTOR