



Appeal Decisions

Site visit made on 21 January 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2020

Appeal A Ref: APP/R4408/C/19/3235377

Appeal B Ref: APP/R4408/C/19/3235378

Appeal C Ref: APP/R4408/C/19/3235379

Land on the north side of School Street, Hemingfield, Barnsley S73 0HZ

- 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 appeals are made by Mr John Anderson, Mr Paul Anderson and Ms Joanna Anderson against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice was issued on 16 July 2019.
 - The breach of planning control alleged in the notice is without planning permission, the contravention of condition 7 of the grant of planning permission in respect of application 2006/0102.
 - The requirements of the notice are:
 - (i) Comply with the condition 7 of the grant of planning permission application reference 2006/0102.
 - (ii) Cease the commercial use of the office and warehouse outside of the hours of 08.00 to 17.30 Mondays to Fridays, 09.00 to 13.00 on Saturdays and at no time on Sundays or Bank Holidays.
 - The period for compliance with the requirements is one month.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal C is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Appeal A 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.
2. Appeals B and C are dismissed, and the enforcement notice is upheld.

Preliminary Matter

3. At my site visit I observed the fencing that has been erected around the site for which the appellants have submitted a retrospective planning application to the Council. However, I do not know the outcome of that application and as that fence does not form part of these appeals it has had no bearing on my assessment of the case.

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

4. The main issue is whether condition 7 is reasonable and necessary in the interests of the living conditions of the occupiers of nearby dwellings, with particular regard to noise and disturbance.
5. The appeal site consists of a two-storey office building and detached relatively modest sized warehouse building. The site is located in a predominantly residential area surrounded on all sides by dwellings. Access to the site is via a driveway off Beech House Road which is also shared with the residents of the Heritage Court development and passes between the front of Heritage Court and the side of 44 Beech House Road, through gates and into a yard area between the office and warehouse building.
6. The buildings are occupied as a base for the appellant's construction and civil engineering company. At my site visit which took place in the middle of the day on a Tuesday I observed, on this occasion, that the immediate locality had a reasonably quiet character with the only apparent noise being from vehicles passing along Beech House Road.
7. It is evident that prior to communication from the Council, following complaints from third parties, that the business was operating from the site prior to 0800 in breach of condition 7 on planning permission reference 2006/0102. The evidence before me demonstrates that the Council received significant representation about this during the course of their enforcement investigation.
8. The Council's reasons for taking enforcement action relate specifically to the use of the office before 0800, a matter which is not in dispute by the main parties. The appellant stated that currently only two vehicles enter the site prior to 0800 and that other staff do not enter the site with vehicles until after 0800. It appears on the basis of the submitted evidence, that other staff have been congregating outside of the site until they can access the buildings (during the permitted hours of operation).
9. The appellant proposes to substitute condition 7 with a condition which would permit the use of the office only between the hours of 0730 and 1730 Monday to Friday. They consider this will reduce the number of waiting staff and vehicles as those staff who work off site and who do not need to access the warehouse can undertake their business in the office and depart promptly without waiting for the office to open. The proposed condition, as set out in the appellant's statement, also includes extending the opening hours of both the office and warehouse to 1400 hours on Saturdays although neither main party has made representations about this. The appellant also proposes a condition relating to the provision of noise attenuation fencing in accordance with a scheme to be first approved by the Council.
10. Although only the office would be open and there is only a small number of office staff, it is evident that staff based off site also access the site to collect instructions from the office. Consequently, although the warehouse would not be open before 0800 the number of people coming and going between 0730 and 0800 would vary.
11. Notwithstanding that some residents in the area may leave their homes before 0800, given the residential context of the site and the relatively low background noise levels in the daytime, which are likely to be lower early in the

morning, the use would and has resulted in material harm to the living conditions of neighbouring residents as a result of noise and disturbance associated with the comings and goings of employees including doors opening and closing, people talking, vehicles manoeuvring and engines running, in particular those residents of Heritage Court, 44 Beech Road and 1 Beech Close with habitable room windows in close proximity to the access and site. Indeed, the appellant acknowledges that most noise is generated by arrival activity outside rather than inside the office building, as supported by third party representations.

12. There is little explanation about why staff would congregate whilst waiting for the buildings to open and in any event, this does not justify granting permission for a development which would cause harm.
13. The provision of noise attenuation fencing within the site would not overcome the harm in relation to those dwellings in Heritage Court, given their proximity to the access and in respect of the first-floor habitable room window in No.44 which overlooks the site.
14. The windows to the office face into the yard and on the basis of my observations it is my view, in the absence of contrary evidence that the activities which take place inside the building cause no material harm to the living conditions of nearby residents in respect of noise and disturbance. However, this does not outweigh the harm identified above.
15. The circumstances relating to the development of Heritage Court and the absence of objections from residents on Garden Grove do not alter my judgement as the rear elevations of those houses are set away from the site and the access.
16. Overall, for the reasons given above I find the breach of condition causes harm to the living conditions of neighbours as a result of noise and disturbance. This is contrary to Policies GD1 and Poll1 of the Barnsley Local Plan Adopted January 2019. Together these require development to have no significant adverse effect on the living conditions and residential amenity of existing and future residents and to demonstrate that it is not likely to result in an increase in noise or other pollution which would unacceptably effect or cause nuisance to people. It is also contrary to the National Planning Policy Framework which requires a high standard of amenity for existing and future users. Consequently, I conclude that condition 7 is reasonable and necessary.

Other Matters

17. I acknowledge the appellant's efforts to refurbish the yard and buildings, but this has no bearing on the planning merits of the development.
18. Third parties have expressed concerns in respect of the alleged breach of other conditions on the planning permission however, this is a matter for the Council outside the scope of these appeals. Concerns raised about employees of the business parking on the street in the village also have no bearing on my assessment of this case and are again outside the scope of these appeals.
19. For the reasons given above, the appeal on ground (a) fails.

The appeals on ground (f)

20. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
21. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
22. In this case the enforcement notice sets out two requirements which both have the same effect of requiring compliance with condition 7 on planning permission 2006/0102, as such I find its purposes are to remedy the breach of planning control. That purpose can only be achieved by compliance with condition 7.
23. The appellants suggest that the requirements go beyond what is necessary as it requires broader compliance with condition 7 which also relates to the use of the warehouse, whereas the reasons for taking action refer specifically to the use of the offices.
24. However, whilst I accept the appellants' point, the allegation as set out in the notice is the breach of condition 7, which relates to both the office and warehouse, and there is no dispute that those matters alleged in the notice have occurred. Consequently, since the purposes of the notice are to remedy the breach of planning control, notwithstanding the Council's reasoning it is not excessive to require compliance with the condition. No lesser steps other than those set out in the notice would achieve that purpose. Accordingly, the appeals on ground (f) fail.

Conclusion

25. For the reasons given above, I conclude that the appeals 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