



Appeal Decision

Inquiry held on 23 September 2008

Site visit made on 23 September 2008

by **David Pinner** BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
2 October 2008

Appeal Ref: APP/N4720/C/07/2060405

52 and 52A Waterloo Lane, Bramley, Leeds LS13 2JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by HPAS Ltd T/A Safestyle UK against an enforcement notice issued by Leeds City Council.
- The notice was issued on 16 October 2007.
- The breach of planning control alleged in the notice is failure to comply with condition No 5 of a planning permission Ref: 82/84/24 granted on 4 May 1982.
- The development to which the permission relates is the erection of two light industrial and warehouse units.
- Condition 5 states that: the hours of use, including deliveries to and from the site, shall be restricted to 08.00 to 18.30 hours Monday to Friday; 08.00 to 13.00 hours Saturdays and there shall be no Sunday or Bank Holiday usage. The notice alleges that the condition is not being complied with in that operations and activities in connection with the lawful use of the premises are taking place after 18.30 hours Mondays to Fridays, after 13.00 hours on Saturdays and also on Sundays and Bank Holidays.
- The requirements of the notice are not to undertake or permit the undertaking of any operations or activities for the purposes of the lawful use of the premises within any part of the site before 08.00 hours on Mondays to Saturdays, or after 18.30 hours Monday to Fridays and 13.00 hours on Saturdays or at any time on Sundays and Bank Holidays.
- The period for compliance with the requirements is 14 days after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of decision I allow the appeal, and direct that the enforcement notice be quashed

Preliminary matters

1. The 1982 planning permission relates specifically to light industrial and warehouse buildings. As the building is not being used in accordance with the 1982 permission and its use is as an office rather than for light industrial or warehousing purposes, it seems to me that the allegation and the deemed application should relate to the use of the premises for office purposes within the meaning of Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987. I have dealt with the appeal on that basis. Had I not been quashing the enforcement notice, I would have corrected it accordingly.
2. During an adjournment at the beginning of the inquiry, the parties were able to agree on a number of matters that led to the withdrawal of grounds (c), (d)

and (f) of the appeal and an agreed variation to the period for compliance with the notice such that nothing further needed to be said on the ground (g) appeal. It was also agreed that there should be an hours of working condition for the use, but the working times remained in dispute to an extent. Saturday working times were agreed, but on weekdays the Council requires the premises to be closed by 8pm, against the appellant's requirement of an 11pm closing time. On Sundays and Bank Holidays the Council requires no working to take place, whereas the appellant sought working times the same as Saturdays. It was common ground that I should allow the appeal on ground (a), subject to a condition limiting working to one or other of the proposed schemes as I consider necessary.

Background

3. The appellant company has occupied the premises since early 2007 and uses them as an office in connection with their business of selling replacement windows and doors etc. Products are not manufactured or kept at the premises and customers do not visit. The premises act as the base for a team of canvassers whose function is to generate leads for the sales staff. This involves doorstep canvassing in the evening after potential customers have finished work. There are usually four sales staff permanently based at the premises, but, according to the appellant's surveys of staff present on site, after about 9pm there is usually only one person present. This person stays until all the canvassers have reported in, partly for health and safety reasons and partly to ensure that orders are sent through to the factory. This person usually leaves the site between 10pm and 11pm. Additionally, meetings are held twice a week when all of the canvassers will be present. One meeting is held during the daytime and one meeting is held on Thursday evening, usually finishing by 9pm.
4. Since the 1982 permission was granted, certain office uses have been incorporated into the same Use Class as light industrial uses, hence the change to office use may not have involved a breach of control, had it been carried out in accordance with the permission. The Council became aware that the appellant was not occupying the premises in accordance with the hours of use condition following complaints from local residents. However, these complaints appear to have been sparked by unruly behaviour of the staff employed at the building, particularly playing football in the yard outside and sitting in their cars with music playing loudly.

Reasons

5. The enforcement action has been taken on the basis that the use of the premises outside the hours permitted in the 1982 permission causes unacceptable noise and disturbance to local residents as a result of cars entering and leaving the site during the evening and at weekends. No mention is made of the rowdy behaviour that led to the complaints. In my experience, rowdy behaviour of employees is not a characteristic of office uses, so the possibility of noise and disturbance arising from bad behaviour would not normally be a consideration in dealing with office proposals. It could be expected that employers would ensure that their employees behave appropriately when on the premises. Failing that, public order legislation would be the appropriate way of dealing with such problems. In this case, no details

of the times when these events occurred have been given, so they did not necessarily take place during the times when the premises should have been shut.

6. The appeal premises face onto a well-trafficked through route and the nearest houses are on the opposite side of the road. According to the appellant's survey evidence, after 9pm, typically only one employee remains on the premises. Traffic count data from a survey undertaken in May 2005 (and likely to be representative of the current situation) shows that the two-way flow on Waterloo Lane remains high after the 8pm closing time favoured by the Council. Even at the minimum recorded, it remains at more than one vehicle a minute after the 11pm closing time required by the appellants. Furthermore, there are other uses close to the appeal site, notably a GPO sorting office, that generate traffic late at night. I do not believe that the sound of someone leaving the premises at 11pm, getting into their car, starting the engine and leaving the premises would create a noise event so prolonged or out of the ordinary that it would be noticeable compared to the general traffic noise and activity in the vicinity (except, maybe, by someone who was determined to notice it). That being so, I conclude that the use of the premises until 11pm would not cause unacceptable noise and disturbance as a result of vehicles entering and leaving the premises. As for Sunday working, there is nothing in the traffic data which suggests to me that Waterloo Lane is especially quiet during the times when the premises would be in use, so unacceptable noise and disturbance would not be caused as a result of the premises being open between 8 am and 4 pm. The noise assessment undertaken on behalf of the appellant supports these conclusions.
7. I have also borne in mind reports that the canvassers' meeting causes parking problems. However, the problem appears to be limited to the daytime meeting during the hours of working permitted by the 1982 permission. Non-planning legislation could deal effectively with problems of cars being parked so as to obstruct pedestrian footways.

Conclusions

8. I conclude that the office use of the premises during the hours proposed by the appellant would be acceptable and would not conflict with policy GP5 of the Leeds Unitary Development Plan, which, amongst other things, requires that proposals for development avoid problems of loss of amenity. The proposed working hours are acceptable and permission will be granted. I have worded the conditions so as to replicate the effect of the 1982 permission insofar as it would have permitted the use of the premises for non-office purposes.

Formal Decision

9. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at 52 and 52A Waterloo Lane, Bramley, Leeds LS13 2JF as shown on the plan attached to the notice, as an office within Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 subject to the following conditions:

- 1) The active use of the premises for office purposes shall not take place other than during the following times:
Mondays to Fridays (except Bank Holidays): 08:00 to 23:00
Saturdays, Sundays and Bank Holidays: 08:00 to 16:00
Outside those times, the premises shall be closed to employees and visitors with no personnel present on the site.

- 2) Having regard to the provisions of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 and to Article 3(1) of the Town and Country Planning (Use Classes) Order 1987, the premises shall not be used for any other purposes made lawful by those provisions except in accordance with the following condition:
the premises shall be closed to employees and visitors with no personnel present on the site and no deliveries made to or from the site except between the following times:
Mondays to Fridays (excluding Bank Holidays) 08:00 to 18:30
Saturdays 08:00 to 13:00
Sundays and Bank Holidays Not at all

David C Pinner
Inspector

APPEARANCES

FOR THE APPELLANT:

Simon Randle of Counsel

Instructed by Mark Blackburn of Gordons Solicitors

He called:

Richard Serra BSc (Hons)
MRICS MRTPI

Of Savills, Instructed by Gordons Solicitors

Richard Watson BEng(Hons)
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Of Blue Tree Acoustics, 11 Colley Road, Sheffield,
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FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter of Counsel

Instructed by Nicole Jackson, Director of Legal and Democratic Services, Leeds City Council

He called:

James Wiggington BA(Hons)
DipTP MRTPI

Planning Compliance Manager, Leeds City Council

INTERESTED PERSONS:

Mr W H Rowe

Local resident of 55 Waterloo Lane, Bramley, Leeds, LS13 2JE

DOCUMENTS

- 1 List of those present at the inquiry
- 2 Handwritten joint position note signed by Messrs Wiggington and Serra
- 3 Report on objections of residents of the surrounding area regarding a scheme for veterinary surgery etc. on land close to the appeal site.
- 4 Statement of Common Ground