The Planning Inspectorate

Appeal Decision

Site visit made on 26 January 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/W4223/C/21/3282465
Land at the junction of Buckley Road and Huddersfield Road, Oldham OL4 2HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Muaaz Munshi against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The notice was issued on 10 August 2021.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from a car park to use for the sale of hot food.
- The requirements of the notice are to cease the use of the land for the sale of hot food.
- The period for compliance with the requirement is one month.
- 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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:

    1) Deleting the allegation in section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and replacing it with the following: *Without planning permission the material change of use of the land from a car wash/valeting service to use for the sale of hot food.*

    2) The deletion of one month and the substitution of two months as the period for compliance.

2. Subject to this correction and variation, 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 1990 Act as amended.

Preliminary Matter

3. The Council's reasons for issuing the notice refer to the effect of the use on the character and appearance of the area and conflict with Policy 9 of their DPD[1] however, they provide little explanation about what that harm consists of. The appellant in their statement highlighted what they consider the relevant areas of the policy and dispute to be, being, in summary, the effect on the living conditions of neighbouring occupants. The Council confirmed that they did not dispute this.

[1] Oldham Local Development Framework Development Plan Document – Joint Core Strategy and Development Management Policies Adopted 9 November 2011

The Enforcement Notice

4. The appellant also pointed out that the previous and lawful use of the land is as a car wash and valeting service which the Council does not dispute. Given the agreement between the parties and since it would neither enlarge nor reduce the scope of the allegation it would cause no injustice if I were to correct the allegation accordingly. I shall also correct the notice to clarify that there has been a 'material' change of use, since it is that which amounts to development.

The appeal on ground (a) and the deemed planning application

5. Based upon the above and the main parties' submissions, notwithstanding the reasons given for issuing the notice, I consider the main issue is the effect of the use on the living conditions of nearby residents with particular regard to noise and disturbance, odour, and light pollution.

6. The appeal site consists of a relatively large parcel of land, formerly used for a car wash/valeting service. Although there are some commercial uses including a petrol station, pub, and fish and chip shop reasonably close to the site, the immediate vicinity is largely residential in character with dwellings on the opposite side of both Huddersfield and Buckley Road.

7. The appellant contends that the level of noise generated will not be significant having regard to existing surrounding uses and the previously authorised use of the site. However, the activity and any effects associated with the car wash would be likely to be confined to the daytime. Activity associated with the pub, although operating similar hours to the appeal business, will be predominantly confined to indoors. Whilst I acknowledge that the petrol station is open 24hours a day, those customers are likely to move through reasonably quickly. Accordingly, it is probable that evenings hereabouts would be relatively calm and undisturbed by commercial activity.

8. In contrast, the hot food sales are likely to result in people congregating around the bus when ordering takeaway food. Noise generated from customers queuing and that associated with the coming and going of cars, including doors slamming and engines running, is likely to cause undue noise and disturbance to those living near the site. Given the operating times, such noise and disturbance extends late into the evening when most occupiers should expect some relative peace and quiet.

9. Representations have been made regarding cooking smells. The appellant states that cooking is restricted to burgers which are cooked on a griddle such that there is no grill or other heavy odour generating cooking. However, it seems to me that cooking burgers on a griddle would generate some smells and there is no evidence about how such smells are supressed. Given the proximity to those nearest houses on Huddersfield and Buckley Road, I find there is a reasonable prospect harm would be caused from cooking smells, particularly in the summer months when residents are more likely to be in their gardens and have windows open.

10. It is noted that objections have been raised about light pollution from headlights and signage on the bus. However, the dwellings on the opposite side of Huddersfield Road are slightly elevated above the level of the appeal site, given this and that the road is already lit by streetlights I find no material harm as a result of light pollution. Further, whilst I note comments about litter, there

is no evidence that this is attributable to the appeal business. However, lack of harm in these respects cannot outweigh the harm identified above.

11. Overall, for the reasons given I find the use causes unacceptable harm to the living conditions of those nearby residents by virtue of undue noise and disturbance and odours. The use is therefore contrary to Policy 9 of the DPD which seeks to ensure that development does not cause significant harm to the amenity of occupants and future occupants as a result of noise and other nuisances.

The appeal on ground (g)

12. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the business employs ten people and that they need time to find alternative premises, they consider a more reasonable period to be nine months.

13. In cases involving business uses, it is necessary to weigh the interests of the business, its employees and customers against the harm caused by the activities the subject of the notice.

14. Whether or not the appellant knows that planning permission is required, the enforcement system is not intended to be punitive. The business employs 10 people, and it seems likely that the cessation of the use will have some impact on them, albeit little substantive evidence has been provided about this or the availability of alternative premises.

15. No physical works are required to comply with the requirements and the use could cease within a short period of time. However, even if account is taken of the need to remedy the harm, the notice does not afford the appellant reasonable time to look for alternative premises or for employees to find alternative employment.

16. Taking all these matters into account I conclude that the period for compliance should be extended to two months. A period of two months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to bring this harmful development to an end and the interests of the appellant and their employees. To this extent, the appeal on ground (g) succeeds.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR