
Appeal Decision

Site visit made on 18 January 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 6th March 2023

Appeal Ref: APP/R5510/C/21/3283537

53 Pinkwell Avenue, Hayes, Middlesex, UB3 1NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Amrick Bhalay against an enforcement notice issued by London Borough of Hillingdon.
 - The notice was issued on 20 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to a mixed use as a dwelling and takeaway food preparation and delivery business ("the breach")
 - The requirements of the notice are
 - (i) Cease the use of the land for a takeaway food preparation and delivery business
 - (ii) Remove from the land all equipment and paraphernalia used in association with the takeaway food business.
 - (iii) Remove from the land all debris, items, fixtures and fittings, plant and machinery resulting from compliance with points (i) and (ii) above
 - The period of 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 (the 1990 Act) as amended. 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. It is directed that the enforcement notice is varied by
 - i) deleting "*one month*" as the period for compliance in Section 5 of the notice and substituting it with "*three months*".
 - ii) deleting requirement (i) from Section 4 of the notice in full and substituting it with "Cease the mixed use of the land as a dwelling and a takeaway food preparation and delivery business.
2. Subject to the variations, 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 Matters

3. The Council in its reasons for issuing the notice has relied upon the Hillingdon Local Plan: Part 2 – Development Management Policies (January 2020) (the Local Plan) which is part of the development plan. The London Plan (2021) was published by the Mayor of London in March 2021 and is also part of the development plan and has been referred to by the appellant. I have taken into account the relevant policies of both plan documents in reaching my decision.

The Notice

4. The allegation refers to a mixed use but the first requirement does not require that mixed use to cease. The wording of the requirement should match the allegation. A requirement to "Cease the mixed use of the land as a dwelling and takeaway food preparation and delivery business" would match the allegation and provides more clarity. As there is no dispute that the lawful use of the appeal site includes use as a dwelling house, no injustice arises to any party as a result of the amendment and I will amend the notice accordingly.

Appeal under ground (a) and the Deemed Planning Application (DPA)

Main Issue

5. The main issue is whether the development causes harm to the living conditions of nearby occupiers of dwellings in Pinkwell Avenue with particular regard to odour and noise.

Reasons

6. Pinkwell Avenue is largely made up of pairs of modest semi-detached bungalows. The pairs have narrow gaps to either side allowing access for each dwelling from the front to amenity area and outbuildings at the rear. The appeal site forms part of this same pattern of development with amenity space and an outbuilding to the rear of a semi-detached bungalow.
7. The outbuildings for the bungalows on this side of the road including the appeal site front onto and can be accessed from Pinkwell Lane. From Pinkwell Lane, the outbuilding at No 53 resembles a garage with double doors behind a roller shutter. The lack of residential frontages at the rear does not mean that the outbuildings and garages used by the occupiers of the dwellings are not part of the largely residential character of the area.
8. The appeal bungalow is in use as a dwelling and the food preparation and cooking takes place in the rear outbuilding. Inside the building, there are areas for food storage and catering style cooking facilities with large appliances including a six ring hob and a cold store. A sink and a toilet facility are accessed via the outside modest amenity space which is between the outbuilding and the dwelling.
9. The appellant describes the business as a cultural service to the Punjabi community, providing fresh traditional vegetarian meals to homes and workplaces. The business is stated to operate by providing regular orders, usually five days a week, ordered up to 3 months in advance. The business employs 2 full time and 1 part time members of staff. The Council has referred to the business providing up to 70 meals per day based on the previous application for a Certificate of Lawful Use. No customer numbers are provided by the appellant. Meals are prepared daily between the hours of 08.00 and 2.30 and delivered in two cars in round trips departing at 3.00 pm and returning at 6pm.
10. The Council considers that the noise emanating from the outbuilding and from vehicles causes significant noise and disturbance to nearby residential occupiers. It also considers that the use results in noise odour from the preparation and cooking of the food at the scale undertaken which significantly affects the living conditions of nearby residents. The occupiers of the dwellings

either side of the appeal site have provided details of their experiences including photographs.

11. The Council refers to 13 separate complaints being received during the period of 28 February 2020 to 21 October 2021 about the business. Two complaints specifically referred to early starts with one complainant alleging that cooking started at 7.00a.m. No details are provided of the other complaints other than that they related to the ongoing use of the building for takeaway food preparation and delivery business. No 55 is the adjoining semi-detached dwelling and No 51 is to the other side.
12. The occupier of No 51 refers to the strong smell of food and noise coming from the marquee which had been erected in the garden, but had at the time of my site visit been removed. A photograph provided by complainants show food being left on the front window sill of the appeal dwelling for collection.
13. The main areas raised by complainants and the Council relate to noise associated with deliveries to customers, staff coming and going and activities within the garden area of No 53, removal of food waste on refuse collection days, customers coming to the appeal site to collect orders, noise from an extractor fan and odours from the cooking of food for customers' orders.
14. The historical origins and importance of this cultural service for the community are noted. However, no details are provided of why the service has to be located at this particular location in close proximity to other dwellings particularly when deliveries are made by car.
15. The appellant has suggested that any issues can be addressed by way of condition as conditions are appropriate where "otherwise unacceptable development could be made acceptable through the use of conditions." Although the appellant refers to an Operational Management Plan, Plant Management Plan and a Workplace Travel Plan, no suggested wording or details have been provided.
16. The appellant refers to ventilation equipment having been installed since the issue of the Notice. He also has plans to install further "high tech" equipment to ensure no impact on surrounding properties from cooking odours if the appeal were to be successful. I have no details of when the horizontal silver flue was installed that is visible on the roof of the outbuilding or whether it requires planning permission.
17. Various technical documents have also been provided which relate to the standard specifications for commercial kitchens. However, it is not clear how the information provided applies to the appeal site. The minimum requirements for odour control set out in the document "Control of Odour and Noise from Commercial Kitchen Exhaust Systems" refer to various alternatives depending on site specific factors but there is no information as to which approach has been adopted. There are also no supporting surveys or assessments to show that odour is no longer an issue following any installations. One of the complainants refers to noise from the extractor being heard in their garden since its installation.
18. A noise level condition is suggested which addresses noise levels from the outbuilding not exceeding a value measured at one metre from the façade of any dwelling or residential premises. However, neighbouring dwellings wish to

use their amenity space as well as their dwellings and outbuildings without noise disturbance. Whilst other conditions are suggested such as operating machinery on half speed early in the day, conditions imposed on commercial kitchens in self-contained units on industrial locations are not necessarily appropriate for the appeal site.

19. The side access which is in close proximity to occupiers of No 51 is used to bring the business food waste through to the front of the dwelling for collection. This is an example of how the nature of the business use has impacts for nearby occupiers beyond the use of the outbuilding itself. Whilst a personal planning permission solely for the named appellant has been suggested, that is not likely to prevent a long term change of use taking place.
20. The appellant has referred to a number of policies in the London Plan and the Local Plan but there is limited information provided as to how those policies relate to the material change of the appeal site to a mixed use. For example, there is policy support for small businesses in appropriate sustainable locations. However, the proximity of residential occupiers and adverse impacts upon their living conditions means that the mixed use is not taking place in an appropriate location.
21. In my view, due to the scale of the use with variable customer numbers, two delivery runs a day over a five day period, with evidence of customers coming to the premises to collect meals, the use of the outbuilding in close proximity to adjacent residential occupiers results in significant increased activity in the garden area and rear outbuilding which has resulted in significant noise and disturbance and odour nuisance to those nearby occupiers. Due to the nature of the use and the proximity of the outbuilding to the adjacent residential occupiers, I am not satisfied on the evidence provided that the significant harms identified could be adequately mitigated by the imposition of conditions.
22. I therefore do find that the development causes harm to the living conditions of nearby occupiers of dwellings in Pinkwell Avenue with particular regard to odour and noise. It is therefore contrary to Policy DEI14: Air Quality of the Local Plan which states that development proposals should be at least "air quality neutral." In the absence of any details from the Council, I do not find Policy DMHB 18: Private Outdoor Amenity Space of the Local Plan which refers to all new residential development being required to provide good quality and useable private outdoor amenity space to be relevant to issues of noise and odours for neighbouring properties. Nevertheless, the development is contrary to Policy D14 (Noise) of the London Plan, which amongst other things, refers to managing noise by avoiding significant adverse noise impacts on health and quality of life.

Other Matters

23. An appeal decision¹ has been provided which the appellant considers to be relevant. The appeal decision related to a change of use from light industrial use to commercial kitchen and delivery centre (sui generis). Eleven conditions were imposed and planning permission was granted for 14 months only. In making that decision, the Inspector took into account various factors including

¹ APP/X5210/C/18/3206950

the context of commercial premises within a town centre location and the bringing back into use of part of a vacant building.

24. Details have also been supplied of a Certificate of Lawful Use² (the CLU) and a planning application both relating to a Deliveroo kitchen operating from a Commercial Unit in Islington. The CLU was refused as the use was held not to fall within Class B1(c) which has now been superseded by Class E. Although the appellant has referred to Class E being relevant to this appeal, the use alleged in this instance is, in any event, a mixed use.
25. The subsequent planning application for a change of use from Light Industrial (B1(c)) to Commercial Kitchen and Delivery Centre (Sui Generis)³ was granted. The business was located in an industrial site with 14 other industrial units of similar size and appearance. The decisions referred to by the appellant relate to materially different sites to the appeal site which is in mixed use in a residential area and are not comparable.

Conclusion on ground (a)

26. I have found that the mixed use does harm the living conditions of occupiers of nearby occupants. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. The appeal under ground (a) is therefore dismissed.

Appeal under ground (g)

27. An appeal under ground (g) is that the time allowed for compliance with the notice is too short. The Council has given a 1 month compliance period. The appellant is seeking a 3 month compliance period. The appellant considers that one month is not enough time to look for alternative premises. He employs three people in connection with the business. However, I am also mindful of the effect of the development on the living conditions of nearby residents.
28. In my view, it would be appropriate to extend the compliance period to three months to allow for the appellant to look for alternative premises. This would extend the effect on living conditions slightly but may allow the business to continue in alternative premises and continue to employ staff. The appeal under ground (g) therefore succeeds.

Conclusion

29. For the reasons given above, I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR

² P2017/4994/COL

³ P2019/2774/FUL