



Appeal Decision

Site visit made on 26 February 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2020

Appeal Ref: APP/N4720/C/19/3238946

Land at 137 Chapeltown Road, Chapeltown, Leeds LS7 3DU

- 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 Miss Julie Rose against an enforcement notice issued by Leeds City Council.
 - The enforcement notice, numbered 16/00810/UCU3, was issued on 12/09/2019.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use of land for the siting of a hot food takeaway van and ancillary equipment (A5).
 - The requirements of the notice are to:
 1. Cease the use of the land as a hot food takeaway unit within 28 days.
 2. Remove the takeaway van, canopy, outdoor seating and any other equipment in connection with the takeaway and return the site to its previous condition for residential use within two months.
 - The periods for compliance with the requirements are; 28 days for requirement 1, and 2 months for requirement 2.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) 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.

The appeal on ground (c)

2. The appeal is proceeding on the ground that the matters alleged in the notice do not constitute a breach of planning control. The notice alleges that a material change of use has occurred for the siting of a hot food takeaway van and ancillary equipment on the land.
3. The appeal site comprises No. 137 and rear outrigger and outdoor land bounded by wall and hedge on the corner of two roads. The van and ancillary equipment associated with the hot food takeaway use is stationed on the land bounded by the wall and hedge with a gated access onto a side street. The appellant has previously submitted a planning application for the development which was subsequently refused permission. The description put on the planning application was 'change use of garden to selling site'. The Council's submission describes the use as a mixed use of retail and residential above. The requirement indicates that the site be returned to its previous condition for residential use.

4. The stationing of a hot food takeaway van and ancillary equipment on the land would amount to a material change of use in the definable character of the use of the land. The material change is both physically and functionally different from what preceded it in relation to the former use to the use now put, and there is a different mix of uses now undertaken within the identified planning unit by the introduction of the hot food takeaway use. The function of a hot food takeaway use is materially different in how the site was used prior to its introduction and has potential environmental consequences on the locality in relation to odour, noise and working hours.
5. I therefore consider that the alleged use does bring about a materially different character of use from the preceding use which would amount to a material change of use within the meaning of development under section 55(1) of the Act as amended.
6. Section 57 of the Act as amended states that planning permission is required for development. A previous planning application for the use of land was refused permission and there is no record of a planning permission for the development as alleged. Planning permission may be granted by development order by section 57(3) and section 58. However, the change of use alleged in the notice is not permitted by the development order of The Town and Country Planning (General Permitted Development) (England) Order 2015.
7. Planning permission is required for the material change of use of the land and this constitutes a breach of planning control.
8. The appellant indicates that the development does not meet the definition of section 55(1) of the Act. However, section 55(1) includes making of any material change in the use of any buildings or other land. Whilst the appellant has a licence for trading, a hygiene certificate and has liability cover and has operated for four years these matters do not alter the conclusion that there has been a material change of use which is development in breach of planning control. I note that the appellant asserts that there have been no issues with odour and noise, nevertheless, these environmental changes to the locality must occur to a degree when the alleged use is in operation. This is but one factor, amongst others, in establishing whether there has been a material change of use of the land. Other issues raised include matters of visual appearance, planning policy and the concentration of hot food facilities in the area, all of which are planning considerations which are not factors in assessing whether the matters alleged in the notice constitute a breach of planning control.
9. The appeal on ground (c) therefore fails.

Iwan Lloyd

INSPECTOR