



Appeal Decision

Site visit made on 10 August 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH SEPTEMBER 2021

Appeal Ref: APP/F4410/C/21/3274845

Land at 38 Hawthorn Crescent, Mexborough, Doncaster S64 9EL

- 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 Mark Roberts, Sweet Memories against an enforcement notice issued by Doncaster Metropolitan Borough Council.
 - The enforcement notice was issued on 27 April 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised change of use of a residential outbuilding within the curtilage on the land for the running of a commercial sweet shop business (Use Class E(a)).
 - The requirements of the notice are (i) Cease the use of the land as a commercial sweet shop business; and (ii) Remove all stock and associated equipment pertaining to the commercial sweet shop business in their entirety from the land.
 - The period for compliance with the requirements is one month from the date upon which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended (the Act). 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, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

The appeal on ground (c)

2. For the appeal to succeed on this ground, the appellant needs to demonstrate that the use of the outbuilding for the running of a commercial sweet shop business does not constitute a breach of planning control, because it is not development or does not require planning permission.
3. While the appellant was advised that planning permission would not be required, that was in respect of alterations to the outbuilding. The notice does not include any alterations to the outbuilding in the alleged breach of planning control and it does not require any building works to be removed.
4. In contrast, the Council advised that a proposed retail unit would constitute a material change of use requiring planning permission. A subsequent application for a retail use comprising sale of sweets and household goods¹ was refused. While I understand an appeal against that refusal was dismissed, only limited

¹ 19/02635/FUL, refused 19 February 2020

details have been provided. Nevertheless, it is apparent that the need for planning permission for the use was not disputed. No evidence to suggest that the use of the outbuilding as a commercial sweet shop business does not require planning permission has been presented in this appeal.

5. The character of the use of the outbuilding as a sweet shop business is different from that associated with a typical residential use, particularly in terms of activity generated by deliveries and customers. Accordingly, a material change of use requiring planning permission has occurred and the appeal on ground (c) must fail.

The appeal on ground (a)

6. The main issue in this appeal is the effect of the use of the outbuilding as a commercial sweet shop business on the living conditions of nearby residents.

Reasons

7. The appeal premises are within a quiet residential area and close to neighbouring dwellings. The increased activity associated with a retail use would not protect local amenity and would harm residential amenity through noise generated by deliveries and visitors and, potentially, through excessive traffic. Accordingly, the use of the outbuilding as a sweet shop is contrary to saved policy PH12 of the Doncaster Unitary Development Plan and policy CS1 of the Doncaster Council Core Strategy 2011-2028.
8. The examination of the emerging Doncaster Local Plan 2015-2035 (the emerging plan) has concluded. The plan has been found to be sound, subject to the recommended main modifications. The Council anticipates it will adopt the plan by Autumn 2021. The emerging plan is therefore at an advanced stage and significant weight may be afforded to its policies. The emerging plan provides support for non-residential uses that do not cause unacceptable loss of residential amenity. However, as noted in the assessment against current development plan policies, that would not be the case in this instance.

Other matters

9. The appellant considers the sweet shop benefits him and his family, his community, and the local area. While it is possible for such benefits to align with the objectives of Core Strategy policy CS1, no further explanation of the benefits, or their significance, has been provided. As a result, only limited weight may be afforded to this aspect of the appellant's case and it therefore does not alter or outweigh my findings on the main issue. Accordingly, the appeal on ground (a) must fail.

Conclusion

10. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.

Mark Harbottle

INSPECTOR