
Appeal Decisions

Site visit made on 20 September 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Appeal A Ref: APP/B4215/W/22/3292608

1 New Street, Miles Platting, Manchester M40 8AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Animal Crossing Music Ltd against the decision of Manchester City Council.
- The application Ref 132291/FO/2021, dated 18 November 2021, was refused by a notice dated 17 January 2022.
- The development proposed is change of use of industrial unit (Use Class B2) to a Cultural Event's Space (Use Class Sui Generis) with some external alterations.

Summary of Decision: The appeal is allowed, and planning permission is granted in the terms set out in the formal decision.

Appeal B Ref: APP/B4215/C/22/3292609

Land at The Loft, Unit F (Cohens), Hillbit House, 1 New Street, Manchester M40 8AW

- 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 Animal Crossing Music Ltd against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 14 January 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to a cultural events space (Sui-Generis).
- The requirements of the notice are:
 1. Cease the use of the premises in its entirety, dismantling and removing from the land all physical manifestations of the use, including but not limited to the bar and DJ booth.
 2. Remove from the land all building materials, rubble and waste resulting from carrying out the above step.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Application for costs

1. An application for costs has been made by Manchester City Council against Animal Crossing Music Limited. This application is the subject of a separate Decision.

Procedural Matters

2. The address for the appeal premises, as set out in the banner headings above, has been taken from the Appellant's application form in Appeal A and the Enforcement Notice in Appeal B. However, it is clear from the plans attached to the application form and notice that Appeal A and Appeal B both relate to the same premises.
3. Appeal A seeks to regularise the unauthorised development alleged in the enforcement notice which is being considered under Appeal B. There is no dispute between the main parties that the proposed use the subject of Appeal A is currently taking place and I have considered Appeal A on that basis.
4. The Appellant's agent advised that there was an error on the Appeal form and that the Appellant Company in both Appeal A and Appeal B is Animal Crossing Music Ltd. The correct Appellant details are set out in the banner headings above.

Appeal A

Main Issues

5. The main issues are:
 - whether the appeal site is an appropriate location in principle for the development, having regard to local and national planning policies; and
 - the effect of the development on the living conditions of nearby residents, with particular regard to noise and disturbance; and
 - whether the use contributes to on-street parking congestion and, if so, whether the business needs of neighbouring residents would be compromised as a result.

Reasons

Appropriate location in principle

6. The appeal site is situated on New Street and forms part of the Central Park Strategic Employment Location, which is within the East Manchester regeneration area. The appeal premises is a two-storey brick and corrugated clad property which is accessed from New Street via a small, shared yard. The surrounding area is predominantly characterised by low rise business/industrial units. However, beyond the commercial buildings to the south on New Street and Canada Street there are two-storey terraced properties which have been recently renovated and are occupied by military veterans. I am aware that the public sector equality duty (PSED) applies¹ as occupants of Canada Street include those which share protected characteristics of age or disability.
7. The Appellant's operate what is described as an intimate cultural events space centred around community wellbeing. The events, which have a capacity for 275 people, are said to include day-time yoga classes, seminars, workshops and night-time DJ led music events. From the evidence before me, and observations on my site visit, the premises are currently being used almost exclusively for DJ-led events, with the ground floor comprising a chill-out

¹ Section 149 of the Equalities Act 2010.

lounge, green room and toilet facilities, and the first floor a DJ area, bar and dance floor. The events at The Loft are run and managed by Animal Crossing Music Ltd, who are established operators in the music industry.

8. One of the key spatial principles set out in Policy SP1 of Manchester's Core Strategy, adopted 2012 (CS) is that The Regional Centre will be the focus for economic and commercial development, retail, leisure and cultural activity, alongside high-quality living. Central Park is a business park which offers accommodation for a range of business/industrial uses and is identified in Policy EC1 of the CS as a key location for major employment growth. Policy EC6 of the CS relates specifically to the Central Park Strategic Employment Location and seeks to encourage a range of employment types, including sui generis employment uses, with the aim of supporting the creation of a sustainable employment destination.
9. To that end, Policy EC2 of the CS seeks to retain and enhance existing employment space and sites, and advises that alternative uses will only be supported on sites allocated accordingly, or if it can be demonstrated that: the existing use is unviable in terms of business operations, building age and format; the existing use is incompatible with adjacent uses; the existing use is unsuitable for employment having regard to the Manchester-Salford-Trafford SFRA; or on balance, proposals are able to offer greater benefits in terms of the Core Strategy's vision and spatial objectives than the existing use.
10. It is understood that prior to the unauthorised use commencing, the premises had been vacant since 2018. Evidence of marketing of the unit has been provided by the Appellant² and indicates that it had attracted interest from a variety of occupiers, including business and leisure users. However, feedback from prospective occupiers identified the following constraints: difficult access arrangements to the upper floors; size, age and poor condition of the unit and initial outlay costs. From the evidence before me, including photographs of the property, the premises were in a poor condition prior to the current occupiers undertaking their conversion works³. Furthermore, I noted on my site visit that, although there appears to be a relatively high occupancy of modern, single storey units within Central Park, the appeal premises forms part of a larger and older industrial building which has been subdivided and is less attractive for modern use with poor access/loading facilities, restricted working height, and accommodation arranged over ground and upper floors in a long and narrow format.
11. Advice from an industrial letting agency, which forms part of the Appellant's appeal submission⁴, confirms that whilst there is currently high demand for modern single storey industrial units in the area, out of date floorspace such as the appeal premises, with physical restrictions, is not attractive to potential tenants and is struggling to be let. There are other vacant units close by which are similarly out of date in terms of layout and condition.
12. Policy EC1 of the CS promotes economic and employment growth in Manchester and seeks to support business and other employment generating uses. Similarly, CS Policy EC6 makes provision for sui generis employment uses. The Loft, albeit not large in scale, provides a leisure and cultural offer

² Appendix 3 Appellant's Statement of Case.

³ Appendix E Appellant's Statement of Case.

⁴ Appendix G Appellant's Statement of Case.

and currently provides employment for four full-time employees as well as up to fifty part-time staff associated with events⁵. There are also wider economic benefits associated with the use, including overnight stays and spending on food and drink in the city, support for public transport, etc. Furthermore, the premises have good access to public transport routes.

13. The development has provided a new economic use for the premises and investment in the building's fabric, including internal refurbishment, outside cladding and improved access arrangements through the provision of an external staircase. There is no substantive evidence that a predominant night-time use, with a small-scale community daytime use, would have any negative impact on the future letting of other units close by. Indeed, the existing unauthorised use of the premises for these purposes has operated without objection from adjoining business operators for many months.
14. I recognise that there would be some conflict with Saved Policy EM5 of the Manchester Unitary Development Plan, adopted 1995 (UDP), which aims to regenerate Central Park with B1, B2 and B8 uses. However, considering the provisions of the development plan as a whole, which includes the more recent Manchester Core Strategy, 2012 which provides specific policy advice for development in Central Park, I give limited weight to the conflict with Saved Policy EM5.
15. I appreciate that there could be opportunities in the future to redevelop the appeal site and adjoining vacant premises to provide a more attractive and modern industrial unit. However, there are currently no such proposals for redevelopment, and it is clear for the reasons set out above, that attempts to let the site for a B1, B2 or B8 use have not come to fruition in recent years. The use of the premises as proposed in this appeal has resulted in investment in a vacant property and generated employment opportunities with some wider economic benefits to the Regional Centre. Whilst I appreciate that the number of jobs and benefits may not be substantial, the use provides a leisure and cultural offer in a sustainable location which aligns with the Council's spatial principles as set out in SP1 and EC6 of the CS for the Regional Centre. Furthermore, there is no demonstrable harm to the Council's existing employment space provision, nor its economic and employment objectives. There are thus social, environmental, and economic benefits to the development, which outweigh the limited conflict with Saved UDP Policy EM5. The development makes effective use of land and supports the National Planning Policy Framework's (the Framework's) objective of achieving sustainable development.
16. I conclude that the appeal site is an appropriate location in principle for the development, having regard to local and national planning policies. There would be no conflict with the development plan as a whole in this regard, and in particular with Policies SP1, EC1, EC2, EC3, EC5 or EC6 of the CS or policies with the Framework, the aims of which are set out above.

Living conditions

17. The Council are concerned that the proposed use would result in harm to the living conditions of nearby residents on Canada Street, which is occupied by military veterans. They are concerned about noise outbreak from the venue in

⁵ Appendix H Appellant's Statement of Case.

the late evening/early morning and about noise and disturbance resulting from incidents of anti-social behaviour as people leave the premises in the early hours of the morning.

18. The original planning application was supported by a noise impact assessment⁶, which concluded that noise outbreak from the proposed venue would fall into the NOEL - No Observed Effect Level, which the Framework indicates is the level below which no effect can be detected, below this level, there is no detectable effect on health and quality of life due to noise. However, this assessment was undertaken prior to the venue being operational. Consequently, a further ambient noise survey was undertaken whilst an event took place within the venue, to assess noise outbreak from the venue and any subsequent impact on nearby noise sensitive dwellings on Canada Street⁷.
19. The impact of noise from the venue was judged to be low, being faintly discernible, but still at a low absolute level, with the conclusion being that any perceptible noise would not significantly affect the acoustic character of the area and could be described as having no observed effect. In addition, the Appellant has: installed noise limiters into the sound system; undertaken upgrades to the roof to improve acoustic insulation; installed double lobby doors to suppress noise; and implemented a management plan to mitigate anti-social behaviour and encourage dispersal from the venue in a respectful manner.
20. The Council do not dispute the findings of the noise impact assessment reports; however, they remain concerned that noise limiters can be bypassed and believe that it would be difficult to prevent noise outbreak from the building. Furthermore, they consider that the coming and goings of people in the early hours and anti-social behaviour often associated with drinking at such venues, will have a negative impact on the amenity of the area. The Council further advise that there have been several complaints regarding noise and disturbance from the venue to their out of hours team, details of which they have provided to support their case⁸.
21. It is clear from the out of hours team records that they have attended the venue and surrounding streets in response to either complaints or as a follow up. On those occasions their reports indicate that there was either no audible noise from the venue or that a bass beat could be heard at a low level, but not at a level that would be a nuisance. Those findings would generally concur with the conclusions of the noise impact assessment reports. Whilst I have had regard to the Council's concern about noise limiters, there is no substantive evidence that would lead me to believe that the noise limiters on the sound system would be bypassed. Furthermore, the Appellant's sound engineer refutes that assertion and has provided technical evidence which would suggest that bypassing the limiters is not possible without his consent and confirms that the venue has a pre-installed sound system utilised by all artists which he maintains.
22. I recognise that there will be some limited noise outbreak from the venue when doors are opened for visitors to enter and exit the building. However, considering the evidence before me, including the noise impact assessments

⁶ Noise Impact Assessment – The Loft, PDA Acoustic Consultants, May 2021.

⁷ Noise Impact Assessment - The Loft, PDA Acoustic Consultants, 9 Feb 2022.

⁸ Appendix One, LPA Statement of Case.

and notes from the out of hours team, I do not consider that any noise from the venue itself would have a significantly harmful effect on the living conditions of nearby residents.

23. When visitors to the venue are leaving the premises in the early hours, their dispersal is likely to be either by taxi or on foot. The nearest residential properties are on Canada Street/New Street and are susceptible to noise and disturbance. I noted from observations on my site visit that Canada Street has low connectivity to other transport/pedestrian links. Therefore, whilst it is unlikely to be a main thoroughfare for traffic and pedestrians accessing or leaving the venue, I recognise that pedestrians and traffic may pass the end of this street. This is evidenced by an objection from a local resident stating that "clubbers" have been found at the end of their street or the alleyways leading to the backs of properties in the early hours, wandering because they are lost.
24. Furthermore, evidence provided by the Council from their out of hours team records indicate that since the late-night events have been operating, there have been some incidents of anti-social behaviour in the area. Those incidents include littering, shouting and anti-social behaviour, car horns and one incident of a breach in the licencing agreement, whereby door staff had signed off work whilst customers were still loitering.
25. However, the number of recorded incidents is not significant. The premises has been in operation now for over a year and only one letter of objection has been received from a nearby resident in relation to the enforcement notice, and none in relation to the planning application or appeal. The absence of objections is an indication that noise and disturbance is not a constant or significant concern to local residents, and there is no substantive evidence that would lead me to conclude that the use in this case results in significant harm to the living conditions of neighbouring residents. Furthermore, the imposition of a condition that would require the Appellant to provide and adhere to an agreed event's management plan to include a dispersal policy, litter clearance and mechanisms to ensure windows and doors remain closed would provide mitigation against the Council's concerns.
26. For the reasons given above and considering the location of the nearest residential properties and surrounding land uses, I conclude that the development does not have a significant harmful effect on the living conditions of neighbouring residents, with regard to noise and disturbance. There is no conflict with the development plan, and with Policies DM1 of the CS and Saved Policy DC26 of the UDP which seek to ensure, amongst other things, that development has regard to effects on amenity, including litter generation, noise, traffic generation and does not result in unacceptably high levels of noise in residential areas.

Parking

27. The appeal site is located on New Street and the premises do not benefit from off-street parking provision. From observations on my site visit, there are no on-street parking restrictions on New Street in the immediate vicinity of the appeal premises, although there is a traffic regulation order on New Street Southwest. Manchester Superstores and a haulage depot also take access from New Street, both have large yards and on-site parking provision. However, neither of the smaller neighbouring units occupied by a church and a kitchen manufacturer have on-site parking.

28. The site is in an accessible location, within walking distance of Oldham Road, where there are regular bus links to the city centre and surrounding areas. In addition, the premises is close to a Metrolink facility.
29. The nature of the use is that it is predominantly a night-time venue, although there is an intended use of the ground floor in the daytime for yoga classes and community workshops. The hours of operation are Sunday to Thursday 12 noon to midnight and Fridays and Saturdays 12 noon to 5am. The Appellant's Highway Consultant advises that, although there is some traffic generation associated with the use, this is predominantly from taxi's picking up or dropping off at the night-time venue. Traffic generation in relation to the use would be relatively low and any impact, given the nature of the use and availability of public transport, would be minimal on the safety and operation of the local highway network. There are footways on both sides of the New Street and the road is wide enough to allow vehicles to pass without obstruction⁹.
30. I have not been provided with any substantive evidence that would demonstrate that New Street suffers from parking stress. Considering the surrounding business uses, which generally operate during the daytime, there is sufficient space along New Street for taxis to drop off or pick up without resulting in any significant impact on the transport network. Furthermore, considering the site's highly accessible location, I am satisfied that the proposed day time leisure/cultural uses would be unlikely to generate significant traffic or parking requirements. I am also mindful of the premises existing use rights and the level of traffic/parking requirements associated with such use.
31. The Framework makes it clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe¹⁰. I have not been provided with any substantive evidence that would demonstrate that the use has or would result in any demonstrable harm to highway safety nor have a harmful impact on the operation of the local highway network.
32. I conclude that the development would not have a harmful effect on on-street parking congestion or highway safety, and the business needs of neighbouring residents would not be compromised. I therefore find no conflict with the aims of the Framework as set out above. In addition, there is no conflict with Policy SP1 or EC1 of the CS, which seek to ensure that new development reduces the need to travel and has good access to sustainable transport provision, or Policy DM1 of the CS which requires regard to be had, amongst other things, to road safety, traffic generation and accessibility.

Conditions

33. The Council has suggested several conditions which I have considered against the advice in the Framework and Planning Practice Guidance. As a result, I have amended some in the interest of clarity and omitted others. The development has already commenced so there is no requirement to place a time limit on commencement.

⁹ Appendix M, Appellant's Statement of Case.

¹⁰ Paragraph 111, National Planning Policy Framework.

34. I have imposed a condition specifying the approved plans to provide certainty. Conditions are necessary to restrict times for deliveries/servicing and to require and secure noise mitigation measures to protect the living conditions of nearby residents. A condition requiring details of lighting is necessary to assist with crime reduction and personal safety.
35. I have imposed a condition to require an operational management plan and waste management strategy to be submitted and implemented to safeguard the living conditions of nearby residents. Whilst I appreciate that the application was accompanied by an operational management plan, I am mindful that the specific details within it may require refinement to ensure that it fully aligns with other conditional matters.
36. A condition is necessary to restrict the use of the premises to protect the living conditions of nearby residents and control the future use of the premises, considering the site's location within Central Park Strategic Employment Location.
37. Taking into consideration the size of the venue, the nature of the proposed use, and the premises accessibility to public transport, it is not reasonable or necessary to require a travel plan to be provided.
38. The purpose of conditions 2,3,4 and 5 below is to require the Appellant to comply with a strict timetable for dealing with acoustic insulation, lighting, to provide a management plan and a waste strategy all of which need to be addressed to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. The conditions therefore provide for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the use would have to cease.

Conclusion on Appeal A

39. For the reasons given above and taking into account all other matters raised, I conclude that Appeal A should succeed.

Appeal B on ground (g)

40. The issue is whether the compliance period is reasonable. The Appellant considers that given the extent of removal works required and the indicative timescales a contractor has given them to carry out those works, a period of four months would have been more reasonable.
41. The initial enforcement notice was issued on 14 January 2022 with a compliance period of two months. However, on 4 March 2022 and after the appeal had been made, the Council pursuant to Section 173A (1)(b) of the Town and Country Planning Act, 1990 varied the enforcement notice to extend the time for compliance to six months.

42. In varying the requirement of the notice and issuing an amended version the Council acknowledged that a period of two months was not reasonable. Although the Appellant has expressed concerns that the notice may come into effect prior to a decision being made on his s78 appeal, he does not dispute that a period of six months to carry out the requirements is unreasonable, and I see no reason to disagree.
43. I conclude that six months is a reasonable time within which to comply with the notice in full, and the Appeal B on ground (g) thus fails.

Conclusion on Appeal B

44. For the reasons given above, I conclude that the appeal is dismissed, and the enforcement notice is upheld.

Formal Decisions

Appeal A

45. The appeal is allowed and planning permission is granted for change of use of industrial unit (Use Class B2) to a Cultural Event's Space (Use Class Sui Generis) with some external alterations at 1 New Street, Miles Platting, Manchester M40 8AW in accordance with the terms of the application, Ref 132291/FO/2021, dated 18 November 2021 and subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Ref:01; Existing Site Plan, Ref:02; Existing Floor Plans, Ref:03; Existing Sections, Ref:04; Proposed Site Plan, Ref:05; Proposed Plans, Ref:06; Proposed Elevations, Ref:07; and Proposed Sections, Ref:08.
 - 2) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within one month of the date of this decision a scheme to include mitigation measures for noise control as recommended in the submitted Noise Impact Assessment for the premises undertaken by PDA, dated 28 May 2021, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within two months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within one month of the date of this decision a scheme for waste management, including the storage and disposal of refuse, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within two months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within one month of the date of this decision an operational management plan shall have been submitted for the written approval of the local planning authority and the plan shall include a timetable for its implementation.
 - ii) If within two months of the date of this decision the local planning authority refuse to approve the plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted plan shall have been approved by the Secretary of State.
 - iv) The approved plan shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved plan specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within one month of the date of this decision a lighting scheme for external areas shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within two months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) Deliveries, servicing and collections, including waste collection, shall not take place outside the following hours: Monday to Saturday 0730hrs to 2000hrs and not at any time on Sundays or on Bank or Public Holidays.
- 7) The premises shall be used as a cultural events space and music venue (DJ led events), and for no other purpose (including any other purpose in any Class of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Appeal B

46. The appeal is dismissed and the enforcement notice is upheld.

Elizabeth Pleasant

INSPECTOR