The Planning Inspectorate

Appeal Decision

Site visit made on 9 March 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 13 March 2020

Appeal Ref: APP/B4215/C/19/3241767

1A Grandale Street, Manchester M14 5WS

- 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 Sam Kane against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 31 October 2019.
- The breach of planning control as alleged in the notice is the material change of use of the land to a hot food takeaway (Class A5), together with the erection of a flue and fume extraction equipment on the side elevation as shown edged in blue on the attached photograph ENF/01.
- The requirements of the notice are 1. Cease the use of the land as a hot food takeaway (Class A5); and 2. Remove the flue and fume extraction equipment in its entirety, as shown edged in blue on the attached photograph ENF/01; brick up the opening using bricks and a bonding pattern to match and tie into the original side elevation.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (e) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed.

Procedural matter

2. An application for costs has been made by the Council against the Appellant. This application is the subject of a separate decision.

Reasons

The ground (e) appeal

3. The Appellant was not a named person on the list of those that were served with the enforcement notice. The notice was, however, served on 'The Owner/Occupier' and the Appellant is the Occupier of the appeal property. Furthermore, the Appellant clearly knew about the notice because he instructed an Agent who had time to submit the appeal before the deadline. It must therefore be concluded that the Appellant was not substantially prejudiced by not being served directly with the notice and the ground (e) appeal thus fails.

The ground (d) appeal

4. The Appellant, by not making ground (b) and (c) appeals, accepts that the breach of planning control alleged in the notice has occurred, and that it is not permitted development or has the benefit of planning permission. In this regard

the change of use of a Class A3 use, or any other use, to a Class A5 use is not permitted development. To succeed under ground (d), therefore, the Appellant must provide sufficient precise and unambiguous evidence to justify a conclusion that the change of use of the appeal property to a hot food takeaway (Class C5) occurred more than ten years before the date of issue of the enforcement notice. The critical date is 31 October 2009.

5. It is stated by the Appellant that the appeal property "…was turned into a café restaurant in 2009, on the impression that the whole building had planning to be turned into a A3 from the planning that was obtained in 1974" and that "The café underwent some changes in 2012…". As indicated a café restaurant is a Class A3 use as defined in The Town and Country Planning (Use Classes) Order 1987 (as amended), whereas a hot food takeaway is a Class A5 use. If the café existed in 2012, as is stated, then the change of use to a hot food takeaway occurred some time afterwards, and after the critical date. On the Appellant's own evidence, the breach of planning control is not immune from enforcement action through the passage of time. The ground (d) appeal thus fails.

The ground (a) appeal

6. The Appellant has accepted that the flue and fume extraction equipment on the side elevation of the property should be removed. The ground (a) appeal therefore relates only to the change of use of the property to a hot food takeaway.

7. The main issue in the ground (a) appeal is the effect of the use of the appeal property as a hot food takeaway on the amenities of neighbouring residents.

8. Grandale Street extends westwards from a junction with Wilmslow Road. It is a mainly residential street though some properties, particularly those close to Wilmslow Road, have retail and commercial uses at ground floor level. The appeal property is at the rear of a property with a main frontage onto Wilmslow Road and has a side elevation to an alleyway. Grandale Street provides access to an extensive residential area to the west of Wilmslow Road.

9. The hot food takeaway will be visited by customers late into the evening and those customers living in the residential area will pass along Grandale Street. Furthermore, customers arriving by car from further afield are likely to pass along Grandale Street, possibly before and after visiting the property, and to park in close proximity to residential properties. This pedestrian and vehicular activity is likely to create noise and cause disturbance to residents of Grandale Street during late evening hours when they can reasonably expect to be experiencing a quiet environment. The Council has suggested a condition that would require the hot food takeaway to close at 2330 hours but the Appellant has requested that the condition be amended so that the premises could stay open until 0200 hours. Activity associated with the unauthorised use even up to 2330 hours is likely to cause unacceptable disturbance to nearby residents.

10. At the time of the site visit the alleyway was obstructed by a pile of wet refuse. This may not be associated with the unauthorised use of the appeal property and it is noted that the property has a rear yard where bins are stored.

11. Several customers of the hot food takeaway have submitted letters in support of the Appellant's business. It is clearly a well regarded and visited hot food takeaway but this factor does not outweigh the likelihood of harm being caused to the amenities of local residents.

12. The unauthorised hot food takeaway is likely to be causing harm to the amenities of local residents and the business thus conflicts with policies DM1 and C10 of the Council's Core Strategy and with policies DC10.1 and DC26.1 of the Unitary Development Plan for the City of Manchester. Planning permission must therefore be withheld and the ground (a) appeal thus fails.

John Braithwaite

Inspector