
Appeal Decision

Site visit made on 29 October 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/N4720/C/19/3228228

Land at The Sugar Refinery, 432 Dewsbury Road, Hunslet, Leeds LS11 7DF

- 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 Ibrar Hussain against an enforcement notice issued by Leeds City Council.
 - The enforcement notice was issued on 11 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission the change of use of part of the ground floor of the above mentioned premises to a café (use class A3) and a snooker centre (use class D2).
 - The requirements of the notice are: cease the use of any part of the building for the purposes of a café (use class A3) and snooker centre (use class D2) and remove all equipment, fixtures and fittings in connection with the unauthorised use therewith from the premises.
 - The period for compliance with the requirements is one month.
 - 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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Decision

1. 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.

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

2. The main issues are the effect of the development on the (i) living conditions of the occupiers of nearby houses with particular regard to noise and disturbance and (ii) highway safety.
3. The appeal building is a relatively large former sugar mill of red brick construction located close to the busy Dewsbury Road. The wider locality is predominantly residential in character with the immediate context including a number of retail units, a pub and other business premises to the rear of the appeal site, towards the northerly end of Oakhurst Avenue.
4. The Council state that the lawful use of the building is as offices and whilst I understand some office space has been retained this is not in use.
5. The closest houses to the building are a row of terraces on Oakhurst Avenue on the opposite side of and facing the road which runs to the broadly east side of the building, the front elevations of which are located in reasonably close proximity to the road. There is residents' permit parking on the road to the front of the houses and a section of unrestricted on-street parking on the

- opposite side of Oakhurst Avenue, closest to the appeal building, with spaces further north along Oakhurst Avenue.
6. Whilst I noted a bus stop close to the site, on the basis of the evidence before me it appears that a reasonable number of customers arrive by private car. I observed at my site visit that there are approximately six off-road parking spaces available at the front of the building but that they appeared relatively narrow and awkwardly configured, such that they could not realistically provide parking for six vehicles without causing inconvenience.
 7. A result of the limited parking is customers parking on surrounding residential streets, in particular Oakhurst Avenue, with a consequent increase in demand and competition for on-street parking. Further, given the proximity to those houses on Oakhurst Avenue and the late-night hours of operation, noise associated with the comings and goings of customers including doors opening and closing, people talking, vehicles manoeuvring and engines running, harms the living conditions of nearby residents during the quieter times of the day and week, in particular late at night when background noise levels are likely to be lower. The evidence before me demonstrates that the Council received significant representation about this both during the course of their enforcement investigation and in response to the two retrospective planning applications for the development.
 8. The appellant proposed a condition restricting the use to between 10am and 11pm seven days a week. I have considered whether this condition could overcome the harm however, whilst the lawful use of the building is as offices, such a use is unlikely to operate outside of normal office hours and the proposed use would still result in comings and goings during the quieter times of the day and week. Consequently, the proposed condition would not overcome the identified harm.
 9. The entrance to the building faces Dewsbury Road with the side elevation containing a number of boarded up windows facing Oakhurst Avenue. Whilst the boarding on the windows could be removed, given the nature of a snooker hall and café use, this seems unlikely. I also have little substantive evidence which demonstrates, that the use generates unacceptably harmful levels of noise within the building such as to cause material harm to the living conditions of nearby residents.
 10. There is no suggestion from the Council that the parking area at the front of the building was created as part of this development however, they have raised concerns about reversing manoeuvres associated with the use of the parking area. As an existing parking area and access which could be used in association with the lawful use as offices, I consider this is not a materially worse situation in terms of highway safety.
 11. Notwithstanding that I have identified no harm in respect of noise generated within the building or in respect of the use of the existing parking area, this does not outweigh the identified harm in respect of noise and disturbance associated with the comings and goings of customers.
 12. Consequently, for the reasons given above the use is contrary to Policy GP5 of Leeds City Council Development Department Leeds Unitary Development Plan (Review 2006) Volume 1: Written Statement, Policy T2 of the Leeds Core Strategy Adopted November 2014 and Leeds City Council Parking

Supplementary Planning Document Local Development Framework Development Plan Document January 2016 which together require development to avoid loss of amenity and to ensure that parking does not cause local amenity problems for neighbours. The appeal on ground (a) therefore fails.

The appeal on ground (g)

13. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that they consider the one month given by the notice is unfair and unreasonable. They asked for the compliance period to be extended to a minimum of four months but provided no explanation why one month is considered to be unreasonable.
14. In cases involving business uses, it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice. However, the appellant provided no explanation about how the business operates including details about the number of employees or the impacts on them.
15. The use enforced against is causing harm to the living conditions of nearby residents in respect of noise and disturbance and weight must be attached to this harm. Such harm should not be permitted to continue for any longer than absolutely necessary.
16. On the basis of the evidence before me and my own site observations it seems there would not be a significant amount of work involved, nor would it be likely that the services of specialist tradesmen would be required to remove any fixtures and fittings in connection with the use.
17. Overall, on the basis of the above and given that the use has been ongoing for some time, with the first retrospective planning application for the use (ref: 19/00722/FU) being refused in April this year and the need to bring this harmful development to an end, I consider one month to be a reasonable period for compliance. The appeal on ground (g) therefore fails.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR