Case No: CO/3437/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

The Civil Justice Centre, Manchester

Date: 28 November 2017

Before :

His Honour Judge Bird

- -

Between :

Mr NAEEM PARVEZ — **Appellant**

- and -

(1) The SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2) BOLTON METROPOLITAN BOROUGH COUNCIL — **Respondents**

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Sarah Reid (instructed by **GLD**) for the **first Respondent**
Killian Garvey (instructed by **Pinsent Masons**) for the **Appellant**

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HIS HONOUR JUDGE BIRD

28 November 2017

His Honour Judge Bird:

1. On 15 November 2016, the second respondent served an enforcement notice on the Appellant requiring him to cease using premises at Mossfield Road in Bolton as a function suite because such use amounted to a breach of planning control, no permission for change of use having been obtained. The Appellant appealed against the notice, relying on section 174(2) of the Town and Country Planning Act 1990 ("TCPA"). The appeal decision was published on 22 June 2017. The decision was upheld. On 24 July 2017 the appellant appealed to the Court against the decision. The appeal is governed by section 289 TCPA. I am asked to consider the grant of permission.

The background and the initial appeal

2. The appellant bought the premises in 2013. At the time, they were used as a working men's club. After considerable refurbishment work (some of which required and were granted planning permission) he began to use the building as a banqueting hall.

3. The Inspector found that the former and present use of the premises were each *sui generis*, that is, neither the former nor the present use fell within any of the use classes set out in the Town and Country Planning (Use Classes) Order 1987. He found that the new use was materially different from the former use and so there had been a material change of use.

4. In reaching that conclusion he considered that the former lawful use of the premises as a working men's club was a mixed use whereas the present use is solely as a function suite. The distinction is important. There is no suggestion that the Inspector made any error of law in arriving at the conclusion.

5. The inspector compared the impact on the locality of the present single use, with the impact if there was a reversion to the former mixed use. He found that the present use resulted in significant disturbance which could not adequately be mitigated by the imposition of planning conditions. He found that there was no evidence, if the building reverted to its former use, that the local impact would be the same or any worse. In other words, a reversion to the former use would result in a lower impact on the locality.

The argument on the appeal before the court

6. The appellant argued that the Inspector had failed to take account of the "fall-back" position in reaching his conclusion.

7. The relevance of a "fall-back" positon is explained by Mr George Bartless QC sitting as a deputy High Court Judge in the case of *Simpson v SSCLG* [2011] EWHC 283. In essence a proposed development should be judged in the context of what might happen if permission is not granted, but the applicant puts the land to its already permitted and lawful use.

8. The appellant's fall-back position is that he would be entitled revert to the mixed use identified by the Inspector as that which was enjoyed by the working mens' club. As a matter of law that is correct and accepted by the Secretary of State. The difference between the parties lies in what the appellant is entitled to do in the event of such a reversion. The appellant submits that he could lawfully continue to hold wedding functions exactly as he does now. The Secretary of State disagrees.

9. In support of his positon, the appellant pointed out that the evidence before me, from Mr Salthouse, a planning consultant at Emery Planning contained the following at paragraphs 11.3 and 11.4:

> *"at the hearing the inspector heard evidence, in the event that the appeal was dismissed and the enforcement notice upheld, the appellant would restore those elements of the use that distinguished the social club from the function suite and continue with wedding functions in their present format.....the council's planning witness, Mr Bridge, agreed that the appellant could restore those elements that distinguished the social club from the function suite and continue with the wedding celebrations in the event that the appeal was dismissed....Mr Bridge confirmed that this would mean the wedding functions continuing in their present format ....accordingly the council accepted the appellant's fall-back position"*

10. The appellant argues that the fall-back position the Inspector ought to have considered was that described by Mr Salthouse and agreed by Mr Bridge, that by adding in some working men's club activities to the activities presently carried on, he would be reverting to the previous lawful use. That, he argues, was the agreed position, and the Inspector should have either applied it, or departed from it. But, if he departed from it he should have explained why.

11. The Inspector dealt with the fall-back position at paragraph 37 of his decision as follows:

> *"There is no dispute that the building could revert to its former use as a social club a fallback argument advanced art the hearing and which would be unrestricted by any planning conditions. However, there is no convincing evidence before me that a reversion to a social club would result in the same level, or any greater level of harmful impacts ion residential amenity that the current use. This argument does not therefore persuade me that planning permission should be granted."*

Discussion

12. The Appellant's argument is counter-intuitive and unattractive. In my judgment, it is wrong and plainly so.

13. A fall-back position must (by definition) be a reversion to a former lawful use. The former lawful use of the premises in question was properly categorised as mixed use, (see paragraph 26 of the decision). It follows that the fall-back must be to the same, or at least not a materially different, mixed use.

14. As the Inspector identified, whether there is a material change of use is a matter of fact and degree in each case and for there to be a material change of use, there needs to be "some significant difference in the character of the activities from what has taken place previously".

15. It is in my judgment unarguable that adding the activities formerly carried on in the working mens' club to the banqueting business would mean that the Appellant has reverted to a mixed use not materially different from that carried on previously. It is clear from the Inspector's decision that the activity now carried on at the site is very significantly different to the activity formerly carried on.

16. In my view Mr Salthouse's evidence on the agreement has no relevance. The agreement he describes is not in respect of a true fall-back position, but rather a new use. What he describes, is simply mixed activity on site. He does not describe "mixed use" materially the same as that carried on at the working mens' club.

17. It follows in my judgment, that the Inspector was entitled not to deal with the agreement referred to by Mr Salthouse, because it was irrelevant.

18. At paragraph 37 of the decision, the Inspector considered the correct fall-back position. In other words, a reversion to mixed use not materially different to the former working mens' club use. He concluded that the true fall-back position did not in reality help the Appellant; if he went back to the activities he was entitled to revert to the impact on local residents would be reduced.

Conclusion

19. For all the reasons set out above I am satisfied that no arguable grounds of appeal have been advanced. I therefore refuse permission to appeal.