
Appeal Decision

Site visit made on 2 November 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/D4635/C/21/3280168

Land comprising 179 Wellington Road, Wolverhampton, West Midlands WV14 6RN

- 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 Davinder Singh against an enforcement notice issued by Wolverhampton City Council.
 - The enforcement notice was issued on 6 July 2021.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the erection of an unauthorised single storey front extension, an extraction flue and an unauthorised change of use from light industrial (Class E) to a training centre (Class F).*
 - The requirements of the notice are:
 - Remove the unauthorised extension and flue*
 - Return the use to how it existed before development commenced*
 - Cease the use of the premises as a training centre*
 - Remove all waste materials arising from the required works to a lawful place of disposal*
 - The period for compliance with the requirements is four weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 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 1990 Act.
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Decision

1. It is directed that the enforcement notice be varied by:
 - i). the deletion of the following requirement "Return the use to how it existed before development commenced" noted in paragraph 4;
 - ii). the deletion of "4 weeks from the date the notice takes effect, namely the 03.09.2021" and the substitution of "12 weeks" as the period for compliance; and
 - iii). the deletion of "i) It appears to the Council that the above breach of planning control has occurred within the last four years" from the reasons for issuing the notice, and the substitution therefor of "i) It appears to the Council that the above breach of planning control concerning the operational development has occurred within the last four years and the breach of planning control concerning the material change of use has occurred within the last ten years".

2. The appeal is allowed insofar as it relates to the “material change of use of the land” and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for “*change of use from light industrial to a training centre on land comprising 179 Wellington Road, Wolverhampton, West Midlands WV14 6RN*” subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plan reference Dwg No MC/2575/03C dated 07/05/2021 entitled Updated Parking 25.10.2021. The parking spaces shall be provided within 3 months of the date of this decision and kept available at all times for the parking of motor vehicles by the users of the property and for no other purpose.
3. The appeal on ground (a) is dismissed insofar as it relates to the single storey front extension and the extraction flue and planning permission is refused in respect of that development on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
4. Subject to these variations, the enforcement notice is upheld.

Matters concerning the notice

5. The reasons for issuing the notice state that the breach of planning control has occurred within the last four years. Section 171B of the 1990 Act concerns the time limits for taking enforcement action. S171B(1) concerns operational development where *no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed* and S171B(3) states that “*in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach*”. The alleged breach in this case attacks the operational development and the material change of use. As such the time limit for taking enforcement action would be 10 years for the use of the building and this should have been stated in section 4 of the notice.
6. A requirement to cease the unauthorised use is sufficient, whereas a positive requirement to restore the use of the building to its previous use goes beyond what is necessary to remedy the breach of planning control. Accordingly, I have deleted this by way of a variation to the notice.
7. I am satisfied that these variations to the notice would not result in any injustice to the parties¹.

Background

8. Planning permission for the change of use to training centre, extraction flue and car park was refused by notice dated 6 July 2021² for the following reason: “This is a very constrained site and it cannot support an education use which is inherently unacceptable in principle. A low level commercial use would be less intensive than an education use which is in a different use class for good reasons.”

¹ 176(1)(a) of the 1990 Act

² 21/00788/FUL

9. The Appellant's submissions primarily contest the requirement to cease the use as a training centre. They confirm in their statement³ that they are willing to remove the unauthorised extension and flue, and only contest the time period given for these works to be completed. In these circumstances, the deemed planning application (DPA) need only include the material change of use of the land. Therefore, I shall confine the appeal on ground (a) and the DPA to the material change of use of the premises on the basis that the extension and flue are removed.

The appeal on ground (a) and the DPA

Main Issue

10. This is the effect of the development on highway safety in terms of on-site parking provision.

Reasons

11. The appeal site, which I am informed was vacant for c5-6 years, is located on the corner of a busy road junction where the A41 Wellington Road, Stowheath Lane and Ward Street meet. The commercial property has an adjoining yard with vehicular access to Stowheath Lane. The immediate area is a mix of residential and commercial with businesses such as: a barber shop, beauty salon, hair salon, pizza shop and post office which neighbour each other in a linear row. On the opposing corners is a meat shop and public house. Further to the west is another public house opposite a vehicle servicing workshop and a small cluster of shops. Along Wellington Road to the east is the City of Wolverhampton College and a large petrol station with associated coffee shop and 24/7 grocery store.
12. The property has been extended to the front into the parking area and original vehicular access. A section of wall has been demolished to allow vehicular access to the site and where there is limited space for parking.
13. The Council's statement provides that Policies C1 and S4 of the Wolverhampton Unitary Development Plan 2001-2011 (the UDP) and Policy HOU5 of the Black Country Core Strategy (February 2011) (the CS) require new facilities to be located in appropriate accessible locations which reflects the wider need of the neighbourhood and provide suitable access for those with disabilities. The site itself does not provide enough parking for an education use which would have students and employees staying on the site for large periods of the day. There is limited provision in the area for on street parking and the original access to the site has been blocked by the extension resulting in highway safety concerns.
14. There is no dispute between the parties that the site is within a highly accessible location for public transport. This is corroborated by the evidence provided by the appellant who has brought to my attention the bus services that operate in the area and their frequency, in addition to the tram service, rail services and the proximity of the National Cycle Network which connects to Wolverhampton City Centre and Birmingham along the Birmingham Canal.
15. The site is located close to a traffic signal controlled junction with nearby roads protected to an extent from on-street parking by existing Traffic Regulation

³ Paragraph 1.4

Orders. Beyond the immediate location, some properties provide off-road parking and others appear to have no such provision. However, there are unrestricted sections of the highway close by, which are available for on-street parking within the immediate vicinity.

16. The appellant has referred to Policy AM12 of the UDP which relates to parking and servicing provision for new development. This advises, within its explanatory text and reflected in the Council's Highway and Transportation Technical Guidance (July 2016) (the TTG), that the 'normal maximum parking standards' for 'Higher & Further Education below 2,500 sqm' is 1 space per two staff and 1 space per five students⁴. The TTG also provides that the minimum provision for disabled parking spaces is 'at least one bay regardless of car park size for a car park used for schools and higher and further education'⁵. This policy and the TTG were not referred to by the Council in their submissions but were provided by them following my request.
17. From the submissions, the premises would be open Monday to Saturday. Two members of staff and on average 4 trainees would use the training facility. This would equate to a maximum of 2 parking spaces in addition to one space for disabled staff/trainees. With the extension removed, the site would be able to accommodate parking for two vehicles, including a disabled bay, as shown on the plans provided by the appellant⁶.
18. This would fall below the 'normal maximum parking standards' for the use of the site as provided by the TTG. However, this is a maximum figure. It is agreed that the site is within a highly accessible location for public transport and, from the evidence presented within the Transport Statement⁷ and from what I saw on the ground, any additional on-street parking that may be generated by the proposed use could be accommodated within the locality with limited disruption to the occupiers and users of the immediate area. In this respect, the proposed use is unlikely to be more intensive than the previous commercial use that operated from the building previously.
19. Overall, I consider that the proposal complies with the essence of Policy S4 of the UDP, which encourages development proposals that contribute towards providing a well-balanced mix of uses to deliver a sustainable environment through reducing the need to travel, producing vibrant and interesting places and making better use of redundant and vacant buildings. It also complies with Policy HOU5 of the CS which directs that education facilities should be well-related to public transport infrastructure. Policy C1 of the UDP refers to community facilities and services for health and education and in this respect, where the proposal is for a privately-run enterprise, it has limited relevance.

Conclusion

20. There are no material considerations that indicate the deemed application should be determined other than in accordance with the Development Plan.
21. For the reasons given above, I therefore conclude that the appeal on ground (a) succeeds in respect of the material change of use of the premises from light

⁴ Table DG11:

⁵ Table DG12

⁶ Dwg No MC/2575/03C dated 07/05/2021 entitled Updated Parking 25.10.2021 provided with the appellant's final comments

⁷ undertaken by Milestone Transport Planning dated October 2020

industrial to a training centre and planning permission shall be granted on the DPA for the material change of use. With regard to the operational development that has occurred in the form of the extension and the flue, this did not form part of the ground (a) appeal. Accordingly, this part of the notice is upheld and I shall refuse to grant planning permission on the deemed application.

22. Instead of varying the requirements of the notice, Section 180 (1) of the 1990 Act provides that: "Where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission". The appellant is therefore able to rely on the provisions of Section 180 (1).

Conditions

23. The Council suggested a condition to limit the numbers of students attending courses at the premises, although no specific number was provided. Nevertheless, I consider that the use of the building would be naturally constrained by its size and therefore a condition to restrict student numbers would be unnecessary. I have attached a condition, in the interests of highway safety, which requires the parking spaces, as suggested by the appellant, be laid out and retained for those using the training facility.

The appeal on ground (g)

24. The appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The Appellant requests a six-month timeframe to complete the works.
25. Due to the nature of the operational development, four weeks is not an unreasonable period of time in which to remove the flue and extension and all resultant materials from the appeal site. However, I acknowledge that these are uncertain times, and as the current business operating at the site would likely continue, I consider extending the compliance period to 12 weeks should be an adequate period for complying fully with the requirements of the notice.
26. I shall vary the notice to that effect and the appeal on ground (g) succeeds.

S A Hanson

INSPECTOR