



Appeal Decision

Site visit made on 18 August 2009

by **John Whalley** CEng MICE

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
25 August 2009

Appeal ref: APP/W4223/C/09/2101319

No. 1 Linkside Avenue, Royton, Oldham OL2 6YS

Appeal made by Mr John Flint

- 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 was made by Mr John Flint against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The notice was issued on 3 March 2009.
- The breach of planning control as alleged in the notice is: Without planning permission, change of use from single dwelling house to a mixed residential and business use for limousine and car hire including storage and parking of vehicles.
- The requirement of the notice is to permanently cease the use of the residential single dwelling house for the operation of the limousine and car hire business including the parking or storage of private hire vehicles within the curtilage of the property.
- The period for compliance with the requirement is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. As the prescribed fees were paid by Mr Flint within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of Decision: The enforcement notice is varied and upheld

The appeal site

1. The enforcement notice appeal site is the house and its garden at No. 1 Linkside Avenue, Royton, Oldham. No. 1 is surrounded by houses; by No 3 Linkside Avenue to the south-east; No. 93 opposite on the other side of the road; No. 23 Low Crompton Road over the road to the side of No. 1 and by No. 24 Low Crompton Road on the north-eastern side.

Mr Flint's activities

2. Mr Flint, the appellant, lives at No. 1 Linkside Avenue. He also runs his private vehicle hire company from his home. As present, this consists of 2 stretch limousines. Both are based at No.1 and are parked on a hardstanding to the side of the house when not out on hire. This part of the garden to No. 1 is surrounded by fencing about 1.6 to 2m high. The closest house to this parking area is No. 24 Low Crompton Road.

Council objections

3. The Council's concern was that Mr Flint's business activities at No. 1 were likely to cause disturbance to those living nearby. Because business trips were frequently made in the evening, with a return to No. 1 late at night, those living close by were likely to be disturbed.

Planning policy

4. Oldham Metropolitan Borough Unitary Development Plan, (UDP), policy S1.5 allows for taxi or vehicle hire offices outside the central shopping core of the town centre and outside district centres only if a set of criteria are met. Such developments should have no adverse impact on the amenity of surrounding residential occupiers; off street parking is to be available and there must be no adverse impact on the free flow of traffic or on highway and pedestrian safety.

Planning history

5. An application for planning permission for a change of use from residential to a mixed residential and limousine/private hire business, including the parking and storage of private hire vehicles within the curtilage of No. 1 was refused by the Council on 20 August 2008. An appeal against that decision was dismissed on 13 January 2009, (our ref: APP/W4223/A/08/2085919).
6. An application for a Certificate of Lawful Use, (LDC), of No. 1 Linkside Avenue for residential use and use for the operation of 2 limousines/private hire vehicle business, including their parking and storage within the curtilage, was refused by the Council in June 2009. The Council decided that the limousines/private hire vehicle business would have a significantly greater impact on the amenity of nearby residential properties than one could expect from the use as a single dwelling house. The mixed use required planning permission.

Considerations

7. My decision turns on the likely effect of the limousine hire business on the amenity of those living nearby. The difficulty for the appellant, Mr Flint, is in meeting the criterion to UDP policy S1.5 which requires that there be no adverse impact on the amenity of surrounding residential occupiers.
8. Mr Flint's business activities at No. 1 have been reduced from the operation of a fleet of 3 limousines, a fire engine and an executive car in 2007 to the present 2 limousines. That would now seem modest enough, particularly if operations were limited to daytime hours.
9. However, a car hire business is generally a poor neighbour to nearby residents, especially in a housing estate. It is the nature of limousine hire that it often takes place in the evening and well into the late hours. When hire vehicles return in the night, immediate neighbours are likely to experience disturbance of a different, more frequent and troublesome nature than might reasonably be expected in an otherwise peaceful residential area.
10. I note that my colleague, in determining the earlier appeal referred to above, came to a similar view. He appeared to indicate, however, that it might be possible for Mr Flint's business to operate in an acceptable manner, compatible with the need not to disturb others. But, in that case, he felt unable to investigate the matter further in the absence of the parties putting forward possible planning conditions which might have adequately controlled Mr Flint's activities. That approach was supported in the case of *Christoforou v SSE & Islington LB* [1994] JPL B44, and confirmed by *Ludlam v SSTLR and Derbyshire Dales DC* [2002] QBD 17/7/02.

11. Here, reference was made to possible personal conditions and to limiting the hours of operation. As to the latter, that would be inappropriate in my view, as restricting late evening use would probably negate the benefit of a planning permission for this type of use. If the use was limited to Mr Flint and to the hiring of no more than the 2 limousines presently operated, it is possible that neighbour disturbance would be minimal.
12. I have considered the possibility of granting a personal and temporary planning permission. But particularly as Mr Flint's business is surrounded by housing within what looked like a quiet area, I have concluded it would be more appropriate if I uphold the enforcement notice, but extend the period for compliance to 12 months. That will allow the Council to monitor the situation to see subsequently whether it might be appropriate to grant a conditional planning permission. Such conditions might restrict the use to Mr Flint and the number of vehicles to be based at No. 1. It will also give Mr Flint more time to find other suitable premises should he wish to expand his business or if he is unable to operate from No. 1 without unduly disturbing others.
13. If disturbance problems are caused to neighbours, the Council would be better able to end vehicle hire activities at No. 1 Linkside Avenue than if they had to consider serving another notice. I know this approach will leave Mr Flint able to operate more vehicles from his home than the present two for the next 12 months. But if he were to do that, it would leave him unable to demonstrate that a use limited to 2 limousines can be operated without unacceptably disturbing those living near his home. The appeal on ground (a) fails.

The appeal on ground (f)

14. For Mr Flint it was said it was not necessary to require the complete cessation of the business from the premises. Planning permission could be granted limiting the number of vehicles to 3, with the permission restricted to Mr Flint.
15. I have dealt with that under the ground (a) appeal. If it is decided, at the end of the extended period for compliance, the notice should take effect, it is hard to see a sensible alternative to its requirement. The appeal on ground (f) fails.

The appeal on ground (g)

16. I have covered the appeal on ground (g) by my decision on the ground (a) appeal. To the extent the period for compliance is increased to 12 months, the appeal on ground (g) succeeds.

FORMAL DECISION

17. I vary the enforcement notice by the deletion of the words: "3 months" in line 2 of para. 6 on page 1 of the notice and the substitution therefor of the words: "12 months". Subject to that variation, I dismiss the appeal and uphold the enforcement notice.

John Whalley

INSPECTOR