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## Appeal Decision

Site visit made on 9 August 2016

by **G J Fort BA PGDip LLM MCD MRTPI**

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

Decision date: 02 September 2016

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**Appeal Ref: APP/W4223/W/16/3150681**

**Kenmow, Young and Wild Ltd, Beal Lane, Shaw, Oldham OL2 8PF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr S Marsh (Kenmow, Young and Wild Ltd) against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/337667/15, dated 30 September 2015, was approved on 6 January 2016 and planning permission was granted subject to conditions.
  - The development permitted is part change of use of general industrial premises (Class B2-general industrial) to a retail unit (Class A1-retail) and external alterations.
  - The conditions in dispute are Nos (4) and (5) which state that: (4) All door openings within the building shall be kept closed at all times except for access or egress; (5) The use hereby permitted shall be restricted to the following times: 0700 to 1800 hours each day
  - The reasons given for the conditions are (4) "To ensure the protection of amenity due to noise and odours"; (5) "To protect the amenities of occupiers of nearby properties".
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### Decision

1. The appeal is allowed and the planning permission Ref PA/337667/15 for part change of use of general industrial premises (Class B2-general industrial) to a retail unit (Class A1-retail) and external alterations at Kenmow, Young and Wild Ltd, Beal Lane, Shaw, Oldham OL2 8PF granted on 6 January 2016 by Oldham Metropolitan Borough Council, is varied by deleting conditions (4) and (5) and substituting for them the following condition:

- 4) The premises shall only be open for customers between the following hours:  
0700-2200 Mondays-Sundays

### Procedural matters

2. The applicant's name on the planning application form is "Mr S Marsh". The name given on the appeal form is "Mr D Marsh". The appellant's agent confirmed in an e-mail to the Planning Inspectorate that the name used in the banner heading above is the correct one.
  3. The application form gives two different dates one in the declaration date box in section 25 of the form which is 30 September 2015; and one in the 'Declaration' section 26 of the form which states 2 December 2015. As the Council's Decision Notice refers to the date of application as 14 October 2015, I
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have used the earlier date given on the application form in the banner heading above.

4. On the Council's Decision Notice the disputed conditions are both numbered as "5". For the sake of clarity I have numbered them as 4 and 5 in the banner heading above to reflect their order on the Decision Notice's list of conditions.

### **Main Issue**

5. Planning permission has been granted for part change of use of the appeal property to provide a retail unit. The appellant wishes to extend the opening hours and not have any restrictions on opening external doors of the property. Thus the main issue in the appeal is whether the disputed conditions are reasonable and necessary having regard to the living conditions of the occupiers of adjacent dwellings in terms of noise and odours.

### **Reasons**

6. The appeal property is a small brick-built industrial unit fronting Beal Lane with its flank wall immediately abutting the platform serving the Metrolink tram station. A small portion of the building, which abuts the Metrolink platform, benefits from planning permission for change of use. The property's flank wall at the side of the platform would undergo external changes to provide an entrance to the shop unit.
7. The appeal property is within an area of a mixed character. The bulk of the appeal property is in industrial use, to its side is part of the car park for the Metrolink station. Other larger industrial and logistics uses are in the environs of the appeal property. Across Beal Lane from the appeal property, set back from the highway behind mature trees is Station House, a property in residential use, this property is bounded to its other sides by the Metrolink car park and the tramline. A short terrace of dwellings fronting Beal Lane is situated across the access to the Metrolink car park from Station House.
8. At the time of my site visit I noticed that the sound of traffic was a constant feature. Given the large industrial and logistics uses in the vicinity of the site a number of larger vehicles use Beal Lane. The sound of vehicles traversing over the tram tracks is particularly loud and noticeable. Furthermore, I observed trams stopping and passing through the station, again contributing to the background noise environment. I am mindful of the appellant's comments that logistics uses in the area operate on a 24 hour 7 day a week pattern. The appellant also noted that trams stop at the station from the very early hours of the morning until late at night, and the timetable shows trams running between 0528 and 0148.
9. The proposed door for the appeal property would open out onto the tram platform, around the corner from the nearest residential property which is Station House. The element of the appeal premises that would be used for retail would be of a modest size. I am not persuaded that such a small shop would be a significant source of noise. Furthermore, sounds that did escape from the appeal premises would, for the most part, blend in to the wider noise environment. Combined with the proposed door's distance from both Station House and the terrace on Beal Lane, and its orientation away from Beal Lane, I do not consider that any sound escaping from the shop would result in significant harm to the living conditions of the occupants of those dwellings.

10. Similarly, given that the use is as a shop, and not a take away or restaurant, I am not persuaded that any odours created by the use would be of such an intensity to cause harm to the living conditions of the occupiers of those adjacent dwellings. Consequently, I do not consider that removal of condition (4) would be contrary to Policies 9 and 20 of the *Oldham Local Development Framework: Development Plan Document- Joint Core Strategy and Development Management Policies* (adopted November 2011) ("The DPD"). Amongst other matters these policies seek to ensure that new developments respect the living conditions of the occupants of adjacent buildings. Condition (4) is thus unnecessary in this case.
11. Neither, given the general volume of background noise, and its occurrence throughout the day do I consider that the hours of use of the shop need to be restricted to the extent outlined in Condition (5). However, I am mindful that the general volume of traffic, and the number tram passengers using the station are both likely to tail off during the evening, leading to a quieter background noise environment later at night.
12. I note that the appellant requested deletion of condition (5) in their appeal statement, and in their final comments suggested that opening hours between 0700 and 2000 may be appropriate. Whilst I consider that, due to the presence of residential properties in the appeal property's environs, totally unrestricted opening hours would not be reasonable in this case, due to the surrounding noise environment I am not persuaded that a closing time of 2000 is strictly necessary. Consequently, I consider it reasonable to attach a condition limiting opening hours to between 0700 and 2200 every day. This will ensure that the development causes no undue noise late at night emerging from the 'night time economy' that could be harmful to the living conditions of the occupants of Station House. Thus the altered condition would ensure that the proposal meets with the objectives of Policies 9 and 20 of the DPD as they relate to the protection of the living conditions of the occupants of adjacent properties.

### **Other Matters**

13. It was drawn to my attention that there are a number of similar businesses in the area. However, this is essentially a commercial matter, which is incapable of being particularly determinative in a planning decision of this nature. Furthermore, I am aware of no policy either local or national that seeks to restrict uses of this type in the appeal site's location.
14. I am aware of concerns regarding parking and servicing of the appeal property. However, the proposal is of a very modest scale and therefore I consider that no material harm would arise from the proposed change of use in these regards.

### **Conclusion**

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

*G J Fort*

INSPECTOR