

PLANNING APPEAL DECISIONS

The Council has received the following appeal decisions in the last months. All decisions can be viewed in full at <https://www.fenland.gov.uk/publicaccess/> using the relevant reference number quoted.

Planning Application Reference: (Appeal reference) ENF/012/17/UCU (Appeal references: Appeal A: APP/D0515/C/19/3224948 & Appeal B: APP/D0515/C/19/3224949					
Site/Proposal: Breach of planning control as alleged in the notice is without the benefit of planning permission, the material change of use to mixed use as restaurant/bar/nightclub and snooker hall and the erection of 2.47 metre high fence to rear. 2 Chapel Road, Wisbech, Cambridgeshire PE13 1RG					
Officer Recommendation:	N/a	Decision Level:	N/a	Appeal Decision:	Dismissed
Main Issues:					
<p>An enforcement notice was issued on 21st February 2019 alleging a breach of planning control, as indicated in the above description. The requirement of the notice was to cease the unauthorised use of the premises with a 3-month compliance period. The grounds of appeal were as follows:</p> <ul style="list-style-type: none"> • The appellants argued that the matters alleged in the notice had not occurred • Furthermore the appellants considered that a breach of planning control had not occurred • In addition they alleged that the Enforcement Notice was outside the prescribed timeframes for enforcement action, and • Considered that deemed planning permission should be granted • Finally the appellants considered that the steps required by the notice were excessive 					
Summary of Decision:					
<ul style="list-style-type: none"> • The Inspector found that the the matters alleged in the notice had occurred noting that: <ul style="list-style-type: none"> - The premises were in 'mixed use' as opposed to operating as two separate planning units, and that this 'mixed use' should be considered 'sui generis' as it comprised a number of <i>'disparate activities'</i>. - Based on his site inspection and other available evidence the Inspector noted that a nightclub was operating at the ground floor of the premises, along with a restaurant, bar and club • The Inspector noted that the Use Classes Order explicitly excluded use as a nightclub from any of the classes specified and that the use operating was a nightclub, as opposed to a Class D2 - dance hall; however as indicated above he reiterated that a mixed use is classified as sui generis even if individual components fall within a described use class. Furthermore the Inspector highlighted that each time a new primary use was introduced a material change of use would have occurred. As such there was a breach of planning control. 					

- With regard to the **legitimacy of the service of the enforcement notice** the Inspector identified that to succeed on this ground the appellant would have to demonstrate that the change of use to a 'mixed use' had occurred at least 10 years before the issue of the enforcement notice (21st February 2019) and had continued without material interruption throughout that period. It was highlighted in the Appeal decision that the appellant had provided no substantive evidence in this regard and that based on information provided on the earlier planning applications and available social media information it was clear that the premises opened as a nightclub on 31st December 2016. As such the appellants had not demonstrated that the change of use had occurred at least 10 years prior to the the issue of the Enforcement Notice.
- In considering **whether deemed planning permission should be granted** the Planning Inspector considered that the main issue was the effect of the change of use on the living conditions of residential occupiers within the vicinity of the appeal site; with particular reference to noise and disturbance. In summary the Inspector noted that:
 - Although a premises licence had been issued these were different regimes and that the licence had been issued prior to the opening of the venue at ground floor
 - The appellants had not appealed the earlier refusal of planning permission
 - Noise levels had previously been monitored from inside a neighbouring property and the recording taken demonstrated noise levels in the early hours which the FDC Environmental Protection team (EP) concluded unreasonable. The Inspector noted in this regard that there appeared to be a direct conflict in professional views between the noise consultant engaged by the appellant and EP at the time of the planning application.
 - In the absence of any updated data or noise report since the planning application was dismissed the Inspector highlighted that *'the technical evidence in support of the use [was] simply too vague for reliance to be placed on it'* and that in his mind *'it is too late for a noise impact assessment to be conducted once permission has already been granted with the risk that suitable mitigation measures cannot be achieved'*.

Based on the above the Inspector found the use to be contrary to Policies LP2 and LP16 and Para 127(f) of the NPPF as he was not satisfied that noise and disturbance caused by the mixed use could be controlled to acceptable levels, including through the use of conditions; accordingly the application for deemed planning permission failed.

- In considering **whether the steps required in the notice were excessive** the Inspector found that:
 - If he were to vary the notice to require the nightclub use to cease at ground floor only this would result in unconditional planning permission being granted once the remaining requirements were complied with which would render the nightclub use free to operate on the first floor free from any planning restrictions including opening times.
 - Such an approach would also not be consistent with the development enforced against as the nightclub use was not in operation at first floor at the time that the enforcement notice was served; furthermore there was no technical evidence to demonstrate whether noise attenuation measures could be resolved
 - although the appellants submit that noise mitigation could be achieved at ground floor and that this could be achieved through S106 or Unilateral Undertaking; however as no such deed accompanied the appeal documentation this could not be taken forward. As indicated elsewhere in the decision the Inspector was not satisfied that noise mitigation would be effective in protecting against noise and disturbance.

- Although the appellants had suggested a number of alternative approaches to how the uses were delivered across the two floors these were outside the scope of what could be considered as part of the Appeal
- Based on the above the Inspector did not feel that the requirements of the notice to remedy the breach were not excessive.
- The Inspector did however extend the period of compliance to allow time for the Appellant to explore alternative options to be explored with the council through the submission of a planning application; although noting that this did not indicate that any of the options mooted were acceptable as this remained a matter for determination by the LPA.

Planning Application Reference: F/YR19/0562/F					
(Appeal reference: APP/D0515/W/20/3247455)					
Site/Proposal: Erect 1 dwelling (3-bed, 2-storey) at Land South West of 38 Burnsfield Estate accessed from Treeway, Chatteris					
Officer Recommendation:	Refuse	Decision Level:	Delegated	Appeal Decision:	Dismissed
Main Issues:					
<ul style="list-style-type: none"> • Character and Appearance • Highway safety 					
Summary of Decision:					
<p>Character and appearance</p> <p>The Inspector concluded that that the proposed house would be an incongruous feature, out of place in the street scene. It would be set back significantly from Treeway and would not accord with the character of the nearest terraced dwellings to which the development site most closely relates.</p> <p>Also found that the proposed house would present a blank side elevation to the approach along Treeway from Station Road and considered that this would result in harm to the street scene due to the lack of visual interest. While acknowledging examples of similar elevations do exist elsewhere in Treeway, concluded that the presence of such does not justify a development that would cause harm to the character of the area.</p> <p>Found the development would conflict with Policy LP16 of the Fenland Local Plan May 2014 acknowledging that this policy requires, amongst other things, that new development make a positive contribution to the local distinctiveness and character of the area.</p> <p>Highway safety</p> <p>Considered that vehicle access to the site would be constrained by the narrow width of the entrance, and the presence of a speed calming feature opposite that entrance. This would be likely to result in cars having difficulty manoeuvring onto and off the site, obstructing the passage of other road users and pedestrians.</p>					

Noted that the site has high fences up to the pavement edge which would limit visibility for vehicles leaving the site and while these could be reduced on the appeal site, the high fence to No 12 Treeway (adjacent) would similarly restrict visibility, and no evidence to indicate that reduction of this fence falls within the appellants' control.

Concluded that the development conflicts with Policy LP15 which requires, amongst other things, that development provides well designed, safe and convenient access for all.

Other considerations

The inspector considered the benefits of the development; it would contribute to the local housing supply, and there would be social benefits from its occupation and financial benefits from its construction and occupation. The appeal site is in a sustainable location within an existing settlement, with access to services and facilities. However, considered that these benefits would be limited as the proposal is for a single dwelling, and did not consider that they would outweigh the identified harm.