

Appeal Decision

Site visit made on 19 July 2016

by Beverley Wilders BA (Hons) PgDurp MRTPI

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

Decision date: 20 September 2016

Appeal Ref: APP/P4605/W/16/3148214
183 Cole Valley Road, Birmingham B28 0DG

- 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 Ravinder Singh against the decision of Birmingham City Council.
 - The application Ref 2015/06895/PA, dated 20 August 2015, was refused by notice dated 15 October 2015.
 - The development is described as renewal of approval of existing use as an internet based car sales company.
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Decision

1. The appeal is allowed and planning permission is granted for the use of the rear of the property for an internet based car sales business (Sui Generis) and for a single storey detached building and 2m high boundary fence at 183 Cole Valley Road, Birmingham B28 0DG in accordance with the terms of the application, Ref 2015/06895/PA, dated 20 August 2015, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The planning application form states that the development was started and completed in January 2012. At the time of my visit the appeal site appeared to be in use as a car sales business and the single storey office building and boundary fence had been erected.
 3. The description of development used in the heading above has been taken from the planning application form. However in allowing the appeal, I have amended the description to more accurately describe the development.
 4. Though not referred to in the Council's reasons for refusal, in their statement the Council has referred to a number of policies contained within the Birmingham Development Plan (BDP). The BDP has not yet been adopted, though I understand that the examination is complete and that the Inspector's report was published in March 2016. However in May 2016 the BDP was called in by the Secretary of State. This limits the weight that I can attach to the BDP policies. In any event, I note that none of the BDP policies referred to in the Council's statement appear to be significantly different from those referred to by the Council in the adopted Birmingham Unitary Development Plan (UDP) as they relate to the development.
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Main Issues

5. The main issues are the effect of the development on:

- The living conditions of the occupiers of properties in the vicinity of the site having regard to noise and disturbance;
- The character and appearance of the area;
- Pedestrian and highway safety.

Reasons

Living conditions

6. The appeal relates to land to the side and rear of a retail unit located at the end of a parade of commercial premises on Cole Valley Road close to the roundabout. The parade includes various uses including an off licence and wine shop with residential uses located at first floor above the commercial uses. The surrounding area is predominantly residential with dwellings located on the opposite side of the road. Cole Valley Road is a wide road with wide verges providing a degree of separation between the parade and residential properties and at the time of my visit the road and the surrounding roads were busy with traffic.
7. The development before me at appeal is an internet based car sales company utilising land to the rear of 183 Cole Valley Road and accessed via a large timber gate positioned to the side of the ground floor retail premises. The single storey building is an office with space available within the site for the parking of six vehicles including one customer parking space. Temporary planning permission was previously granted for the operation of an internet based car sales business from the site and this appears to have expired in September 2015 (Ref 2014/03880/PA). This was subject to a number of conditions including one restricting the hours of use to between 0900 and 1800 Monday to Saturday and between 1100 and 1700 on Sundays and Bank Holidays. Additional conditions restricted the amount of vehicles to be kept on site to a maximum of six and restricted visitors to a maximum of one at any one time and by appointment only.
8. I have had regard to the concerns raised by the Council and by other interested parties including residents of Cole Valley Road relating to the noise and disturbance resulting from, amongst other things, vehicle manoeuvring and conversations with customers caused by the use of the site for internet based car sales. However it seems that in the main the concerns relate to the operation of a car sales business on a larger scale than the one that is the subject of the appeal. It is alleged that the use on site has been taking place beyond the restrictions that formed part of the temporary permission. The appellant states that the previous occupier of the site operated a larger scale operation but that his intention is to operate the business on a very limited scale and as described in the temporary permission.
9. Whilst I have some sympathy with local residents and whilst it appears from the evidence available that there has been a more intensive use of the site for car sales than is the case with the appeal development, I must consider the development before me on its own merits. The car sales use as shown on the submitted plans and as controlled by the conditions attached to the temporary

permission and now proposed by the Council, is relatively small in scale. Having regard to this, to the hours of operation and to the position of the appeal site to the side and rear of a commercial parade adjacent to a wide and busy road, I do not consider that any noise and disturbance generated by the use would be materially harmful to the living conditions of occupiers of properties in the vicinity of the site.

10. Taking the above matters into consideration, subject to the imposition of appropriately worded conditions, I conclude that the development would not have a significant adverse effect on the living conditions of the occupiers of properties in the vicinity of the site having regard to noise and disturbance. It therefore accords with paragraphs 3.8 and 3.10 of the UDP and with relevant paragraphs of the National Planning Policy Framework (the Framework). These policies seek amongst other things, to protect the environment and to secure a good standard of amenity for existing occupants.

Character and appearance

11. The Council's concerns in relation to the impact of the development on the visual amenity of the area relate to the larger scale car sales use that appears to have been taking place at the appeal site. This has involved a higher number of vehicles being sold from the site than the number forming the development before me at appeal and has allegedly resulted in cars for sale being parked outside of the appeal site and on the adjoining shop forecourts, the highway and the pavement. The Council considers that this overspill parking together with associated advertising on the cars creates an overly commercial character at odds with the predominantly residential surroundings.
12. Though I have had regard to the Council's concerns and those of interested parties regarding the visual impact of the development, the car sales use before me would take place to the rear of the appeal site with the majority of vehicle parking taking place to the rear of the retail building at No 183 and therefore screened from view. No advertising is proposed as part of the development. Consequently I do not consider that the development before me would adversely affect the predominantly residential character and appearance of the area. The Council has not raised any concerns in relation to the visual impact of the single storey building or the boundary fence and I have no reason to disagree with their findings in relation to these aspects of the development.
13. Taking the above matters into consideration, subject to the imposition of appropriately worded conditions, I conclude that the development would not adversely affect the character and appearance of the area. It therefore accords with paragraphs 3.8, 3.10 and 3.14 C-D of the UDP, to relevant paragraphs of the Framework and to the Council's Places for All Supplementary Planning Guidance 2001 (SPG). These policies and guidance seek, amongst other things, to ensure that proposals which would have an adverse effect on the quality of the built environment will not be allowed and require positive action to improve the quality of the environment.

Pedestrian and highway safety

14. The Council is concerned that the continuation of a car sales use at the appeal site would continue to result in illegal and excessive parking on the forecourt and public highway to the detriment of pedestrian and highway safety. The highway authority objected to the application based on evidence provided by

the Council's Enforcement Team and by local residents and I have been provided with a number of photographs of the site taken by the Enforcement Team between May 2014 and August 2015 and in April 2016. The photographs show the appeal site being used for the parking of more than six vehicles and vehicles parked beyond the appeal site on the forecourt and the road, though I have no evidence before me to confirm that these vehicles are associated with the car sales use.

15. At the time of my visit I noted that off street parking is available within a forecourt area located between the commercial premises and the road. This appears to provide parking for approximately two vehicles for each of the commercial premises. I also noted that on street parking is available on both sides of Cole Valley Road and that this is unrestricted. At the time of my visit parking spaces were available both within the forecourt and along Cole Valley Road.
16. I note that the majority of the evidence provided by the Council in relation to the use of the site pre dates the appellant's involvement with the business operating on the appeal site. However I also note that the Council states that there has also been parking associated with the car sales use taking place beyond the appeal site boundary at a time when the business was being operated by the appellant. At the time of my visit I noted that there were in excess of six vehicles parked within the hardsurfaced area to the rear of the timber gates.
17. Though I have had regard to the concerns raised by the Council and interested parties in relation to the impact of the development on pedestrian and highway safety, the majority of the evidence before me pre dates the appellant's involvement with the appeal site and whilst I have been provided with photographs of cars parked beyond the appeal site boundaries in April 2016, it is not clear from the photographs whether these vehicles are connected with the car sales use. In any event the development before me is for a car sales use taking place wholly within the appeal site with no parking taking place beyond the appeal site boundaries. Therefore any impact on pedestrian and highway safety would be limited to vehicles manoeuvring into and out of the site. Having regard to the small scale of the development and to the availability of a turning area within the site, I am satisfied that any vehicle movements associated with the development would not be harmful to pedestrian or highway safety.
18. Taking the above matters into consideration, I conclude that the development would not adversely affect pedestrian or highway safety. It therefore accords with paragraphs 3.8, 3.10 and 6.39 of the UDP and to relevant paragraphs of the Framework. These policies seek, amongst other things, to protect and enhance the environment and to take into account matters of safety and pedestrian needs.

Other Matters

19. In reaching my decision I have had regard to the history of the use of the appeal site and to the fact that there was a significant level of objection to the planning application that is the subject of this appeal. I have also had regard to the representations made in relation to the appeal itself. However, though I have some sympathy with the problems that appear to have been experienced by local residents as a result of activities taking place on and around the site,

as previously stated, these problems appear to result from a development on a larger scale than that which comprised the development applied for and which is before me. I must consider the appeal development on its own merits. The fact that development has been carried out without planning permission or in breach of planning conditions is not in itself a reason to withhold planning permission. Should there be a breach of planning conditions following the granting of planning permission, this would be a matter for the Council to consider and to pursue enforcement action where necessary.

20. I note that concerns have been raised with regard to the obstruction of private driveways, business being conducted on the road, the impact on customer parking within the parade, speeding vehicles and an increase in accidents and congestion. However I do not consider that the operation of a car sales business on the scale applied for would give rise to a significant increase in vehicle movements or off-site parking. Any obstruction of private driveways, speeding vehicles associated with the use or roadside business dealings would be matters to be pursued by the police and are not matters for me in considering the appeal.
21. I also note concerns were raised with regard to anti-social behaviour, sometimes late into the evening, associated with the appeal site. Whilst it appears that this may have previously occurred, such behaviour is not a direct consequence of the development and is a matter to be pursued by the relevant bodies should it occur in the future. Though I note reference to the presence of other car sales businesses in the area, whether or not there is a need for the business is not a matter for me to consider in determining the appeal.
22. Finally reference has been made by an interested party to a previously dismissed appeal for a similar proposal on the appeal site. However I have not been provided with the reference of any planning appeals and note that no reference was made to any appeals within either the Council's report or statement.

Conditions

23. I have had regard to the conditions suggested by the Council. I have imposed a condition specifying the approved plans as this provides certainty. I have also imposed conditions relating to the hours of operation, the maximum number of vehicles on site at any one time, the maximum number of visitors at any one time and that visits should be by appointment only, limits on the repair of vehicles and electrical/pump washing equipment. These are having regard to the nature of the development and the position of the site relative to residential properties.
24. Having regard to the fact that the car sales use is already taking place at the site and to the fact that the proposed parking areas are shown on the approved plans, I do not consider it necessary to impose a condition requiring the parking bays to be marked out on site. Similarly I do not consider that it is necessary to impose a condition restricting any advertising that could be erected under the provisions of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. This is having regard to the limited scale and nature of the advertisements that could be erected under the regulations and to the position of the appeal site at the end of a commercial parade. Finally I have not imposed a condition regarding sound reproduction

or amplification equipment as I do not consider that such a condition would be reasonable or necessary having regard to the nature of the development.

Conclusion

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

Beverley Wilders

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 1:1250, 4387/1 and 4387/2.
- 2) The premises shall only be open for customers between the following hours:
0900 – 1800 Mondays – Saturdays
1100 – 1700 Sundays and Bank Holidays
- 3) There shall be no more than five vehicles for sale on the site at any one time. Vehicles for sale shall be located in the rear yard only.
- 4) There shall be no more than one visitor to the site at any one time and visits shall be by appointment only.
- 5) No repairs shall be carried out to vehicles on the site.
- 6) There shall be no electrical/pump equipment used for the washing of vehicles on site.