



Appeal Decision

Site visit made on 28 May 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/N4205/C/23/3334611

7 Atlas Mill, Bentinck Street, Bolton

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Apex Window Services Ltd against an enforcement notice issued by Bolton Metropolitan Borough Council.
 - The notice was issued on 2 November 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the mill premises from storage and distribution (Class B8 use) to a mixed use of storage and distribution together with manufacturing and use as an indoor venue for exercise and sport.
 - The requirements of the notice are to:
 - Cease to use the mill for manufacturing purposes; and
 - Cease to use the mill as an indoor venue for exercise and sport.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (a) 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 allowed under ground (b) and the enforcement notice is quashed.

Ground (b)

2. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting a breach of planning control have not occurred.
3. The Council advises that the appeal building was previously used for the storage of paper products and was considered to be in a Class B8 use. In 2020, the building was subdivided into 14 separate units, which were let to different businesses and individuals. Following the subdivision of the building, the Council states it received a number of complaints from neighbouring residents with regards to noise, traffic and general nuisance by reason of the new uses/businesses. The Council states that an enforcement notice was issued in respect of Unit 2, which has since been complied with.
4. The Council appears primarily concerned with Unit 4, which is used for the manufacture of windows and doors and Unit 5, which was used as a gym. The appellant occupies Unit 4. During my visit, I saw that the units are physically separated from other units within the building by walls and roller shutter doors. In terms of Unit 4, the manufacturing of windows and doors appears to take place exclusively within the unit itself. Unit 5 was vacant at the time of my visit, though I see no reason to conclude that activities relating to the use of the gym took place outside the Unit itself.

5. When considering whether a material change of use has occurred, it is necessary to ascertain the correct planning unit, and the present and previous primary uses of that unit. The general rule is that the materiality of change should be assessed in terms of the whole site concerned. The planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.
6. I raised with the parties what they consider the planning unit to be and whether the planning units are the individual units rather than the Mill as a whole. The Council advise the units are all in the same ownership, share main entrances off Sofa Street and Bentick Street, and have their individual entrances internally within the mill building off shared corridors. The units also share loading facilities (bays).
7. However, although the different units share certain parts of the building, the units are physically separated from the other by walls and roller shutter doors. While there is a single landowner, the units are let to different businesses and individuals. The activities of the different units appear functionally separate. Indeed, the appellant states they have no affiliation with any other business including any sporting activity venture.
8. From the evidence before me and from my inspection of the site I find that, as a matter of fact and degree, each unit is a separate planning unit, which is physically and functionally separate. I have wide powers of correction under section 176 of the Act and so I have considered whether it would be possible to correct the notice to refer to the individual units (4 and 5, since these are the units, the Council is concerned with). However, I consider such a correction would be so significant, I cannot be sure no injustice would be caused. The appellant may, for example, have advanced a different case on grounds already pleaded, or have appealed under different grounds of appeal.
9. The material change of use to a mixed use of storage and distribution together with manufacturing and use as an indoor venue for exercise and sport has not occurred as a matter of fact and the appeal under ground (b) therefore succeeds.

Conclusion

10. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
11. In these circumstances, the appeal on ground a, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) does not fall to be considered.

M Savage

INSPECTOR