



Appeal Decision

Site Visit made on 22 April 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th May 2024

Appeal Ref: APP/V2635/C/23/3324745

Land at the Old Jam Factory, Chapel Lane, Emneth, Norfolk

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Danica Painter against an enforcement notice issued by King's Lynn and West Norfolk Borough Council (the LPA).
- The enforcement notice was issued on 18 May 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the unauthorised material change of use of the Land to use as dance studios.
- The requirements of the notice are:
 1. Cease the use of the Land for use as dance studios.
 2. Restore the Land to its condition before the unauthorised material change of use took place.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Procedural Matters

1. The appeal was made by the tenant of the Land who operates the alleged use. They were not served with a copy of the enforcement notice. S172(2) of the Act states that a copy of an enforcement notice shall be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
2. The appellant has a material interest in the Land. On that basis, they should have been served with a copy of the notice in accordance with S172(2). Nonetheless, the appellant was made aware of the notice by the landowner and have been able to appeal against the notice in a timely manner. They do not seek to pursue an appeal on ground (e) of S174(2) of the Act. I am satisfied therefore the appellant has not been substantially prejudiced by the failure of the LPA to serve a copy of the notice on them, and the appeal can be determined accordingly.

Appeal on ground (b)

3. An appeal on ground (b) is made on the basis that those matters stated in the notice as constituting a breach of planning control have not occurred.

4. The appellant has not advanced a case on ground (b). The appellant's submissions make clear reference to the use of the Land as a dance studio. There is thus no reason for me to conclude that the alleged breach of planning control has not occurred as a matter of fact.
5. The appeal on ground (b) therefore fails.

Appeal on ground (a)

Main Issues

6. The main issues are:
 - the effect of the development on highway and pedestrian safety; and,
 - the effect of the development on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

Highway & Pedestrian Safety

7. Chapel Lane is a narrow, unmarked road with no footpaths or verges. It almost entirely serves residential properties with a speed limit of 30mph. I was able to see from my site visit that in most places two vehicles could pass each other in opposite directions. There is a curve in the road from the junction with Elm High Road. Visibility of oncoming traffic in both directions is reasonable. Nevertheless, there are properties with driveways on Chapel Lane, where visibility of oncoming traffic when pulling out will be obscured by vegetation and boundary treatments.
8. I was able to see that traffic volumes on the road are relatively typical of a residential area. Nonetheless, there is the frequent movement of vehicles to and from the properties. Moreover, I was able to see that current demand for on-street parking on Chapel Lane is low given most of the residential properties have off-street parking. I have no reason to believe my observations are anything other than typical of normal highway conditions.
9. The appellant indicates that nine off-street parking spaces can be provided. They are said to be six spaces at the side and rear of the building, one space at the adjacent property owned by the landowner of the Land and that the landowner has an agreement with the tenant of another property "Mount Fuji" directly opposite to use two spaces on their driveway.
10. The photographs provided show four off-road spaces immediately adjacent to the side wall of the building. However, they are not all independently accessible. Vehicles parked in the spaces marked as "1" and "2" on the photograph will not be able to exit if a vehicle was parked in space "3".
11. Moreover, the spaces marked as "5, 6 and 7" are of limited width, situated between the building and the road. Thus, vehicles parked here will be partially parked on the highway. Indeed, that was the case at the time of my site visit.
12. In addition, the spaces marked as "8" and "9" are within the curtilage of a different property. Thus, even if those spaces could be secured by way of condition or planning obligation, they will not alleviate on-street parking, since they will simply displace off-street parking for the residential property "Mount

- Fuji". As a result, the development provides for only four off-street parking spaces, only two of which are independently accessible.
13. On that basis the appellant has stated that they are willing to reduce the maximum capacity of their classes to four people. A condition could be imposed to that effect.
 14. However, even restricting classes to four people will mean the potential still for five vehicles, accounting for an instructor. Moreover, the appellant states there is a crossover time of 15 minutes between classes. It seems to me that such a short period of time could result in customers arriving for the next class before those from the earlier class have left, resulting in no off-street parking availability and the potential to then park on the road.
 15. Furthermore, the fact that spaces "1" and "2" are not independently accessible means customers may be more inclined to park on the road for the convenience. Even if the instructor parked in space "1" for the duration of the operating, assuming they are first to arrive and last to leave, that will still leave only two independently accessible spaces for four customers, not accounting for any crossover between classes.
 16. Moreover, any vehicle parked in any of those spaces will only be able to exit onto Chapel Lane in reverse gear. Vehicles will have no visibility of oncoming traffic from the west as the building itself obscures views. Thus, there will be the potential for vehicles exiting the spaces in reverse to collide with oncoming vehicles. To that end, customers may be more inclined to park on-street to ensure ease of access and egress. As a result, I consider that, even if limited to class sizes of four people, the development will increase demand for on-street parking on Chapel Lane.
 17. Chapel Lane is a relatively narrow road. If vehicles are parked on Chapel Lane, it will likely inhibit the free flow of traffic in both directions along the road. Moreover, the appeal site sits directly opposite the small junction which serves properties on Chapel Lane set back behind the main ribbon of development. Any vehicles parked on-street to use the dance studio will likely park close to that junction. That will consequently impede vehicles entering and exiting the junction.
 18. Moreover, if an oncoming vehicle passes a parked vehicle adjacent to the Land, it will have to drive close to the driveways of the properties opposite. A vehicle pulling out of those driveways will have limited visibility and could conflict with the ongoing vehicle.
 19. Consequently, it seems to me that the development will likely result in a substantial increase in on-street parking. Given Chapel Lane is narrow and without verges or footpaths, such parking will inhibit the movement of vehicles and materially increase likely conflict between vehicles and pedestrians.
 20. I conclude, therefore, that the development will have a harmful effect on highway and pedestrian safety, in conflict with Policy CS11 of the King's Lynn and West Norfolk Local Development Framework – Core Strategy 2011 which states that development should provide for safe and convenient access for all modes of transport.

Living Conditions

21. The appeal site is a two-storey former warehouse located in a predominately residential area. The closest residential properties are the adjacent Violet House, the properties opposite on Chapel Lane and those to the rear of 122-132 (evens) Elm High Road. Chapel Lane is an unmarked lane with a mix of single and two-storey houses. Neighbouring dwellings are mainly set back from the lane behind front gardens.
22. In terms of the background noise environment, whilst the area is predominately residential in character, I was able to observe on my site visit that there is a significant level of noise arising from the regular flow of traffic on Elm High Road. Whilst my observations were simply a snapshot of conditions, I have no reason to believe they were not representative of the typical noise environment in the area.
23. The LPA indicates that noise from music and shouting emanates from the studio and has a detrimental impact on the living conditions of the closest residential properties. Moreover, it is indicated that noise from the traffic movements for each class also has a detrimental impact.
24. I visited Chapel Lane unaccompanied by the parties between 1815 and 1835 on a Monday evening when the appellant's submitted timetable indicates a class was taking place. Cars were parked on the area adjacent to the building and to the front on the road, suggesting a class was ongoing at the time. Again, whilst only a snapshot of a particular time of day, I observed little by way of loud music or shouting emanating from the building. Indeed, the predominant source of noise at that time was vehicles on Elm High Road.
25. The LPA's reasons for issuing the notice cite music being played at early and late hours. However, the appellant states that there are no classes at all in the early hours of the morning. The only time there is a class on a morning is a Saturday, which starts at 1030. I agree with the appellant that does not amount to the "early hours" of the morning. The provided timetable sets out that, otherwise, the earliest class is 1730 on a Sunday, and 1745 on Tuesdays and Thursdays. Moreover, the latest class in the week begins at 2015 on a Wednesday. The appellant indicates that the classes are finished by 2115 at the latest. Again, I consider such a time is not the "late hours" of the evening. Classes presently have a maximum capacity of eight people, though in order to attempt to overcome highway safety concerns, the appellant has offered to reduce it to four.
26. I note that the use will result in the movement of several vehicles along Chapel Lane in a short period of time before and after classes. Noise will thus likely arise from vehicle engines, doors opening and closing and people talking.
27. However, it seems to me that the studio will not be in use early mornings or particularly late into an evening into the hours when neighbouring residents will have reasonable expectations for lower levels of noise.
28. As a result, any noise arising from the internal use of the premises or indeed from the coming and going of people and vehicles will be unlikely to have a material harmful impact on the living conditions of the closest neighbouring residents. A suitably worded condition could be imposed to restrict the use to the indicated times. Moreover, a condition could be imposed to limit class sizes

to prevent any increase in any potential noise levels from more people attending the studio.

29. I conclude, therefore, that the development will not have a harmful effect on the living conditions of neighbouring residents with particular regard to noise and disturbance. As such, the development accords with Policy DM15 of the King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan 2016 insofar as it states that development that has a significant, adverse impact on the amenity of others will be refused.

Other Matters

30. I note that the refusal of the deemed planning application will have the effect of upholding the notice and the closure of the dance studio. As the appellant points out, this will result in the loss of a small business and a community facility. However, such matters do not outweigh the harm I have identified to highway and pedestrian safety.

Conclusions

31. Whilst I have found that the development will not have a harmful effect on the living conditions of neighbouring residents, I have found it will result in harm to highway and pedestrian safety. That is the prevailing consideration and the development therefore conflicts with the development plan as a whole.
32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

33. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J Whitfield

INSPECTOR