
Appeal Decision

Site visit made on 8 August 2024

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 September 2024

Appeal Ref: APP/X4725/C/23/3333523

Valentinos, 699 Leeds Road, Lofthouse, Wakefield WF3 3HF

- The appeal is made by Shuhina Khanum under section 174 of the Town and Country Planning Act 1990 against an enforcement notice issued by Wakefield Metropolitan District Council on 9 November 2023.
 - The breach of planning control alleged in the notice is "the erection of a timber structure and siting of generator for electrical supply, to rear of the restaurant".
 - The requirements of the notice are as follows: -
 - "i) Demolish and remove the single storey timber structure from the Land; and
 - ii) Remove the generator from the Land"
 - The period for compliance with these requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g). Since there is an appeal on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of a timber structure and the siting within it of a generator for the supply of electricity at the rear of Valentinos, 699 Leeds Road, Lofthouse, Wakefield WF3 3HF, subject to the following conditions: -
 1. If, within one month of the date of this decision, details of the completed appearance of the timber structure have not been submitted in writing to the local planning authority for their written approval and if the works required to complete the timber structure are not carried out in accordance with the approved details within three months of the local planning authority's approval, the structure shall be demolished and all the resultant debris shall be removed from the land. The works carried out shall be retained as approved.
 2. If, within one month of the date of this decision, details of the sound insulation to be installed to control the emission of noise from the timber structure have not been submitted in writing to the local planning authority for their written approval and if the sound insulation has not been installed in accordance with the approved details within three months of the local planning authority's approval, the use of the generator shall cease until such time as the sound insulation has been installed in accordance with the
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approved details. The installed sound insulation shall be retained as approved.

3. The generator shall only be operated as a back-up facility monitored by an automatic transfer switch that cuts in if there is a mains electricity power outage.

Reasons for the decision

Ground (c)

2. The information which the appellant has obtained from Government websites either does not relate to town planning regulations or only applies to residential properties. Planning permission is required for the structure and the generator referred to in the enforcement notice. Since it has not been obtained, the appeal on ground (c) has failed.

Ground (a)

3. Under ground (a), the appellant seeks planning permission for the erection of the timber structure and the siting within it of the generator. The main issues in deciding whether permission should be granted relate to the appearance of the structure and the effect on residential amenities of the noise produced by the generator.
4. Policies relevant to these issues are now contained in the Wakefield District Local Plan 2036, which was adopted on 24 January 2024. Policy LP56 contains design criteria that indicate that the structure should respect the character, function and overall quality of the locality. Policy LP67 and the supporting text relating to noise pollution indicate that the generator will only be permitted if measures can be taken to ensure that the noise it produces will be kept to a satisfactory level.
5. The locality has a compact mix of commercial, industrial and residential properties. Noise from commercial and industrial activity is to be expected here as well as the existence of outbuildings and other items at the rear of properties of all kinds. The structure in question is small. It is in the yard at the rear of a large commercial building, which is used as a restaurant and was previously used for retail purposes. It is close both to the building and to the house that is next to the yard and it is visible from the nearby roadside. The generator is diesel powered.
6. The structure is at present unfinished, mainly because of enforcement action. Some sound insulation has already been installed in it. The generator was used continuously in the past to power the electricity supply to the restaurant – a use that caused a noise nuisance and led to the service of an abatement notice. This continuous use has ceased following the restoration of mains electricity to the restaurant. The generator can now only be operated as a back-up facility monitored by an automatic transfer switch that cuts in if there is a mains electricity power outage. This facility is essential to enable the restaurant's refrigerators to continue to operate at their required temperature for the duration of the power outage.
7. In the circumstances I have described, the structure and the generator would be acceptable and compliant with the planning policies referred to if three

measures were implemented, as follows. Firstly, the structure should be completed to a standard that has an acceptable appearance; secondly, sufficient sound insulation should be installed to ensure that when the generator is in operation the level of noise emanating from the structure is acceptable; and thirdly, the generator should only be operated as a back-up facility monitored by an automatic transfer switch that cuts in if there is a mains electricity power outage.

8. I am satisfied that planning conditions can be imposed that will require all these measures to be implemented. The appeal on ground (a) has therefore succeeded and a conditional planning permission has been granted.

Grounds (f) and (g)

9. As a result of the success of the appeal on ground (a), the enforcement notice has been quashed. Grounds (f) and (g) no longer fall to be considered.

D.A.Hainsworth

INSPECTOR