


Planning Committee

10th February 2021

Subject:	Decisions of the Planning Inspectorate
Director:	Interim Director – Regeneration and Growth Tammy Stokes
Contribution towards Vision 2030:	
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DECISION RECOMMENDATIONS

That Planning Committee:

Notes the decisions of the Planning Inspectorate as detailed in the attached appendices.

1 PURPOSE OF THE REPORT

This report is submitted to inform the Committee of the outcomes of appeals that have been made to the Planning Inspectorate by applicants who were unhappy with the Committee's decision on their application.

2 IMPLICATIONS FOR SANDWELL'S VISION 2030

The planning process contributes to the following ambitions of the Vision 2030 –

Ambition 7 – We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.

Ambition 8 - Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families.

Ambition 10 - Sandwell now has a national reputation for getting things done, where all local partners are focused on what really matters in people's lives and communities.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 Applicants who disagree with the local authority's decision on their planning application may submit an appeal to the Planning Inspectorate. An appeal may also be made where the local authority has failed to determine the application within the statutory timeframe.
- 3.2 Appeals must be submitted within six months of the date of the local authority's decision notice.
- 3.3 Decisions on the following appeals are reported, with further detailed set out in the attached decision notice:-

Application Ref No.	Site Address	Inspectorate Decision
DC/20/64234	21 Pleasant Street Lyng West Bromwich	Allowed with conditions
DC/20/63929	16 Grove Vale Avenue Great Barr Birmingham	Dismissed

DC/20/64330	26 Waterfall Lane Cradley Heath B64 6RQ	Dismissed
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4 STRATEGIC RESOURCE IMPLICATIONS

- 4.1 There are no direct implications in terms of the Council's strategic resources.
- 4.2 If the Planning Inspectorate overturns the Committee's decision and grants consent, the Council may be required to pay the costs of such an appeal, for which there is no designated budget.

5 LEGAL AND GOVERNANCE CONSIDERATIONS

- 5.1 The Planning Committee has delegated powers to determine planning applications within current Council policy.
- 5.2 Section 78 of the Town and Country Planning Act 1990 gives applicants a right to appeal when they disagree with the local authority's decision on their application, or where the local authority has failed to determine the application within the statutory timeframe.

Tammy Stokes

Interim Director – Regeneration and Growth



Appeal Decision

Site visit made on 6 October 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2020

Appeal Ref: APP/G4620/W/20/3256821

21 Pleasant Street, West Bromwich B70 7DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Ali against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/20/64234, dated 30 April 2020, was refused by notice dated 25 June 2020.
 - The application sought planning permission for the change of use of an industrial unit to a snooker hall without complying with a condition attached to planning permission Ref DC/18/62395, dated 13 August 2019.
 - The condition in dispute is No 6 which states that: The use hereby approved shall be open only between 09.00 - 21.00 hours Mondays to Saturdays, 10.00 - 16.00 hours on Sundays and there shall be no opening on Bank Holidays.
 - The reason given for the condition is: in the interests of residential living conditions, with some residences being located nearby which could be affected by noise.
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Decision

1. The appeal is allowed and the planning permission Ref DC/18/62395 for the change of use of an industrial unit to a snooker hall at 21 Pleasant Street, West Bromwich B70 7DB granted on 13 August 2019 by The Planning Inspectorate, is varied by deleting condition 6 and substituting for it the following condition:
 - 1) The use hereby permitted shall take place only between 1200 - 0300 on Mondays to Saturdays, 1000 - 1600 on Sundays, and shall not take place on Bank Holidays.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, having particular regard to noise and disturbance.

Reasons

3. The snooker hall is located within a portion of an industrial estate close to residential properties which front onto Newhall Street and back onto Mount Pleasant Street. The other commercial properties nearby predominantly comprise car repair and motor services businesses. There is also a steel fabrications and welding business located further along Pleasant Street which is also close to the nearby residential properties.

4. At the time of my visit, in the early afternoon, there were no people gathered outside the snooker hall and the level of traffic on Pleasant Street, Mount Pleasant Street and Newhall Street during this snapshot in time was also not significant. I also did not hear any significant noise levels coming from the snooker hall. Consequently, and given the fact that the area is both light industrial and residential, I consider the area to be relatively quiet when the snooker hall is open and no deliveries are being made to the nearby commercial premises.
5. I acknowledge that given the lack of public transport linkages nearby that patrons of the snooker club are more likely to travel there by car. However, the hall has capacity for up to 30 car parking spaces in and around it which I consider sufficient to meet the needs of its potential patrons. It would also be unlikely that this car park would be always full or that the club would be at full capacity every hour that it would be open or that all the patrons would arrive or leave at exactly the same time thereby causing significant noise or disturbance.
6. Furthermore, while I acknowledge the objection made by the Council's environmental health officer and interested parties, no substantive evidence, such as a formal notice, has been submitted to support this which suggests that noise disturbance has not been an issue at the appeal property in the past nor that any noise or disturbance was directly related to or caused by the business.
7. As a result and given the existing levels of background noise and the fact that the business has been in operation for a period of time, it would be reasonable to think that the development has not caused any unacceptable noise or disturbance to its neighbours. Moreover, I consider that this is likely to be as a result of the way the business has been run, and the measures taken to ensure that any noise disturbance is kept to a minimum.
8. Consequently, based on the evidence before me, I consider that the proposal would not unacceptably harm the living conditions of neighbouring occupiers having particular regard to noise and disturbance. I therefore conclude that it would accord with paragraphs 91 and 127 f) of the National Planning Policy Framework which amongst other things aim to create places that are safe and have a high standard of amenity for existing and future users.

Other Matters

Anti-social behaviour and fear of crime

9. Interested parties have raised concerns that the proposal would lead to an increase in anti-social behaviour and a fear of crime in the area. However, while I note that the statistics show that the area is not crime-free, I have no convincing evidence before me to show that any reported crime in the area is directly linked to the snooker hall or its operation as a business. Indeed, the snooker hall operates a strict no alcohol and no drugs policy and has 24-hour CCTV security cameras installed. Furthermore, the police have not objected to the proposal and based on the evidence before me I see no reason to disagree.

Highway safety and free flow of traffic in the area

10. Concerns have also been raised in relation to the effect the proposal would have on highway safety and the free flow of traffic in the area. However, the highway authority has not objected to the proposal and based on the evidence before me I see no reason to disagree.

Conclusion

11. For the reasons set out above I conclude that the appeal should be allowed and will vary the planning permission by deleting the disputed condition and substituting it with one permitting longer opening hours Mondays to Saturdays.

C Coyne

INSPECTOR



Appeal Decision

Site Visit made on 16 December 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/G4620/D/20/3258508

16 Grove Vale Avenue, Great Barr, Birmingham B43 6BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr B Dail against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/20/64330, dated 4 June 2020, was refused by notice dated 3 August 2020.
 - The development proposed is extensions and alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description on the Council's decision notice provides additional detail on the proposals confirming that they include 'single and two storey rear extension, first floor side extension (amendment to previously approved of DC/20/63927)'. The Council's reason for refusal relates specifically to the proposed first-floor side extension and I have assessed the appeal on that basis.

Main Issue

3. The main issue is the effect of the proposed first floor side extension on the living conditions of the occupants of No 14 Grove Vale Avenue with particular regard to outlook.

Reasons

4. No 14 has a ground floor clear glazed window facing, and in close proximity to, the boundary with the appeal site. The evidence before me indicates this window currently serves a study. Means of outlook from this window is not unimpeded given the relative proximity of the window to the boundary fence and the appeal dwelling. Even so, due to the relative levels, the top of the window sits just above the top of the boundary fence. The appeal dwelling incorporates a sloped roof with side dormer window and then a set back to the section of first floor vertical brickwork which sits parallel with the neighbouring study window. These site-specific factors ensure that an adequate means of outlook is provided to this neighbouring window.

5. As a result of the proposed first floor extension, there would be an expanse of brickwork at first floor level aligned with and extending forward of the neighbouring study window. The close proximity and span of the first-floor extension would significantly reduce the appreciation of space for occupiers of No 14 when utilising the study. This would be overbearing and harmful to the means of outlook for the occupiers of this neighbouring property.
6. My attention has been drawn to an extant planning permission for extensions to the dwelling at No 16. However, the previously approved extensions retain the sloped roof and an inset to the first-floor vertical brickwork that is aligned with the neighbouring study window. This arrangement retains a similar degree of space and levels of outlook from the neighbouring study to that which presently exists. I therefore do not find the fallback position of the previously approved extensions persuasive in respect of the appeal proposals.
7. I conclude that the first-floor side extension would have a harmful effect on means of outlook for occupiers of the neighbouring dwelling at No 14. In that regard the development would conflict with Policy SAD EOS 9 (Urban Design Principles) of the Sandwell Metropolitan Borough Council Site Allocations and Delivery Development Plan Document (2012) (DPD) which amongst other things seeks to ensure that development which is incompatible with its surroundings is rejected. The proposals would also be contrary to Paragraph 127 of the National Planning Policy Framework with amongst other things states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.
8. The Council has also referred to Policy ENV3 (Design Quality) of the Black Country Core Strategy (2011). This particular policy does not specifically refer to compatibility with surroundings or more specifically to the protection of living conditions for neighbouring occupiers. Whilst I have therefore not identified specific conflict with this particular policy, this does not override the conflict with the DPD and the Framework.

Conclusion

9. For the reasons given above I conclude that the appeal should be dismissed.

M Russell

INSPECTOR



Appeal Decision

Site visit made on 1 December 2020

by S A Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2021

Appeal Ref: APP/G4620/X/20/3258044

26 Waterfall Lane, Cradley Heath, West Midlands B64 6RQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Miss Lesley Pearson against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/20/63929, dated 28 October 2019, was refused by notice dated 3 April 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The use for which a certificate of lawful use or development is sought is described as "No machinery, retailing and storage of household goods. Daily 8am to 7pm. 7 days week."
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The description of development in the banner heading above is taken from the application form. However, for clarity the Council's decision notice describes the particulars of development as "existing use as retail and warehouse¹". From the evidence before me, I take this to be a correct description of the use which the appellant seeks to claim is lawful.
3. Under S191(1)(a) of the 1990 Act, any person who wishes to establish whether any existing use of buildings or other land is lawful, they make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2) of the 1990 Act specifies that uses and operations are lawful if (a) no enforcement action may then be taken in respect of them because they did not involve development or require planning permission or (b) because the time for enforcement action has expired.
4. Planning merits form no part of the assessment of an application for an LDC which must be considered in the light of the facts and the law. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The burden of proof lies with the appellant and the relevant test is 'the balance of probabilities'. However, the Courts have held the

¹ At the date of application retail warehouses are classed as falling within Class A1 of the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO).

evidence of the appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and the evidence alone is sufficiently precise and unambiguous that is enough.

5. The property is currently occupied by Steve Davies and at the time of my site visit, the building at ground level contained many items of reclaimed household items/antiques. I note from the evidence supplied by the appellant that it is Mr Davies' intention to "use the building as registered offices for my business, secure storage of hand tools and portable equipment, a workshop where I can service and repair my small equipment and portable scaffold towers, a showroom for antiques, architectural antiques, oak beams and reclaimed flooring that I salvage.... The showroom will not be open to the general public, unless by appointment, and goods will be advertised and sold online. I also intend to store my company vehicles there... and have a nice office to entertain developers who invite me to tender for new contracts. Between demolition contracts I will be able to relax there, restore antiques, service my vehicles and photograph architectural antiques and floorboards for selling on the internet (including items that I may have stored elsewhere). I will also be able to work on my website from these premises, including adding an items for sale page, and advertise for more work".
6. What is proposed by the current occupier and what is sought to ascertain whether the existing use of the building is lawful, as applied for, differ considerably. The purpose of an application for a certificate of lawfulness of existing use or development under s191 of the 1990 Act is to ascertain whether the existing use of the building is lawful. Consequently, in determining the appeal I will have regard to the evidence before me concerning its previous uses, and not those proposed by the current occupier, to establish whether the building has a lawful use for retailing and warehouse (storage) use (Class A1 of the UCO).

Main Issue

7. This is whether the Council's decision to refuse to issue an LDC was well-founded. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of ten years beginning with the date of the breach. The appellant therefore needs to show on the balance of probability, that by the date of the application for the LDC the use of the site for retail and warehouse had existed on a substantially uninterrupted basis for at least ten years, and had not subsequently been abandoned or supplanted by another use. The burden of proof rests with the appellant.

Reasons

8. The property comprises a former Methodist Chapel which, from the evidence that has been supplied by the appellant, has been used since 1960 for the following purposes.
9. From 1960 to 1991 the site was owned and occupied by Mr Jack Pearson and provided space for his business trading as "Wholesale Warehouse Supplies" which sold white goods, furniture and electrical appliances. On 25 March 1992

the property was leased from Mr Jack Pearson to Mr Donald Pritchard for 15 years (to 2007). An incomplete copy of the lease agreement has been provided by the appellant which does not include the full agreement or any signatures. The appellant provides that Mr Donald Pritchard traded as "Sweet Dreams" selling bedding furniture and carpets.

10. Also included with the appellants evidence is an incomplete copy of a Notice of Assignment of Leasehold Property, dated 17 December 2004, to Mr Jack Pearson showing the lease had been assigned from Donald Geoffrey Pritchard to Mark Barry Jones. From the evidence supplied, Mark Barry Jones continued trading as "Sweet Dreams" selling similar items. Sweet Dreams is listed by an online business listing service as 'Furniture – Retail'.
11. The Council's evidence notes that to support the application submission, the applicant has submitted three legal agreements (Notice of Assignment of Leasehold Property, Lease Agreement and Counterpart Lease). The submitted lease refers to the address of the premises as "The Warehouse" with no mention of retail found in the paperwork. Moreover, a lease would not provide sufficient evidence to confirm the use of the site for a continuous ten-year period. Furthermore, the council's Revenues and Benefits department has confirmed that from their records the premise has not been used for retail purposes and is listed as a warehouse. However, it is not provided to what period this refers.
12. From January 2010 to June 2015 a charity, Loaves n Fishes, occupied the property. An incomplete copy of a lease made on 22 July 2010 shows that the property was leased by Jack Pearson to Marcus Penberthy, Steven Hartland and Anna Hartland for 5 years starting on 4 January 2010. From the few pages which have been provided by the appellant, the lease stipulates that the property is not to be used except for the storage of furniture, nor to hold an auction sale. From the information provided, the charity operated from the site distributing furniture and a large variety of donated household goods.
13. The Council's statement provides that 'the use at the time was charity/storage' as stated on the application form for a storage shed². A letter provided by the appellant from an interested party states that he supplied the charity with excess bedding, blankets, sheets, curtains and towels for the needy. There is no further information provided to demonstrate that the activities undertaken during this tenure included a retailing element. It seems to me that the primary use was not one where the sale, display or service was to visiting members of the public. The use fell outside Class A1 of the UCO, being more akin to one falling within Class B8 (storage and distribution) of the UCO.
14. Following the occupation of the property by the charity, the unit was leased from June 2015 to 18 November 2018 to Mrs Christine Moore. From the limited evidence supplied in the form of photographs of 'A' board signage and a copy of rent receipts³, the building was occupied by HALO (Help and Love Others). The 'A' boards advertise "Gods (sic) Store Cupboard open today 1pm – 3.30pm (with Christian books and tapes for loan)" and "tearoom open today 1.00pm

² Planning application reference DC/12/54849

³ Receipt from HALO for rent paid to L Pearson from 22 June 2015 to 31 March 2016 paid by Christine Moore

until 3.30pm". The use of the property is described as a tea shop/gift shop in a letter from an interested party, supplied by the appellant.

15. The evidence supplied by the appellant is limited and ambiguous concerning the use of the site, particularly in the interim period since the property was vacated by the business trading as Sweet Dreams. From the evidence before me and on the balance of probabilities, I consider that although it is likely that there had been a lawful retail element of the site up to 2009, it is likely to have been supplanted during the years when it was occupied by the charity Loaves n Fishes from 2010 to 2015. As detailed above, and without any further evidence to the contrary, I consider that the use by Loaves n Fishes as a storage and distribution depot (Class B8 of the UCO) would likely have been materially different in character to a retail use. Moreover, it seems to me that a further material change of use occurred when the site was occupied by HALO. The sequence of events leaves no specific identifiable lawful use.

Conclusion

16. For the reasons given above I conclude that, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of the use of the site for retail and warehouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR