



Appeal Decision

Site visit made on 27 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Appeal Ref: APP/C9499/C/21/3289795

Land at 59 Main Street, Sedbergh LA10 5AB

- 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 Nigel Close (Nigel Close Limited) against an enforcement notice issued by the Yorkshire Dales National Park Authority (YDNPA).
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed. See formal decision below.

Background information

2. The two single-storey outbuildings are located to the rear of Nos 61 and 59 Main Street, in the centre of Sedbergh and form part of a row of similar outbuildings which serve properties backing onto Davis Yard. The outbuildings are connected to each other and the first part comprises a roughly-shaped square plan form, whilst the second is much narrower and slightly longer.

3. On 2 May 2020 planning permission (Ref: S/03/207) was granted for the change of use of No 59 from a shop and residential flat to a professional services and office use (Use Class A2, superseded by E(c)ii). On 18 December 2020 planning permission (Ref: S/03/207A) for alterations to the existing outbuildings to form a laundry to serve appellant's holiday let business was refused for the following reason: *'The change of use of the outbuildings to a commercial laundry business would lead to noise, odours and disturbance that would be inappropriate in this location leading to disturbance of the occupiers of the neighbouring residential properties and an adverse effect on residential amenity contrary to policies SP1 and SP4 of the Yorkshire Dales Local Plan (2015-2030)'*. Planning Committee members had deferred considering enforcement action in respect of the unauthorised development on 7 September 2021, to allow for consideration of a retrospective application (S/03/207B) for the works as carried out. But this was also refused and the enforcement action was then authorised.

4. The property at No 59 Main Street is now operated as an Estate Agency and office by the appellant. One of the appellant's businesses is a holiday letting operation, which manages a number of properties. These are all set out in the appeal statement. This indicates that there are 3 holiday letting properties; a large house; 6 apartments and a bunk barn providing a total of 95 bed spaces in 32 bedrooms. All of the properties are located in the local area, with the furthest from the appeal site being approximately just over a mile away.

5. Following the refusal of the 2020 application works were undertaken to create the laundry facilities. The appellant did not consider that a change of use would occur and so planning permission was not required. The outbuildings are now

currently used to provide laundry services for the holiday letting business. Prior to this use, they were used for purposes ancillary to the use of No 59 Main Street: primarily for storage purposes. The commercial laundry use is solely related to properties operated by the appellant and is not linked to any other operators. Nor is the laundry open to members of the public.

6. The square-shaped part of the outbuildings is used for ironing the washed laundry and there are no washing or drying machines in this part of the outbuildings. In the second, narrower part, during my visit I noted three washing machines, a small dryer and a larger commercial-type dryer. There is a flue which serves the large dryer and which rises within the square part of the outbuildings.

7. At the time of my visit (mid-morning) all of the washing and drying machines were in operation. I was able to hear the noise generated by the machinery with the doors to the outbuildings unit open, as well as closed. I was also able to enter the living accommodation at Nos 61 and 63 in order to experience the levels of noise generated by the commercial laundry operation.

8. The submissions indicate that the narrower building has been altered through the addition of a new concrete floor and a blockwork front wall with a door and two windows. Although the windows appear to be double glazed, the door seemed to be single-glazed. It was not clear whether or not the timber-boarded wall construction, or finishings, included any thermal or sound insulation.

The appeal on ground (c)

9. An appeal on this ground is made on the basis that a contravention of planning control has not occurred and the onus is upon the appellant to show that this is the case. Two arguments are put forward on behalf of the appellant. The first is that the laundry use is an ancillary use to the '*holiday letting office*' use carried out at No 59 and that, if this is not accepted, then it is contended that there has been no material change of use of the outbuildings.

The ancillary use question

10. The planning permission granted for No 59 was for '*Professional Services and Office Use*'. I acknowledge that the description of development for the planning permission granted did not specify a use class. On behalf of the appellant it is argued that it could have included a mix of Class A2 and Class B1 and, irrespective of whether or not the use of the building fell within the former Use Class A2 or Class B1, it now falls within Use Class E. I agree and having seen the submissions and visited the site, I also agree with the YDNPA that it falls into Class E(c)ii, as an Estate Agency Office and an office related to the appellant's holiday letting operation.

11. Like the YDNPA, I also acknowledge that the appellant's holiday letting business requires a laundry facility. This is not surprising as there are a total of 32 bedrooms which need to be regularly serviced. However, the previous use of the outbuildings is stated to be for storage purposes related to the shop and the accommodation above. This would clearly have been an ancillary use of No 59 at that time.

12. The laundry use on the other hand in my view is, as a matter of fact and degree, a different, separate and extensive operation. Whilst this may well be required for the functioning of the holiday letting business, in my view it cannot be said to be an ancillary part of the lawful primary purpose of the building. I consider that on the facts of the matter it is a primary use in its own right.

13. The scale of the operation (to service 32 bedrooms and 96 bedspaces) is such that it is far removed in its character and intensity of use from use as a small

ancillary store or even as a 'utility room' to the appellant's professional offices. In terms of its character of usage, it is a fundamentally different operation, or use. I do not accept that the laundry use is required in order that the primary lawful office uses, in Class E(c)ii, can function and it follows that I do not consider that the laundry use can be ancillary to the lawful use.

Whether or not there has been a material change of use of the outbuildings

14. The courts have held that whether or not a change of use has occurred must depend upon the particular circumstances of each case and, as a matter of fact and degree. The basic test is to compare the lawful use of the land or property with the use being carried out and to assess whether the use alters the character of usage of the property to such an extent that a material change has taken place.

15. As referred to above the lawful use of No 59 is as professional offices and there is no other permission in place other than the May 2020 planning permission (Ref: S/03/207). This use is now typical of a professional office being used as an Estate Agency, as well as an office to manage the appellant's holiday let properties.

16. There can be no dispute that the introduction of the laundry use to replace the ancillary storage use has altered the character of how these vernacular buildings to the rear of No 59 are now used and how they are perceived and experienced by others. Instead of a basic and presumably quiet storage use, there is now a completely different physical use of the outbuildings.

17. Having visited the site and having considered the physical nature of the laundry use. I share the view of the YDNPA that, as a matter of fact and degree, a material change of use of the outbuildings has occurred. The outbuildings are part of No 59 and could be used as ancillary storage or even office space in association with the lawful use. However, this is not how they are currently being used.

18. A relatively quiet storage use has been replaced with a commercial, rather than domestic, laundry operation. This has led to complaints by neighbours of noise and disturbance which resulted in two EH noise complaints to the YDNPA. Having experienced the machinery in action I consider that the perception and experiences of this different use must have been noticeably different from the previous and current lawful uses.

19. As indicated the current lawful use (since 2020) is for former A2 and now E(c)ii Professional Services and not for a laundry function. I also agree with the YDNPA that this particular laundry use is inconsistent with the former B1 use, as claimed by the appellant. The actual use of the buildings, prior to development of the laundry, was for business and community storage. It cannot be construed that laundry operations are consistent with this, or with a Class A2/E(c)ii use and the change in use classifications do not alter laundry use so that it falls under E(c)ii use.

20. I also disagree with the assertion made on the appellant's behalf that the laundry operation falls under Class B1/E. There is clear evidence that the use has affected the living conditions of some local residents and, therefore, I agree with the YDNPA that the use falls into the B2 classification.

21. I conclude, therefore, as a matter of fact and degree, that there has been a material change in use of the two outbuildings. There is no planning permission in place and the use does not constitute permitted development. A contravention of planning control has occurred and the appeal must fail on ground (c).

The appeal on ground (a)

Relevant policy

22. The development plan for the appeal site is The Yorkshire Dales National Park Local Plan 2015-2030 (YDNPLP). The most relevant policies are SP1 (Sustainable Development); SP3 (Spatial Strategy); SP4 (Development Quality) and BE1 (Business Development Sites). The National Planning Policy Framework (NPPF) is also a major material consideration and I have taken into account all references to it made by the parties.

The main issue

23. The main issue is the effect of the laundry use on the living conditions of nearby residents, with particular reference to noise and disturbance caused by the use of the commercial laundry equipment.

24. The South Lakelands Environmental Health (EH) section did not raise the issue of 'odours' but there is clear evidence from the consultation responses from neighbours that 'odours' from the laundry use are also noticeable. I also noted these during my site visit. There was a clear smell of laundry being washed and dried. However, considering the location in the middle of this market town, I do not consider that these odours are so harmful, in themselves, to warrant refusal of planning permission for the use being carried out.

Reasons

25. There had been various complaints to the YDNPA from some neighbours and particularly from those living closest to the outbuildings. There have been specific concerns raised about the daily continuous noise of the machines and odours from the laundry. In one case a complainant had indicated that a relative had had to give up living in one of the properties closest to the site.

26. The noise was described as a constant '*droning of machines*' for long periods of the day. As well as affecting the use of the various dwelling houses there has been reference to the effect that the laundry had had on the quiet enjoyment of the gardens close to the site and the fact that staff congregated and smoked outside of the outbuildings in the confined rear spaces.

27. Other complaint submissions by nearby residents have included the use of the laundry facilities on Sundays; the extent of the overall operating hours; the lack of and the need for appropriate insulation and the opening of windows due to a lack of suitable ventilation of the laundry.

28. As referred to above, there have been two planning applications relating to the laundry use and, due to the complaints, during the consideration of the 2020 application EH was consulted. They did not issue their consultation response until after the application had already been refused by the YDNPA. It is indicated on behalf of the appellant that EH supported the application, subject to conditions relating to working hours and a scheme for the control of noise emanating from the site. The full response is set out below:

'Environmental Health has no objection in principle to the above proposal, however the following matters must be considered: Construction hours No demolition/construction activities shall take place other than from 08:00 hours until 18:00 hours (Monday to Friday) and from 08:00 hours until 13:00 hours (Saturday) with no noisy work on Sunday or Bank/Public Holidays.

[In addition to these hours of working, the Local Planning Authority may approve in writing a schedule of activities where it is necessary to conduct works outside the hours specified in this condition] Reason: To protect the amenity of local residents Noise. No development shall take place before a scheme has been

submitted to and approved in writing by the Local Planning Authority, which specifies the provisions to be made for the control of washing machine and dryer noise emanating from the site. Thereafter, the use of the proposed development shall not commence until the approved scheme has been fully implemented. Reason: To protect the amenity of local residents'.

29. By the time of the September 2021 application the works to install the laundry facilities had been completed. This was supported by a statement which sought to address the reason for refusal on the previous application and a 'Noise Impact Assessment' (NIA) was also submitted. The NIA concluded that the use '*did not generate levels of noise which would cause harm to neighbours' amenity*'. A response was received from EH, after the application had been considered and commented on the NIA. These comments are set out below:

'The assessment states that the noise source is constant. Whilst this was true for the measurement period of 1 hour, when considering the operational period of the laundry each day I expect there to be an intermittent character to the noise source as it is not likely to be operating on a constant basis - due to the ebb and flow of demand from the holiday lets; I therefore feel that a correction of +3dB to the sound rating level would be appropriate.

There appears to be no calculation for the sound rating level at the nearest sensitive receptors. Due to the layout and materials used in the courtyard separating the source from receptors, there is potential for reflective surfaces to increase the noise impact. I therefore request that a further calculation is carried out to include the impact of reflective surfaces between the source and receptor'.

30. On behalf of the appellant a response was made as follows:

'The report assesses noise based on criteria set out in BS 8233. The noise source was found to be steady state and continuous for a 1-hour period. Therefore, it was deemed more appropriate to assess using BS 8233 rather than completing a BS 4142 assessment. It may be true that Intermittency can occur through a full daytime period, however the assessment period is 1 hour, and it was found that the laundry room had steady state noise present for the full 1-hour period. Penalties would only be applied if a BS 4142 assessment was to be carried out' and,

'There are no sound rating levels as the assessment used BS 8233. Measured noise levels have been distance corrected to the nearest receptor at 5 metres from the laundry room, with 13 dB of attenuation applied for an open window giving the predicted internal noise levels. Increases in noise levels due to any reflections would have been captured during the measurement, which was under façade conditions, and therefore accounted for'.

31. I acknowledge that the NIA recorded sound levels are not unusual for such a use and that, in theory, they indicate that the noise and disturbance caused by the laundry use could be acceptable subject to appropriate conditions and measures being imposed. Although it is stated that EH has '*no objection*' to the use, this was qualified by the words '*in principle*'. EH has also clearly recognised that the noise emanating from the site, caused by the washing machines and dryers, is not acceptable and that the amenities of local residents needed to be protected.

32. EH called for a scheme to be '*submitted to and approved in writing by the Local Planning Authority, which specifies the provisions to be made for the control of washing machine and dryer noise emanating from the site*'. However, a comprehensive scheme has not been submitted and I do not agree with the appellant's contention that EH's concerns were minor issues.

33. Having visited the site and its immediate surroundings and having experienced the operations carried out at the laundry, I share the YDNPA's and EH's concerns about noise and disturbance and the effects on the amenities of nearby residents.

34. Noise disturbance cannot be judged or assessed simply by assessing decibel levels at the source and recorded at the receptor sites. In many cases recorded noise levels can be found to be acceptable in themselves and the NIA figures are not so excessive. However, simple decibel levels alone cannot be the determinative factor in assessing whether noise is unacceptable. The intensity, longevity and character of the noise must also be considered.

35. In this case it is evident from complainants, from the YDNPA, the EH and my own site visit that the '*constant daily droning noise*' has, in the past, interrupted and detrimentally affected the living conditions of those people living closest to these two outbuildings. It is also clear that the noise caused by the machinery also detracted from the enjoyment of the garden areas close to the outbuildings.

36. I found the sounds created by the laundry machines to be fairly normal day to day domestic/residential sounds. These include sounds from washing machines, dryers and other domestic and residential tools and equipment such as grass mowers and other gardening tools. These can all be an irritating nuisance for users of adjacent gardens. However, such uses might typically only last for short periods. The daily 'droning' noise of the laundry machines, on the other hand, has been shown to last for many hours of the day and even on Sundays. I consider that this intensity of use will have caused unacceptable aural experiences for residents both within their dwellings and their gardens. This is particularly the case in the summer when residents (whoever they are) might have left doors and windows open. At the same time the doors/windows of the outbuildings could have been left open.

37. The NIA readings were taken with the doors closed and also with the doors open. Clearly the noise level at the receptor points were higher when the doors were open and the complainants have indicated that both doors and windows have been left open during laundry operation times. Having seen the laundry operating and noted the lack of an adequately functioning ventilation system, it is not surprising that both doors and windows needed to be kept open in the summer.

38. I agree with EH that, in principle, there can be no objection to such a use in this location. However, I also agree that a scheme is required which would demonstrate that residents were not going to remain being detrimentally affected by the continuous 'droning' noise of the laundry machines. In my view the only way to achieve this would be to provide adequate sound-proofing and ventilation to the two outbuildings to enable them to be used with closed doors and windows.

39. EH had suggested that a scheme be submitted which specified the provisions to be made '*for the control of washing machine and dryer noise emanating from the site*'. Restrictions on operating times were also set out.

40. I have considered whether or not permission could be granted subject to the conditions suggested by EH. Whilst accepting that restrictions on operating times could be imposed and adequately policed, I consider that a condition simply

requiring '*a scheme to be submitted for approval*' is too open-ended and could not guarantee that the noise and disturbance issue for residents would be overcome.

41. In my view, only a fully detailed scheme for full sound-proofing and ventilation could mitigate against the almost constant machinery noise. This would require a new planning application which included calculations and construction details to show exactly how the envelope of the outbuildings would result in preventing any excessive noise leakage and the continued disturbance for residents.

42. For the current situation, therefore, I do not consider that a conditioned permission would overcome the harm identified to the living conditions of nearby residents. I conclude that the use as being carried out is contrary to Policies SP1 and SP4 of the Yorkshire Dales Local Plan (2015-2030) (YDLP) and that the appeal must fail on ground (a).

43. In reaching my conclusions on this ground of appeal I have taken into account Policies SP3 (Spatial Strategy) and BE1 (Business Development Sites) of the YDLP which have been referred to on behalf of the appellant. In terms of the YDNPA's aims and objectives relating to creating economic advantages and encouraging appropriate new business sites, I accept that the use has created employment in this part of Sedbergh and that this is a positive aspect of the laundry use.

44. However, for the reasons outlined above, I do not consider that, in its present form and with the outbuildings not being insulated or ventilated to an acceptable standard, the use is a sustainable development in this particular part of the town. The negative aspects of the development far outweigh any positive factors. In conclusion on this ground of appeal, I do not consider that planning permission should be granted. The appeal also fails, therefore, on ground (a).

The appeal on ground (g)

45. It is stressed that the laundry operation is essential to the appellant's holiday letting operations and that if the use had to cease, there would be a need to find an alternative location and that this is highly unlikely to be possible within 1 month.

46. The YDNPA's suggestion that the nearby Toll Bar Industrial Estate could provide such an alternative is not accepted, since there are no units listed within Sedbergh or the surrounding area. It is also stated that even if a unit was available, planning permission may be required for a change of use, depending on the current use of the unit, and that is likely to be at least a 3 month process to allow time for an application to be prepared and then an 8-week determination period. Time would also be required to secure a lease and to undertake the physical works to move the equipment to the unit.

47. The YDNPA's other suggestion that the laundry facilities could be provided in an outbuilding at one of the appellant's more isolated holiday lets is also questioned. Firstly because there is an issue as to whether any suitable buildings are available and secondly that, again, planning permission would be required resulting in at least a 3 month period. In summary, it is considered that 1 month is a wholly unreasonable time period for complying with the notice and that a period of at least 6 months is considered to be more reasonable and realistic.

48. The YDNPA stress that given that the laundry operation was previously provided at one of the Appellant's other properties, the timescale is considered reasonable in all the circumstances and is justified to quickly restrict any further impact on the living conditions of the nearby residents.

49. I agree with the YDNPA that any further impact on residents should be kept to a minimum. I accept that a planning permission might be required for the use to be carried out somewhere else in the Sedbergh area. However, it would appear that the appellant has, in the past, been able to use a facility at one of his other properties for the laundry use. If this could be used again it is highly unlikely that a separate planning permission would be required since the use, as a matter of fact and degree, could be regarded as being ancillary to the primary use as a holiday let.

50. In the overall circumstances of this case, I agree that a compliance period of 1 month falls well short of what is required. In my view a 6 month period is reasonable in order for the appellant to find another solution. This could be either in an alternative location or by liaising with the YDNPA to agree a comprehensive scheme which would resolve the sound insulation and ventilation of the two outbuildings and as referred to by EH. I shall, therefore, vary the notice accordingly and the appeal succeeds to this limited degree on ground (g).

Other Matters

51. In reaching my conclusions in this appeal I have taken into account all of the appellant's, the YDNPA's and third party/interested persons submissions. These include all references to local plan and NPPF policies; the full planning history of the property; the consultations and complaints; the EH reports and respective comments; the initial appeal submissions; the detailed appeal statements; the photographic submissions and the final comments made on behalf of the appellant.

52. However none of these, either singularly or jointly, carries sufficient weight to alter my conclusions on any of the grounds pleaded and nor is any other factor of such significance so as to change my decision that, subject only to the compliance period being altered, the appeal is dismissed and the enforcement notice is upheld.

Formal Decision

53. The appeal succeeds to a limited degree on ground (g) only and I direct that the enforcement notice be varied by deleting the words '*One month*' in Section 6 of the notice (WHAT YOU ARE REQUIRED TO DO) and by substituting therefor the words '*Six months*'.

54. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. The application made under Section 177(5) of the Act is refused.

Anthony J Wharton

Inspector