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## Appeal Decision

Site visit made on 30 September 2019

**by Beverley Wilders BA (Hons) PgDurb MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> November 2019**

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**Appeal Ref: APP/G4240/W/19/3233133**

**239 Two Trees Lane, Haughton Green, Denton M34 7AJ**

- 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 Peter Lee (Lees Garden Centre Limited) against the decision of Tameside Metropolitan Borough Council.
  - The application Ref 18/00997/FUL, dated 5 November 2018, was refused by notice dated 22 March 2019.
  - The development is described as change of use of former public house beer garden and car park to outdoor storage area associated.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application form states that the development has commenced and that works started in March 2018. At the time of my visit the ground floor of the former pub building was in use as a shop, storage areas and a small office. A canopy structure had been erected towards the rear of the site and it together with land to the front of it were being used to store a variety of items including building materials, timber pallets, fencing panels, furniture, concrete blocks and plants. As I cannot be certain that the development that has and is taking place on site is the same as that applied for, I have assessed the development as applied for and as shown on the submitted plans.
3. The description of development above has been taken from the planning application form and relates to the use of the former beer garden and car park. However, the description of development used on the Council's decision notice and as stated on the appeal form also relates to the use of the former public house for ancillary retail sales. Although the appeal form states that the description of development has not been changed from that stated on the application form, this is clearly not the case and the appellant's statement states that the appellant was forced to accept the amended description under duress in order for the application to be registered by the Council.
4. There is clearly disagreement between the parties with regard to the nature of the use currently taking place on site. However, I have not been provided with any evidence of the appellant's formal agreement to amend the original description of development and as previously stated, my assessment is confined to the development being applied for and not to the development

taking place on site which may well differ. I have therefore determined the appeal on the basis of the original description of development.

### **Application for costs**

5. An application for costs was made by Mr Peter Lee (Lees Garden Centre Limited) against Tameside Metropolitan Borough Council. This application is the subject of a separate Decision.

### **Main Issues**

6. The main issues are the effect of the development on:
  - the character and appearance of the area;
  - the living conditions of the occupiers of nearby properties having regard to noise and disturbance and to the occupiers of 237 Two Trees Lane having regard to outlook.

### **Reasons**

7. The appeal site comprises part of a former public house building together with its former car park and beer garden. It appears that the pub use ceased some time ago and that prior to the current use of the site, it was used for retail purposes. The Council has provided photographs of the site stated to be from 2014/15 which appear to show it being used for retail purposes as 'BMS Convenience Store' and refer to an application for advertisement consent made in 2014 (Ref 14/01102/ADV). The site is located at the end of Two Trees Lane at the junction with Mill Lane. The immediate surrounding area is residential in character with an electricity substation at the rear of the site.

#### *Character and appearance*

8. As stated, the appeal site is located in a predominantly residential area generally comprising brick built, two storey dwellings of varying form and design. The former pub building is prominently positioned on the corner of Two Trees Lane and Mill Lane, with a gap between it and the two storey dwelling at 237 Two Trees Lane formerly occupied by the pub car park. Concrete panel fencing is in place towards the front of the site near to No 237 with timber fencing and gates positioned towards the rear of an off road parking area to the side of the former pub building and adjacent to Two Trees Lane.
9. The presence of the fencing to the front of the site means that any outside storage within the site of a height below the top of the fencing would largely be screened from public view. The canopy structure is significantly higher than the fencing at the front of the site meaning that it and anything stored in the upper parts of it is visible from Two Trees Lane. The general design and means of construction including materials used for the canopy are not reflective of the largely residential character and appearance of the immediate surrounding area. Although the position of the canopy relative to the road and to surrounding built development and landscaping means that it is not visible in longer distance views, it is nevertheless visible from this particular part of Two Trees Lane and forms an incongruous feature in the streetscene. Whilst it may be possible to condition the maximum height of any outside storage on site, this would not overcome the harm that results from the canopy structure. The

fact that the site is not in a Conservation Area or subject to any other design restrictions does not justify the development which, for the reasons stated would be harmful.

10. Taking the above matters into consideration, I conclude that the development has a significant adverse effect on the character and appearance of the area. It is therefore contrary to policies C1, E6 and S9 of The Tameside Unitary Development Plan adopted November 2004 (UDP). These policies seek, amongst other things, the layout, design and external appearance of development including employment and retail development to be of a high quality and to complement or enhance the character of the surrounding area.

#### *Living conditions*

11. The appellant states that the outside storage area is for the hardware/garden centre retail business which operates from the building and also via online sales. It is stated that the area is private and is not open to the public to browse around. No opening hours were specified on the application form. Signage on site states that the premises are open 7 days a week between 0900 and 1700, whilst the appellant's statement refers to opening hours of between 1000 and 1800. It appears that neither of the previous uses of the site were subject to any hours of use restrictions. The Council's suggested conditions if I were allowing the appeal include restrictions on opening and delivery hours but not any restrictions relating to public access to the outside storage area.
12. I note that the proposed hours of use of the outside storage area appear to be more restrictive than either of the site's previous uses and that public access would be restricted. However, having regard to the nature of the storage and the close relationship between the storage area and nearby residential properties, particularly the dwelling and garden at No 237, I consider that even if public access to it were restricted and notwithstanding the proposed hours of use, its use would be likely to give rise to unacceptable and harmful levels of noise and disturbance. The bulky nature of at least some of the stored items means that their delivery and collection is likely to involve the use of some form of mechanised machinery, the operation of which I consider would be likely to generate significant levels of noise and disturbance.
13. The evidence suggests that the last lawful use of the site was for retail purposes and therefore it is not appropriate or necessary to compare the impact of the outside storage area with the previous use as a pub car park and beer garden as this use no longer appears to be extant and any re-commencement of that use would therefore appear to require permission.
14. The side of the canopy structure is positioned adjacent to the common side boundary with No 237 and is higher than the existing boundary treatment between the two sites. The height, form and position of the canopy relative to the rear elevation and rear garden of No 237 means that there is a resultant adverse loss of outlook from this property. I have seen no evidence to suggest that kitchen windows are offered lesser protection by the Council than other windows and, in any event, the canopy also impacts on the outlook from the garden of the property, notwithstanding the presence of an outbuilding to the rear of No 237. The fact that the roof of the canopy is formed by Perspex does not adequately minimise the impact of the canopy structure on outlook. I note that the appellant would be willing to reduce the length of the canopy structure to move it away from the boundary with No 237 and to accept conditions

restricting the height of storage and requiring screening and landscaping where necessary. However, I have assessed the development as shown on the submitted plans as there are no amended plans before me. Whilst conditions could be used to restrict stacking heights, this would not overcome the harm resulting from the canopy structure itself, the length and position of which I do not consider could be controlled by conditions.

15. Though no objections were raised to the application by the Council's Environmental Health department, taking the above matters into consideration, I conclude that the development has a significant adverse effect on the living conditions of occupiers of nearby properties having regard to noise and disturbance and to the occupiers of 237 Two Trees Lane having regard to outlook. It is therefore contrary to policies E6 and S9 of the UDP which seek, amongst other things, to ensure that developments do not have an unacceptable impact on neighbouring properties.

### **Other Matters**

16. Although the development would help to support economic growth and to meet the business needs of the area by utilising an existing building and associated land, any benefits arising from it do not outweigh the harm that I have identified to the character and appearance of the area and to living conditions. Moreover, though I note the alleged lack of co-operation from the Council and, though unfortunate if this is the case, this would not justify the grant of planning permission for harmful development.

### **Conclusion**

17. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Beverley Wilders*

INSPECTOR