



Appeal Decision

Site visit made on 26 January 2021

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2021

Appeal Ref: APP/W2465/W/20/3260076
33-39 Gwendolen Road, Leicester LE5 5FL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Materia against the decision of Leicester City Council.
 - The application Ref 20200781, dated 1 May 2020, was refused by notice dated 19 August 2020.
 - The development proposed is change of use of buildings and land from Use Class B8 (Storage or Distribution) to a Builders' Merchants.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of buildings and land from Use Class B8 (Storage or Distribution) to a Builders' Merchants at 33-39 Gwendolen Road, Leicester LE5 5FL in accordance with the terms of the application Ref 20200781 dated 1 May 2020 subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr M Materia against Leicester City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this case is the effect of the development on the living conditions of nearby residents.

Reasons

4. The appeal site is formed by a terraced building that has an undercroft to allow access to a yard which a commercial building is used which constitutes 33-37 Gwendolen Road whilst 39 Gwendolen Road is a building and area alongside the above currently used as part of the business. The locality surrounding the site is residential in nature but there are some business uses dotted around.
5. There is considerable planning history across the site, including a Certificate of Lawful Use, refusals and planning appeals, and a 2019 planning application that was approved for 33-37 Gwendolen Road for the same proposal as is in front of me that now adds 39 Gwendolen Road to the overall site area. There is some dispute between the parties as to whether that 2019 approval has actually commenced, whether conditions have been met and the use is actually lawful. From the evidence supplied to me and my observations from my site visit, it appears to be operating as a builders' merchants, but that is not the case that I am assessing and would be dealt with outside of this particular appeal.

6. Whilst I am not debating the status of the previous approval, the fact that an approval is on record and remains part of the history of the site is a significant factor in this case. The 2018 appeal was dismissed on the basis of the noise assessment methodology and the 2019 application, amongst other matters, submitted a noise assessment that met the criteria required and was approved.
7. I have, in the evidence provided by the appellant, an updated noise assessment that takes into account No 39 in addition to the rest of the site. The appeal proposal seeks to relocate the trade counter into what is the area of No 39 and would be accessed by a small internal waiting area.
8. The 2019 approval made an assessment of the impact on the living conditions of nearby residents and found insufficient harm to warrant a refusal on such grounds. The noise assessment supplied by the appellant appraises the potential for noise generation by the addition of No 39 to the overall site area and finds that it would create no additional noise. I note that the Council's consultee on this matter has not raised an objection to this assessment.
9. I have taken into consideration the noise report, and the supporting information from the appellant as well as the Council's justification for the refusal. However, without the support of the key consultee, I find it difficult to give much weight to the Council's arguments regarding the potential effect on living conditions to local residents. The nature of the business, has, in my opinion not changed. The appellant seeks to relocate the trade counter into No 39, and include No 39 in the overall business use, which the use itself, was deemed acceptable in 2019.
10. With regards to objections from local residents, the use is located in a predominately residential area, but it would appear that business uses have run cheek by jowl with residential use in this predominately residential area for many years. The two may not mix well together but have to co-exist for the foreseeable future. There are ways that issues can be reported and investigated, that lay outside of the remit of this appeal.
11. As a result, I find that the proposals are consistent with policies PS10 and PS11 of the City of Leicester Local Plan (2006) which amongst other matters, expect development to take into consideration amenity issues for existing residents and the amenity guidance set out in the National Planning Policy Framework.

Conditions

12. I have taken into consideration the conditions suggested by the Council, and consider them to be fair and reasonable, given the previous planning history of the business and the relationship with residential development.
13. Conditions 1 and 2 are in the interests of proper planning, whilst 3 to 9 are in the interests of the living conditions of local residents. Conditions 10 and 11 relate to the protection of the highway network and Condition 12 relates to the provision of sustainable drainage.

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed.

Paul Cooper

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans :- 1240/01 and 1240/02
- 3) No deliveries or collections shall take place at the site outside of the hours of 0730 to 1800 hours Monday to Friday nor at any time on Saturdays, Sundays or Public Holidays.
- 4) No machinery shall be operated, and the site shall not be open outside of the hours of 0730 to 1800 hours Monday to Friday nor at any time on Saturdays, Sundays or Public Holidays.
- 5) No machinery shall be installed or operated, nor shall any processes be undertaken which are detrimental to the amenity of the area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
- 6) There shall be no live or amplified music played which would be detrimental to the amenities of occupiers of nearby properties.
- 7) The doors and windows to the building shall be kept closed at all times when machinery is being operated or and noise emitting processes undertaken within the building, except to allow access or egress.
- 8) There shall be no stacking of materials or processed or finished goods or of waste exceeding 2.5 metres in height within 3 metres of any boundary of the site or exceeding 5 metres in height anywhere else within the site.
- 9) No loose materials such as sand, soil, wood shavings or metal filings or any other materials with a fine grain shall be stored outside the building and no unpacking or repacking of such materials shall take place outside the building.
- 10) Within two months of the date of this permission, the parking area and the loading and unloading area shown hatched on plan 1240/02 shall be provided and shall be permanently retained as such. These areas shall not be used for any other purpose.
- 11) Space shall be kept available within the curtilage of the site to allow for vehicles turning into and out of the parking area and the loading and unloading area shown hatched on plan 1240/02.
- 12) Within six months of the date of the permission details of a Sustainable Drainage System (SuDS) shall be submitted to and approved in writing by the Local Planning Authority. This approved scheme shall be implemented within six months of the date of the decision formally approving the system. It shall be retained and maintained thereafter.

END OF SCHEDULE