



Appeal Decisions

Site visit made on 21 April 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2021

Appeal A Ref: APP/D4635/C/20/3261994

Site comprising Constantine Convenience, 8 Constantine Way, Wolverhampton WV14 8GX

- 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 Sancheevan Thirunvukkarasu against an enforcement notice issued by Wolverhampton City Council.
 - The enforcement notice was issued on 25 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of a modular self-service launderette facility.
 - The requirements of the notice are: Remove the unauthorised modular self-service launderette facility and repair any damage caused by its removal.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/D4635/W/20/3261995

8 Constantine Way, Wolverhampton WV14 8GX

- 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 Gary Smith of Photo-Me International Plc against the decision of Wolverhampton City Council.
 - The application Ref 20/00826/FUL, dated 31 July 2020, was refused by notice dated 25 September 2020.
 - The development proposed is installation of a modular self-service launderette facility.
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Decisions

Appeal A: S174 appeal

1. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of 'one' month in relation to the time period for compliance at Schedule 6 and the substitution of 'three' months as the period for compliance.
2. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal B: S78 appeal

3. The appeal is dismissed.

Ground (a) appeal and 78 appeal

Main Issues

4. The main issues of the appeal are the effect of the appeal scheme on:
- The character and appearance of the area; and
 - The living conditions of occupants of nearby residential properties having particular regard to noise and disturbance.

Reasons

Character and appearance

5. The appeal site comprises a commercial building which is located in a generally residential area. The building is located in a prominent position along Constantine Way and has been designed to reflect dwelling design in the area. Although building design in the wider area varies, the use of similar materials and design affords a degree of cohesion which makes a positive contribution to the area.
6. The laundrette facility is located to the front of the building in a prominent position and is constructed in grey metal with white writing. Although views of the site are limited from the A4098, the laundrette can be clearly seen from Constantine Way itself. The grey metal contrasts significantly with the more traditional design of the convenience store and obscures architectural detailing to the front of the building. Whilst other paraphernalia is present within the site, such as advertising boards, charity bins and refuse bins, due to their modest size they appear less prominent than the laundrette.
7. Policy D5 of the Unitary Development Plan (UDP)(2006) seeks to differentiate between private areas and public spaces and sets out that the fronts and backs of buildings should be clearly defined to ensure places are easily understood and, amongst other things, pleasant. The provision of the laundrette facility in this location introduces what is essentially a private activity, washing and/or drying clothes, into the public domain.
8. Because of its prominent location, contrasting design and function, the laundrette appears an incongruous feature which diminishes the character and appearance of the area, contrary to policy ENV3 of the Black Country Core Strategy (BCCS)(2011) which seeks high quality design and policies D4, D6, D8 and D9 of the Wolverhampton Unitary Development Plan (UDP)(2006) which all seek development which contribute to the appearance of an area, amongst other things and policy D5, the requirements of which are set out above.

Living conditions

9. The laundrette facility is located in a generally residential area and is surrounded by housing on all sides. Above the convenience store there are also 2 no 1 bed flats. The appellants confirm that the facility is located below the living room window of the first floor flat but asserts that the occupier of the ground floor commercial unit is related to the tenant of the flat directly above the laundrette machine and points out that occupants of the flats did not object to the appeals. Whilst this may be true, occupancy of the flats may change over time and so it is necessary to consider the effect the laundrette would have on existing and future occupants.

10. No 14 Constantine Way is adjacent to the appeal site, separated by a brick wall. Although the brick wall is likely to provide some noise attenuation, given its limited height, I consider it likely that noise emitted by the launderette would still reach the property. I agree that other properties in the area are less likely to be affected by the launderette due to greater distance from the facility or the presence of intervening structures.
11. The appellants advise that the launderette will generally be in use during the operational hours of the convenience store. However, it can operate 24 hours per day, at times when people in the local area are likely to be trying to sleep. Whilst there may be no planning restrictions or conditions limiting the opening hours of the convenience store, the appellants confirm it is generally open 16.5 hours a day and I have no substantive evidence that it is likely to be operated on a 24 hour basis.
12. Policy EP1 of the UDP states that development which may result in pollution through noise, amongst other things, will only be permitted where it can be shown there would be no material adverse impact on the amenity of users of the land or surrounding areas. The machines were not in use at the time of my site visit and I have no substantive evidence regarding the noise that is generated by the machines. Nevertheless, given the nature of the facility I would expect the machines to generate noise, particularly when more than one machine is in use at the same time. I also note an objection submitted by an interested party refers to the facility as 'noisy'.
13. Whilst during my visit the main source of noise in the area appeared to be the nearby main road, I have no evidence as to how this changes over time, particularly later in the evening and during the night. I consider it highly likely that road noise would be less dominant in the evening and when occupants of the nearby dwellings are likely to be trying to get to sleep. The appellants state that they would be willing to provide a site specific assessment as part of the appeal, however, no such assessment has been provided. It has therefore not been demonstrated that the noise produced by the facility would not be unacceptable when compared to background noise.
14. Although occupants of the flats and surrounding area will be accustomed to a certain level of activity generated by users of the convenience store, given the nature of the facility and the time it takes to complete a washing cycle, I consider it likely that users of the launderette would choose to wait close by while washing clothes and may generate noise whilst doing so. This is likely to cause noise and disturbance, particularly to occupants of the flats. Users of the convenience store, by contrast, are less likely to wait outside for long periods of time.
15. The appellants suggest restricting the hours of operation of the facility. Although it would be possible to restrict opening hours by condition, I have no evidence to indicate what hours of operation would ensure that there would not be harm to living conditions of nearby residents. Such a condition may not, therefore, be effective in mitigating the harm to living conditions.
16. In relation to the S174 appeal, the appellant suggests providing details and/or limiting the noise emitted from the facility. Although this suggestion was made under ground (f), it relates to planning merits and so I shall address it here.

17. It would not be reasonable to limit the noise emitted from the launderette by condition, since I do not know whether this is feasible, having regard to the construction of the unit. Furthermore, I do not know what noise levels would ensure there would be no harm to living conditions of nearby properties.
18. In my view, and in the absence of evidence to the contrary, noise and disturbance generated by users of the machines, together with noise generated by the machines, is likely to harm the living conditions of the occupants of the flats and the occupants of Number 14 Constantine Way, contrary to policies EP1 and EP5 of the UDP which both seek to prevent harm from noise pollution.

Other Matters

19. I agree that there would be no harm to highway safety from the use of the launderette and acknowledge that the police and highways officer did not object to the appeal schemes. However, these are neutral factors in my consideration of the appeals.

Conclusion on Ground (a) and S78 appeal

20. The launderette provides a facility for local people, including disabled users and is therefore of modest benefit to the community. The facility also allows diversification in terms of revenue for the existing business and is therefore likely to be of some very modest economic benefit to the area.
21. For the reasons given above, I have found that the launderette harms the character and appearance of the area and the living conditions of nearby occupants and conflicts with the development plan taken as a whole. These matters attract significant weight and outweigh the benefits associated with the development.
22. The launderette conflicts with the development plan and there are no other considerations, including the National Planning Policy Framework (2019), that outweigh this conflict.

Ground (f)

23. An appeal under ground (f) is made on the basis that steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is clear that the purpose of the Notice is to remedy the breach, since it requires the removal of the unauthorised development in its entirety.
24. The appellant's case under ground (f) relates to the planning merits which I have considered under ground (a) above. The requirements go no further than is necessary to achieve the purpose of remedying the breach and so the appeal under ground (f) must fail.

Ground (g)

25. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

26. The appellant suggests a period of three months is required to remove and make good the site. The appellant has drawn my attention to full or partial lockdowns, required as a consequence of the Covid-19 pandemic. I note that the Council advise it considers a period of two months is acceptable given the change in circumstances since the enforcement notice was issued.
27. Given the likelihood that compliance with the enforcement notice would require a suitably qualified engineer to safely remove the launderette, and in light of the above, I consider extending the compliance period for three months is reasonable. I shall therefore vary the terms of the enforcement notice accordingly.

S174 Overall Conclusion

28. For the reasons given above I conclude that a reasonable period for compliance would be three months and I shall vary the notice accordingly. The appeal under ground (g) succeeds to that extent. I conclude that the appeal on ground (a) and (f) should not succeed. I shall uphold the enforcement notice as varied and refuse to grant planning permission on the deemed application.

M Savage

INSPECTOR