



Appeal Decisions

Site visit made on 6 November 2007

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Decision date:
14 November 2007

Appeals Ref: APP/B3410/C/07/2041541 (Appeal A) and 2041543 (Appeal B)

No 4 Horninglow Road, Burton upon Trent, Staffordshire DE14 2PR

- These appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
- The appeals are made by Mr Shamrez Khan against enforcement notices issued by East Staffordshire Borough Council.
- The Council's reference is EN/00480/009.
- The notices were issued on 22 February 2007.
- The breach of planning control as alleged in the notice to which Appeal A relates (Notice A) is without planning permission, the erection of a ventilation flue.
- The breach of planning control as alleged in the notice to which Appeal B relates (Notice B) is without planning permission the change of use of the land from use as a solarium to a mixed use comprising a hot and cold food takeaway, a café and a DVD / video hire shop.
- The requirements of the notices are
 - Notice A - to remove the ventilation flue from the land; and
 - Notice B - to stop using any part of the land as a hot and cold food takeaway, and/or a café, and/or a DVD / video hire shop.
- The period for compliance with the requirements is thirty days.
- The appeals are proceeding on the ground set out in section 174(2)(a) of the Act. Since the prescribed fees have been paid within the specified period, the applications for planning permission deemed to have been made under section 177(5) of the Act also fall to be considered.

Summary of Decisions

- **Appeal A: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out in the Formal Decision below.**
- **Appeal B: The appeal is dismissed, and the enforcement notice is upheld.**

The Main issues

1. From the written representations and my visit to the appeal premises and surrounding area, I consider the main issues on which these appeals will turn to be
 - Appeal A - whether the flue
 - is visually intrusive, and/or
 - by virtue of the fumes it emits, is harmful to adjacent residential amenity; and

- Appeal B - whether permitting the current use of the appeal premises to continue would have an adverse impact on the safe and free flow of traffic on this part of Horninglow Road.

Reasons

Appeal A

2. The flue is located tight to the appeal premises' rear wall. It not visible from any public vantage point. The closest window to it within the flats above the block of shops comprising Nos 1 to 5 Horninglow Road is a bathroom, and is hence obscure glazed. From the next closest, a bedroom window, the flue can be seen only when standing unnaturally and uncomfortably close to that window, and even then only at a very oblique angle.
3. From all of the clear glazed windows within the block, wider views are dominated by the roof of an adjacent workshop or warehouse building. The limited extent to which the flue can be seen does not, I therefore consider, cause material harm to the prevailing outlook.
4. I do not accept the appellant's contention that such visual harm as the flue might have caused would have been acceptable because he occupies the flat above the shops at Nos 3 and 4 Horninglow Road, and that the flat at No 5 is currently unoccupied. This is because the former is self-contained, and hence could be occupied separately from the shops beneath; and at the latter, the present situation may not always obtain. Those matters do not, however, affect my conclusion that the flue is not visually intrusive.
5. That the flue vents just below eaves level may, I surmise, in certain weather conditions allow some fumes to enter the flats. The problem could however be avoided by a minor extension to its height.
6. It accordingly follows that subject to a condition to that effect, Appeal A deserves to succeed.

Appeal B

7. Horninglow Road forms one arm of a roundabout-controlled intersection of major arterial roads. It carries a high volume of vehicular traffic. The appeal premises are located only some forty metres or so from the roundabout. The appellant in consequence acknowledges that parking outside the premises causes inconvenience and danger. Because of the presence of double yellow lines, it is also illegal.
8. It seems reasonable to suppose that parking outside the appeal premises would to some extent arise whatever the use to which they were put. The crucial questions for this issue are hence first whether permitting the premises' current uses to continue would give rise to a material increase in such parking, and secondly and if so, whether it would be reasonable to withhold planning permission on that ground.
9. As to the first question (and notwithstanding there might, I appreciate, be some exceptions), customers of a business who by the nature thereof stay at the subject premises for a considerable length of time would, I believe, be unlikely to park illegally. Where however the use of the premises relies on a

- regular turnover of short to medium length stay customers - and regardless of whether they emanate from the immediate locality, have made a special journey for the purpose of the visit or are simply passing by - the temptation for them to flout parking laws is, I believe, much greater.
10. The appeal premises' authorised use falls into the former category, whereas its current uses fall into the latter. The view to which I am therefore drawn is that permitting the premises' current uses to continue would be likely to give rise to a material increase in parking on the adjacent highway.
11. Where both fell within the same Class of the Town and Country Planning (Use Classes) Order 1987 as amended, the Council could not resist the change of use of premises from one which did not generate unacceptable levels of on street parking to one which did. That is not to say, however, that they should not seek to do so when (as here) permission is required for a change from one Use Class to another: on the contrary, it is a well established principle of development control that all potentially harmful aspects of the proposal concerned should be taken into account, even if there exist nearby examples of similar harm which the planning system is powerless to prevent.
12. For these reasons my conclusion on the second question is that it would be reasonable to withhold planning permission on the ground that permitting the current use of the appeal premises to continue would give rise to a material increase in on street parking outside them. And from that it follows that so doing would in turn have an adverse impact on the safe and free flow of traffic on this part of Horninglow Road.
13. In coming to those conclusions I have not lost sight of the appellant's main counter arguments, but I reject them for the following reasons:
- As already mentioned, the fact that some of the existing, nearby businesses might also give rise to similar on-street parking is no reason to permit this one.
 - I have insufficient information to form a definitive view on whether the recent development opposite the appeal site (a Sainsbury's Local store and a bathroom shop) provides adequate car parking. But as I have no reason to suspect that the Council do not act even-handedly and given the stand they have adopted in this appeal, the more likely answer is that it does. Furthermore, at the time of my site visit seven of the twenty spaces (including one disabled space) which the car park provides were vacant.
 - That (to use his words) "a significant proportion" of the appellant's customers arrive on foot does not alter the fact that a significant proportion will also arrive by car.
14. Appeal B therefore fails accordingly.

Other Matters

15. Because the flue is an integral part of the appeal premises' current uses, it was sensible for these appeals to be considered together. In the light of the outcome of Appeal B, it may however be that the appellant will wish not to implement the planning permission I shall grant under Appeal A. He may even wish to remove the flue.

16. Those are, of course, matters entirely for him. But they do not alter the fact that permission under Appeal A should still be granted.
17. Should that permission in the event be implemented, three months would, I consider, allow ample time for the flue's height to be increased. I shall therefore so provide.

Formal Decisions

Appeal Ref: APP/B3410/C/07/2041541 (Appeal A)

18. I hereby allow the appeal, and direct that the enforcement notice be quashed. I also grant planning permission on the application deemed to have been made under section 177(5) of the Act for the development already carried out and referred to in the notice (namely the erection of a ventilation flue on land at No 4 Horninglow Road, Burton upon Trent, Staffordshire DE14 2PR), subject to the condition that the permission hereby granted shall lapse unless within three months of the date of this decision the height of the flue has been increased so that it vents above the eaves level of the premises to which it is attached.

Appeal Ref: APP/B3410/C/07/2041543 (Appeal B)

19. I hereby dismiss the appeal and uphold the enforcement notice. I also refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

K P Moxon

INSPECTOR