



Appeal Decision

Site visit made on 19 August 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2021

Appeal Ref: APP/Z4310/C/19/3243155

Land at 158 Walton Road, (including 2 Christopher Street), known as 'Liverpool Party Pad', Liverpool, L4 4AZ

- 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 Stephen Charlesworth against an enforcement notice issued by Liverpool City Council.
 - The enforcement notice, numbered C/18/0335, was issued on 22 November 2019.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the change of use from a public house/bar (A4) use to short term leisure accommodation (*sui generis*),
 2. Application of timber cladding to external northern and western elevations,
 3. Construction of timber planters to external elevations to north and west, and
 4. Siting of hot tub with associated decking structure within the yard to the east of the building.
 - The requirements of the notice are to:
 1. Cease the use of the premises for short term leisure accommodation (*sui generis*).
 2. Remove the ground floor timber cladding and timber planters to the northern and western elevations and make good the exterior walls using either uniform coloured blue tiles or red brick to match the upper floors or render coloured cream or white.
 3. Remove hot tub and decking structure within the yard to the east of the building.
 - The period for compliance with the requirements is,
 1. 2 months.
 2. 4 months.
 3. 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal 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.

Procedural issues

2. On 20 July 2021, the Government published the National Planning Policy Framework (the Framework) which replaces the previous version published in February 2019. Planning decisions must be determined in accordance with the

development plan unless material considerations indicate otherwise. The Framework is such a material consideration where it is relevant to a planning application or appeal.

3. In this case the reasons for issuing the notice was based on the saved policies of The City of Liverpool Unitary Development Plan (UDP). I have considered the content of the Framework against the 2019 version of the Framework, in so far as, it relates to this appeal. I see no significant difference between them (the Framework and the 2019 Framework) having regard to the development and the submissions made on this appeal that would warrant going back to the parties on this issue. I am satisfied that this would not cause injustice to any party involved in this appeal.
4. The Town and Country Planning, England, The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020. Regulation 10(7)(b) of the Order places public house, wine bar, or drinking establishment outside of any specified class of that Order. However, the deemed application is submitted prior to the commencement of the material period and Regulation 4 provides that the application must be determined by reference to those uses or use classes which were in place by The Town and Country Planning (Use Classes) Order 1987.
5. Regulation 4 of the Use Classes Order Amendment 2020 provides that the deemed application is determined in view of the Use Classes Order 1987, and therefore there is no material change to the way in which this appeal is determined. The parties' views were not sought on the issue since it made no material difference to the deliberations of this appeal in relation to the allegation and the submissions made by the parties.

The appeal on ground (b)

Whether the breach of planning control as alleged has occurred as a matter of fact

6. The appellant contends that the premises is a typical example of a substantial Liverpool drinking establishment with accommodation on the upper floors and manager's dwelling. It is maintained that this has been an historical feature of inner-city pubs providing short-term cheap and cheerful accommodation. It is therefore asserted that the lawful use is a mixed use comprising a drinking establishment on the ground floor and a hotel or boarding house on the upper floors often with shared bedrooms and manager's dwelling. The appellant asserts that the drinking establishment is available independent of the accommodation and vice versa. The case put is that the alleged use has not occurred as a matter of fact.
7. The Council contends that the previous lawful use of the building was a public house with accommodation on the upper floors being ancillary or incidental to the ground floor use. This indicates that in the Council's view the primary use was a public house with ancillary or incidental accommodation above.
8. The Council alleges in the notice that this primary use of public house has changed to another primary use of short-term leisure accommodation with an ancillary public house use on the ground floor.
9. Although this is the Council's main contention, it is also suggested in submissions that the use could be a mixed use of short-term leisure accommodation with associated function facilities. This latter alternative view

- would not coincide with the enforcement notice allegation and would if right mean that the notice would need correcting, subject of course to any correction not causing either party injustice.
10. The appellant's submission is that the existing use is a mixed use comprising a drinking establishment on the ground floor and a hotel or boarding house on the upper floors.
 11. The concept of a mixed use is one of two primary uses existing within the same planning unit or unit of occupation. The occupier carries out a variety of activities and one is not ancillary to another where the component activities fluctuate in their intensity over-time, but the different activities are not confined within separate and distinct areas of the land.
 12. In relation to a ground (b) appeal the onus is on the appellant to demonstrate that the alleged use has not occurred as a matter of fact and degree. However, by suggesting that the alleged use has not occurred the appellant is also indicating that the lawful use of the premises is a mixed use and that this is established. It is also asserted that this mixed use is the same or no different in character to the use which is carried-out in the premises.
 13. There is no evidence presented with this appeal to conclusively presume that the lawful use is that of a mixed use and that the purported mixed use fluctuates in intensity between a public house and hotel/boarding house. This proposition has not been established through documentary/physical evidence that this mixed use has occurred at all, or has continued if it has occurred, for the requisite period so that no enforcement action may be taken in respect of it.
 14. The description put forward by the appellant that of a 'typical example of a substantial Liverpool drinking establishment with accommodation on the upper floors and manager's dwelling', in my view, describes a public house as the primary use and the accommodation on the upper floors as ordinarily incidental to that primary use. In the absence of evidence from the appellant that the mixed use has occurred, I consider it more likely that the Council's submission is more probable. That is the former use of the building was a public house with accommodation on the upper floors being ancillary or incidental to the public house use.
 15. Turning now to the question of whether the alleged use has occurred as a matter of fact and degree. The Council refers to the way the premises is advertised as an indication of a short-term leisure accommodation use.
 16. The Council's evidence is that the internet accommodation booking web site indicates that the ground floor bar is available for guests of the upper floors as a 'party venue', and that the bar is available for hire separately from the upper floor accommodation. The Council contends that the premises are not available for the public to enter at will to purchase drinks and food and is therefore not operated as a public house. The Council say that the focus is now on accommodation which results in people arriving as individuals or as a group, and that people staying can arrive or leave at any time of the day or night.
 17. From my inspection of the premises, there were 11 rooms and 1 manager's flat. I saw that the accommodation on the upper floors including the manager's flat were decorated in different themes. These were dressed and decorated

- depicting cultural references of local celebrities from the arts and television. There were football themed rooms, and a Lego themed room amongst others.
18. The bar area on the ground floor was similarly themed with pieces of wall art and graffiti and various props dressed to convey a party atmosphere.
19. Most of these rooms had several double beds in each room. The washing/showering/toilet facilities were grouped together outside the bedrooms and there was a communal breakfast bar and seating area. The guests in the accommodation on the upper floors have use of the bar and hot tub on the ground floor. The hot tub situated in the covered area adjoining the bar was not closed-off from the bar and it is likely due to the configuration of the layout that guests could roam freely between the bar and the hot tub area and vice-versa.
20. It seems more likely than not that the primary focus of the use is now on providing accommodation for individuals and groups of people to use as a party venue. Although not conclusive on its own the venue is named 'Liverpool Party Pad'. The premises functions primarily as a place to stay with the bar available for guests and the use of a hot tub adjacent to the bar. From the available evidence the public house use is not available to the public to enter at will to purchase drinks and food.
21. From what I have seen, there is no functional or physical separation between these activities. Guests of the accommodation could freely roam from the upper floors to the ground floor and between the bar and the hot tub area. The business is based on filling rooms for guests to enjoy the facilities the premises has to offer. The bar appears an incidental or ancillary role to this function since it no longer operates as a public house in that the public cannot avail themselves of these facilities. The bar maybe hired out separately but there is little evidence of this from the appellant. I doubt from the configuration of the layout that guests of the upper floor accommodation would be denied access to the ground floor bar when a function occurs and such occurrences would not change the primary purpose as alleged in the notice.
22. From the available evidence it is more probable than not that the alleged use has occurred as a matter of fact and degree. No case is made that the operational components of the notice has not occurred.
23. The appeal on ground (b) therefore fails.

The appeal on ground (c)

Whether the alleged breach constitutes a breach of planning control, so that planning permission is required to authorise it

24. It needs to be shown that the change of use is not material and planning permission would not, therefore, be required to authorise the alleged use. I must compare any differences in the character of the alleged use with the authorised use of the building. I have already turned away the appellant's suggestion that the authorised use is a mixed use under the ground (b) appeal. The ground (b) establishes from the available evidence that it is probable that the former use of the building was a public house with accommodation on the upper floors being ancillary or incidental to the public house use. I also consider that the former use of public house has been supplanted by the primary use of short-term leisure accommodation.

25. The pattern of use at the premises is directed at providing accommodation to facilitate a party venue and this is materially a different character of use to a former licensed public house use. A public house use is a venue where people arrive for drinks, entertainment and food regulated by licensing hours whereby the peak of activity would typically be in the evenings. The activity associated with the alleged use is where guests can arrive at different times of the day and night with evidence presented by the Council to indicate that this could be in the early hours of the morning. It is suggested by the Council that this unmanaged and unsupervised activity has been subject to complaints by residents and local councillors and has resulted in the police being present on occasions. This has been corroborated by a representation made in response to this appeal.
26. The environmental effect of the alleged use is a factor in deciding whether there has been a material change of use involved. Representations indicate that there have been issues with noise up to 04:00 and 05:00 hours on weekends and concerns about the outside storage of rubbish. I am advised that the former public house closed under its license at 01:30 hours Thursday-Saturday.
27. A short-term leisure accommodation use would be outside of any use class and would ordinarily require planning permission. Future changes to the Use Classes Order (outside the transitional period) would place public houses outside of any use class and ordinarily would require planning permission to change this use. Notwithstanding this point, I find the change of use from public house to short-term leisure accommodation use a material change of use due to the change in the character and activity of the use, the way it functions, and due to its local environmental impact in relation to noise and disturbance.
28. I conclude that as a matter of fact and degree that the change from public house to short-term leisure accommodation use, in this case, is a material change of use and planning permission would be needed to authorise it.
29. There is a suggestion in the ground (a) appeal that the external cladding has replaced cladding installed 10 years ago and that the decking in the covered area was originally installed 10 years ago but the planks were replaced in 2018.
30. The appellant provides no evidence to back this claim and I concur with the Council that it is more probable than not the timber cladding replaced glazed tiles in this case. I find that the timber cladding materially affects the external appearance of the building, and planning permission would be needed to authorise it.
31. There is no evidence presented by the appellant to indicate the assertion concerning the decking area. It seems probable from the available evidence that when the decking was replaced the hot tub and the associated decking may have been installed. The onus is on the appellant to demonstrate that the hot tub/decking has gained immunity or is not in breach of planning control. Nothing has been presented on the matter. The Council indicates that the hot tub/decking was in place at the time the notice was served and that this amounted to a building operation by a person carrying on business as a builder, and planning permission would be needed to authorise it.

32. From the available evidence, I consider as a matter of fact and degree that the operational components of the notice do constitute a breach of planning control and that planning permission would be required for them.

33. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed application

34. The main issues are the effect of the development on the living conditions of nearby residents in relation to noise and disturbance, and the effect of the development on the character and appearance of the building and the surrounding area.

Living conditions

35. The deemed application derives its terms from the allegation of change of use from a public house/bar use to short term leisure accommodation. The appeal site is a three-storey Victorian brick building with a yard area. There is a commercial premises next door to the yard and a retail unit and car park to the north of the site. To the south of the appeal building is an alleyway and residential properties.

36. Planning permission reference 92P/1802 was granted to use the rear of the public house as a beer garden and to erect a fence.

37. As set out in the ground (b) and (c) I have found that one of the consequences of the change of use is its impact on the living conditions of nearby residents.

38. The pattern of use at the premises is directed at providing accommodation to facilitate a party venue which is unregulated in terms of time. The layout of the use allows guests of the accommodation to use the ground floor bar and hot tub area at any time. Whilst there is on-site management the Council indicates that there have been eight complaints in relation to noise, music, shouting and singing, people congregating outside on the street and in the covered area around the hot tub. The Council allege that residents feel unsafe and that there is a lack of on-site management to prevent or stop anti-social behaviour taking place. The Council contends that the police have been called to the property on four occasions including for one serious assault when two arrests were made.

39. The appellant has not provided evidence to counter these claims. The evidence from the Council is detailed and persuasive and is corroborated by correspondence submitted in response to this appeal.

40. The impact on the living conditions of nearby residents of the alleged use is more harmful than the former use of public house/bar. The former public house was regulated by licensing controls and on-site management. Residents could expect some degree of disturbance associated with the former use, but they would gain respite when the public house would close under its licensing terms. The alleged use is designed to facilitate a party atmosphere whereby suitable planning controls could not realistically control the behaviour of guests. I am not persuaded that securing this measure through a condition attached to a planning permission would be enough to overcome the identified harm.

41. I note the appellant's point that the beer garden has been authorised as part of the drinking establishment. I also note that the appellant contends that any noise from the hot tub is contained by the boundary walls and glazed canopy.

42. Planning permission was granted for the beer garden in connection with the public house which was regulated by licensing controls. I have concluded that there has been a change of use which has impacted on the living conditions of nearby residents in relation to noise and disturbance. The evidence from residents and the Council is that noise and disturbance is a significant concern and that the unregulated use continues into the early hours of the morning when ambient noise levels in the area normally drop. Any short outbursts of noise through shouting and singing associated with the alleged use which has a focus on providing a party venue facilitated by the hot tub/decking situated in the covered area has been shown from the available evidence to be harmful to the living conditions of nearby residents.
43. The change of use conflicts with UDP Policy GEN 4 which sets out to promote good quality living environment for all Liverpool's residents by improving the living environment of existing housing areas, and conflicts with UDP Policy H4 which permits within residential areas, amongst other things, new industrial and business development, redevelopment or change of use, provided there is no adverse impact on residential amenity or the character of the area.
44. I have also been referred to The Liverpool Local Plan 2013-2033 (Pre-submission draft January 2018) as an emerging plan. The relevant policies are noted as UD1, UD4, TP1 and STP3. However, the Council notes that whilst these are material considerations, they are to be given limited weight at this time due to the emerging plan's stage of progression.
45. I conclude that planning permission should not be granted for the alleged change of use enforced against. I conclude that the development harms the living conditions of nearby residents in relation to noise and disturbance.

Character and appearance

46. Turning to the operational components of the notice the application of the timber cladding, the construction of timber planters and the siting of the hot tub with associated decking. The timber planters had been removed prior to my inspection, although there can be no dispute that they were present when the notice was served. The notice has a continuing effect to prevent the containers from being re-introduced and are therefore considered in the deemed application.
47. Whilst the hot tub/decking are enclosed in the yard they facilitate the use enforced against which is considered unacceptable for the reasons I have outlined above under the heading living conditions. The requirement to remove the hot tub/decking is reasonable having regard to the identified harm in connection with the use enforced against.
48. However, the Council is also concerned that the hot tub/decking area has resulted in the loss of a bin storage area. It is claimed that bins are being stored on the highway or in the alleyway which is reported to be a thoroughfare. The lack of a bin storage area is considered to conflict with UDP Policy GEN 8 which is aimed at ensuring that all developments are carried out with due consideration for the environment and public health.
49. Whilst I saw no bins being stored on the highway it seems more likely than not that the use enforced against has displaced the bins storage facility to outside the building on the pavement or the alleyway. The alleyway is not outlined on

the notice plan as being the use enforced against, but the consequence of the hot tub/decking area has resulted in these issues and concerns being raised. This adds to my concern about the development; however, the main objection relates to the impact of the use with its associated hot tub/decking facility.

50. In relation to the issue of the cladding and planters the appeal building is situated on a prominent corner with an open area of parking to the north. I concur with the Council that the alterations to the exterior of the building are highly noticeable in the street scene and are seen by large numbers of people passing through the area. The timber cladding is decorated in a variety of shades of colour and the planters are box-like and quite bulky additions. The combination of these alterations and additions on the ground floor is a visually distracting appearance to the Victorian character of the upper floors of this brick corner building.
51. I find the timber cladding and the planters harmful to the character and appearance of the building and the surrounding area. I consider that these features conflict with UDP Policy HD18, which seeks developments to include the characteristics of local distinctiveness in terms of design and materials.
52. I conclude that the ground (a) appeal and the deemed application should not succeed.

Conclusions

53. For the reasons given above, the appeal 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.

Iwan Lloyd

INSPECTOR