



Appeal Decision

Site visit made on 13 June 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/W2465/C/22/3304142

Land at 84 Barkby Road, Leicester LE4 9LF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Agnieszka Stasiak on behalf of Barn House Bakery Ltd trading as Zloty Klos Bakery against an enforcement notice issued by Leicester City Council.
 - The enforcement notice was issued on 30 June 2022.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 20150589 granted on 1 July 2015.
 - The development to which the permission relates is: Change of use from plant and tool hire premises (no use class) to fabrication of machinery (Class B2).
 - The condition in question is No 3 which states that:
 3. No machinery shall be operated and no work shall be undertaken outside the hours of 0700 to 1900 hours Mondays to Fridays, and 0700 to 1300 hours Saturdays, nor at any time on Sundays or officially recognised public holidays. (In the interest of the amenities of nearby occupiers, and in accordance with policies PS10 and PS11 of the City of Leicester Local Plan).
 - The notice alleges that the condition has not been complied with in that: the premises operates 24 hours a day including on Sundays.
 - The requirements of the notice are to:
 - Comply with planning condition 3 attached to planning permission 20150589.
 - Cease the operation of machinery and work outside the hours of 0700 to 1900 hours Monday to Friday and outside the hours of 0700 to 1300 hours on Saturdays and at any time on Sundays or officially recognised public holidays.
 - The period for compliance with the requirements is: 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 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. The appeal is dismissed and the enforcement notice upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The ground (c) appeal

2. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the enforcement notice (the Notice) do not constitute a breach of planning control. The burden of proof is upon the appellant.

3. Planning permission¹ was granted in 2015 for the change of use of the appeal property from a plant and tool hire premises (no use class) to fabrication of machinery (Class B2). The Council confirm that a bakery falls within the permitted B2 use class and can therefore lawfully operate from the site. I find no reason to conclude otherwise.
4. The 2015 permission was subject to a number of conditions. Condition 3 imposed on the permission restricted the operating hours of the approved use by stating 'No machinery shall be operated and no work shall be undertaken outside the hours of 0700 to 1900 hours Mondays to Fridays, and 0700 to 1300 hours Saturdays, nor at any time on Sundays or officially recognised public holidays.'
5. The Council allege that the existing bakery business operates 24 hours a day, including on Sundays. However, the letter from Goscinski & Associates Solicitors, dated 29 July 2022, to the Council confirms that the operating hours are approximately 8am to 1am every day except Saturday. Either way, there is clearly a breach of condition 3.
6. The appellant states that they notified the Council that they were operating the bakery from the appeal property and that an inspection was made by a Council Officer, Mrs Liz Johnson. However, this inspection appears to have been in relation to food safety. There is no evidence before me that advice was sought from the local planning authority or, more importantly, that planning permission has been granted to vary/remove condition 3. Consequently, the operation of the business outside the hours permitted by this condition is a breach of planning control.
7. I note the applicant submitted an application to register a food business establishment on 29 July 2022, which they argue sought to vary the conditions of the existing planning permission. Notwithstanding this application was made after the Notice was issued, it is not clear whether this application was in the form of a planning application.
8. The ground (c) appeal therefore fails.

The ground (a) appeal

Main Issue

9. Given that the appellant identifies the operating hours of the bakery I have considered the ground (a) appeal on the basis that they seek to vary condition 3 to reflect these operating hours.
10. The main issue is the effect of the variation of condition 3 imposed on planning permission 20150589 on the living conditions of the occupants of neighbouring residential properties.
11. The appeal site is located within a mixed use area comprising industrial, commercial and residential properties. The site comprises a large industrial building with a forecourt to the front and an access serving a yard to the side. The site is directly adjacent to a row of dwellings.
12. The approved use of the site is for a B2 use. Therefore, in my assessment of the effect varying condition 3 would have on the living conditions of the neighbouring residents, I have had regard to the potential effects of any business falling within

¹ Council ref: 20150589

the permitted use of the site. If I were minded to vary the condition, any future use of the site that would fall within its lawful use would also benefit from this variation. For example, were the existing bakery use to vacate the site and a different, noisier B2 use occupy it, that use would also be able to operate during the same permitted hours.

13. Given the proximity of the site to the neighbouring residential properties, the occupants of these properties, particularly 82 Barkby Road, would be sensitive to various sources of noise associated with the approved use, potentially including vehicular engines running, lorry reversing alarms, machinery noises and staff conversing outside. The approved operating times under condition 3 would ensure that the level of noise would unlikely have a significantly harmful effect on the neighbouring residents as it would cease at a reasonable time.
14. During the evening hours/early hours of the morning when residents should expect a reasonable level of peacefulness, such noise would be particularly discernible and could unduly disturb neighbouring residents' sleep. This would be to such an extent that it would be significantly harmful to their reasonable expectation of peacefulness during night-time as well as on a weekend.
15. I find therefore that the variation of condition 3 would significantly harm the living conditions of neighbouring residents, with regard to noise. As such, it would be contrary to saved Policies PS10 and PS11 of the City of Leicester Local Plan 2006, which, amongst other matters, seek to protect residential amenity.

Conclusion on the ground (a) appeal

16. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and deemed application. Therefore, the ground (a) appeal fails.

The ground (f) appeal

17. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
18. The appellant's argument under the ground (f) appeal is that the business was granted permission to operate and no material changes to the operation of the business occurred. However, as I have referred to above in my consideration of the ground (c) appeal, this argument appears to relate to the correspondence the appellant had with the Council regarding food safety matters, not planning matters. There is no evidence of planning permission having been granted to vary the subject condition.
19. The requirements of the Notice seek to ensure the business operates in compliance with condition 3 and cease the operation of machinery and work outside the restricted hours set out in the condition. There is no evidence before me to suggest the requirements exceed what is necessary to remedy the breach of planning control.
20. I therefore conclude the ground (f) appeal must fail.

Formal Decision

21. 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.

Alexander Walker

INSPECTOR