



Appeal Decision

Site visit made on 14 September 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2021

Appeal Ref: APP/Z4718/C/21/3272693

Land and property adjacent to 188 Healey Lane, Healey, Batley WF17 8BN

- 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 Azhar Hussain Rafiq against an enforcement notice issued by Kirklees Metropolitan Borough Council.
 - The enforcement notice was issued on 10 March 2021.
 - The breach of planning control as alleged in the notice is the material change of use to industry (as defined by Class B2 of the Use Classes Order 1987 (as amended)).
 - The requirements of the notice are to cease the use of the land and building for industry, including repairs.
 - The period for compliance with the requirements is 60 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (g) 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. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Appeal under ground (b)

2. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred.
3. The appellant accepts that planning permission is required for the use of the appeal building for the manufacture and repair of beds. However, the claim under ground (b) is that this is not development falling within use class B2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) as alleged in the breach of planning control. Instead, the appellant claims that it is a use which falls under what was previously use class B1 (i.e. light industry) and which is now use class E (Commercial, Business and Service). The UCO states that in terms of Class E these are '*uses which can be carried out in a residential area without detriment to its amenity*'.
4. The appellant claims that use of the appeal building for the manufacture and repair of beds is Class E development with reference to the Land Use Gazetteer (LUG) which refers to a '*bed manufacturing place*' or a '*bedroom furniture manufacturing place*' as use class B1. The LUG is neither statute nor national policy and I consider that the use classes should be interpreted in relation to the actual impact a use has or is likely to have rather than by its description.

Indeed, whether a use falls within a specific use class is of course a matter of fact and degree depending on the circumstances of each use.

5. The appellant has provided very little information in terms of how beds are specifically repaired or manufactured. However, a floor plan of the site has been submitted within the appellant's appeal statement and this shows dedicated areas for stitching, frame manufacturing, mattress manufacturing, storage and deliveries, parking and waste storage. Furthermore, the evidence indicates that the local planning authority received complaints in respect of noise associated with the use of the building for the repair, manufacturing and storage of beds.
6. As a matter of fact and degree, and taking into account the evidence that is before me, I consider that the allegation in the notice is correct. In other words, I consider that when the notice was issued the breach of planning control was causing detrimental harm to the amenity of this predominantly residential area. This evidence includes objections from members of the public in respect of the withdrawn planning application Ref 2021/91304. Consequently, I conclude that the breach of planning control does relate to a B2 use class and hence the ground (b) appeal fails in so far that when the notice was issued such development had occurred.

Appeal under ground (a) and the deemed planning application

7. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice.
8. I have considered the reasons for issuing the enforcement notice and the main issue is the effect of the breach of planning control on (i) the living conditions of the occupiers of neighbouring residential properties in respect of car parking, access and noise and (ii) highway safety and the free flow of traffic.

Lawful use of the building

9. There is no dispute between the parties that prior to the breach of planning control the last lawful use of the building was for use class B8 storage purposes. However, the Council claims that such a B8 use has been abandoned and comment that *'the Council's position is that the mill has been in a nil use, and no longer has permission for storage use as this has not occurred continuously over the last 10 years and so planning permission would be required for storage use'*.
10. In the absence of a certificate of lawful development in respect of this matter, I cannot be certain whether the appeal building and site has a nil use or whether it has a lawful B8 storage use. I would add, however, that in considering whether a use is abandoned the courts have held that a number of matters need to be considered including the period of non-use; the physical condition of the land or building; whether there had been any other use, and the owner's intentions as to whether to suspend the use or to cease it permanently. I do not have detailed information relating to these matters and of course the building is now being used for a different purpose.
11. Even if I was to agree with the appellant that the building/premises benefitted from a lawful B8 storage use, the weight that I could give to this as a fall-back position as part of the consideration of the deemed planning application would not be significant on the basis that I am not in a position to know the likelihood

of any B8 use resuming or occurring. In fact, the undisputed evidence indicates that the building has not been used for a B8 storage use for quite some time which is perhaps an indication of lack of demand. This also therefore diminishes the weight that I can afford to any possible fall-back position in respect of relative levels of activity and comings and goings.

Living conditions

12. At the time of my site visit, the appeal premises were not in use for business purposes and the appellant commented that the '*site had been cleaned up and the business was now operating elsewhere*'.
13. There is no dispute between the parties that when the notice was issued, some manufacturing was taking place at the site. The appellant does not dispute that the business operation made use of a sawdust extraction system, air handling units and fans. The appeal site adjoins an end terraced house and the use of this machinery, coupled with activity within the yard area in respect of the loading and unloading of goods, and the general comings and goings of vehicles, pedestrians and use of a fork lift vehicle, has the potential to be an unacceptable source of noise and disturbance for occupiers nearby residential properties, and, in particular, the dwelling adjacent to the site.
14. I acknowledge the appellant's suggested planning condition which would control operating hours to between 8am and 6pm Monday-Friday, 8am and 4pm on a Saturday and no working on a Sunday or Bank Holidays. This would go some way in terms of minimising noise and disturbance from the site late in the evening and in the early hours of the morning. Furthermore, the Council's concern about permitting a general industrial use could be addressed by granting a personal permission.
15. Notwithstanding the above, the evidence is that the development has the potential to lead to some on-street car parking in respect of staff and visitors. In the absence of car parking survey information from the appellant, I have some concern about the effect that this may have on on-street car parking displacement for nearby residents. Furthermore, the evidence is that there were a number of noisy activities associated with the breach of planning control. In the absence of a noise survey, I have concern about the effect of manufacturing activity and vehicular comings and goings on the quiet enjoyment of what is a predominantly residential area, and at all times. Indeed, I find direct conflict with Policy LP52 of the LP which states that proposals '*must be accompanied by evidence to show that impacts have been evaluated and measures have been incorporated to prevent or reduce pollution*'.
16. For the reasons outlined above, I cannot conclude with certainty that the proposal would not lead to inconvenience for nearby residents from a car parking point of view or that the development would be acceptable from a noise and disturbance point of view. These are matters that go to the heart of the acceptability of the ground (a) appeal development and therefore it would not be appropriate to impose conditions relating to these matters. The breach of planning control does not therefore accord with the environmental, pollution and living conditions requirements of Policy LP52 of the Kirklees Local Plan Strategy and Policies 2019 (LP) and paragraph 127(f) of the National Planning Policy Framework (the Framework).

Highway safety and free flow of traffic

17. The appellant has included a floor plan of the site in his appeal statement showing the parking of three lorries in the front yard area. Given the limited amount of space within this area for on-site turning, it is likely that lorries and other vehicles would have to reverse into or out of the site. Furthermore, the evidence is that this space has been used for fork lift vehicle movements as well as for some outside storage.
18. Healey Lane is a relatively busy and narrow road and is in close proximity to a primary school. In the absence of dedicated on site turning facilities, and the likely limited availability of front yard space for car parking and delivery vehicles, I consider that the breach of planning control would likely result in either reversing manoeuvres into or out of the site from Healey Lane, which would have the potential to unacceptably interrupt the free flow of traffic on this highway. The parking of cars and, in particular, delivery vehicles on Healey Lane would also have the same adverse impact taking into account the fact that this is a narrow and relatively well used road.
19. Even if all staff and delivery vehicles could be accommodated within the appeal site, the reversing of such vehicles into or from Healey Lane would also lead to unacceptable conflicts with pedestrians using the nearby pavement or with other passing motorists. This harm would be exacerbated given the close proximity to two road junctions, i.e. Mortimer Street and Mortimer Avenue. The loading or unloading of goods from the highway including the use of a fork lift truck would similarly be an unacceptable arrangement from the point of view of the safe use of the pavement by pedestrians and others.
20. I therefore conclude that the development has caused unacceptable harm to highway safety and that there is potential for it interrupt the free flow of traffic on Healey Road. Therefore, it does not accord with the highway safety and traffic management requirements of Policy LP21 of the LP and paragraph 109 of the Framework. In this case, the appellant has not persuaded me that planning conditions could be imposed to reasonably address my concerns in respect of this main issue.

Conclusion on the ground (a) appeal

21. For the reasons outlined above, I find that the development does not accord with the development plan for the area when considered as a whole. There are no material considerations, including the potential for the site to have a lawful B8 use and the economic benefits of business use of the site, which would outweigh the identified conflict with the development plan. I therefore conclude that the ground (a) appeal fails.

Appeal under ground (g)

22. The appeal on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
23. The compliance period in the notice is 60 days. The appellant claims that a period of 6 months is needed to relocate the business to alternative premises, including moving the machinery. The evidence is that the business has already relocated, although I accept that I do not have full details about this matter.

24. The appellant does not say why 60 days is not long enough to re-locate the business to alternative premises or why 6 months would be more appropriate. In the absence of such detailed reasons, I find that 60 days is an acceptable period to comply with the requirements of the notice. Therefore, the ground (g) appeal fails.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Hartley

INSPECTOR