

Appeal Decision

Site visit made on 25 August 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 29 September 2016

Appeal Ref: APP/G5180/W/16/3146055

1a Sanderstead Road, Orpington, Bromley BR5 4AE

- 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 Xhevat Bafcari against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/15/04102/FULL1, dated 21 September 2015, was refused by notice dated 8 January 2016.
 - The development proposed is described as 'use of yard for hand car wash / valet facility and associated canopy, maximum height 3600mm, to include enclosed vacuum and jet wash areas; retrospective application – amendment application addressing reasons in recent dismissed appeal decision'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) the effect of the proposed development on the living conditions of the occupiers of adjacent dwellings, with particular regard to noise and disturbance; and
 - b) the implications for the safe and efficient operation of the highway network in the locality.

Reasons

Living Conditions

3. The appeal site is located on the corner of Lower Road and Sanderstead Road. There are dwellings immediately adjacent to the appeal site on both of these roads and on the opposite side of Lower Road. The area is predominantly residential but there are a number of commercial premises locally including a builders' yard opposite the appeal site on Sanderstead Road.
 4. The use is in operation and the canopy is in place but I shall consider the appeal strictly on its planning merits.
 5. Approval is sought for the continued use of the site as a hand car wash / valet facility. Access to the appeal site is from Lower Road with egress onto Sanderstead Road. Elements of the scheme have been revised to address
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matters which were raised in a previous application and subsequent appeal¹ which was dismissed. The primary changes to the scheme are to re-site the vacuum and jet wash machines which would be contained within acoustic enclosures and to use reduced pressure for the jet wash equipment.

6. The area for cars to be washed is within the centre of the site. It is proposed that mobile acoustic screening would be provided between the jet wash area and neighbouring residential properties as a means of limiting noise. The acoustic housing for the vacuum cleaner and water jet is proposed to be located in the corner of the site at the junction of Lower Road and Sanderstead Road, further from the adjoining residential properties than in the previous scheme.
7. The appellant has provided Acoustic Note NO1a subsequent to the Noise Impact Assessment (NIA) which was submitted as part of the previous proposal. NO1a reflects the mitigation measures which are included in the revised scheme and the revisions to BS4142. A further Acoustic Note NO2 provides a response to the Council's Environmental Health Officer (EHO) comments.
8. NO1a sets out the typical background noise level as 46dB during the working week, reflecting road traffic as the dominant underlying noise source. It assumes a 50% reduction in traffic over the weekend which would equate to a 3dB reduction in the typical background noise level to 43dB. Taking account of the character corrections in the revised BS4142, the typical background noise level, the reduced jet washer pressure and revised locations for the vacuum / jet wash machines, the Rating Level at the dwellings adjoining the site were calculated. This included an 'on-time' for both the jet washers and vacuum of 20 minutes per hour. On this basis the appellant assessed the Rating Level to be significantly below the typical background resulting in a low to very low noise impact.
9. The Council argued that the background noise level of the locality would be significantly less at weekends and especially on Sundays. In contrast the appellant indicated that the drop in background noise level at weekends would be minimal. However, the appellant has not provided any measurements of the noise levels at the weekend and I find the appellant's assumptions about weekend traffic to be unrealistic and without foundation. Consequently the reduction in traffic at weekends could result in the overall background level being lower than suggested.
10. It also appears that with two jet washers the stated number of cars to be cleaned per hour, indicated to be five, could be exceeded at busier times leading to greater levels of activity and resultant noise.
11. The appellant indicated that the jet wash would operate at a level of 63.9bB whereas the EHO measurements indicated a level of 68.9dB and that the acoustic report may not have used accurate input source data. In response the appellant questioned the Council's measurement conditions. Nevertheless, in the absence of conclusive evidence I share the concerns of the previous Inspector and the EHO about the difficulty of measuring the use of a lower power jet in the context of the requirements of the National Planning Policy Framework (the Framework) for conditions to be enforceable and reasonable.

¹ APP/G5180/W/15/3003268

12. With regard to the use of mobile acoustic screens I have similar concerns about enforceability. I am not convinced that the details of the type of unit could be adequately conditioned given their mobility and controls over their use at all times would be difficult to enforce on existing and future occupiers of the site.
13. I am also not convinced that only operating the jet wash for 20 minutes each hour would be a realistic business approach when potential customers are waiting. Again I have conflicting evidence, with the EHO assuming that a 45 minute 'on-time' would equate to a 3.6dB over an hour of operation whilst the appellant comments that the same 'on-time' on the highest Rating Level would only result in a 1dB above the typical background. There would also appear to be greater pressure to operate more frequently at busy times such as on Sundays when the background noise would be lower.
14. BS4142 requires a 3dB penalty if the intermittency of the operation is readily distinctive against the residual noise environment. With the implementation of the mitigation measures the appellant argued that the resultant noise at the nearest dwellings would be below the existing ambient noise levels. As this would mean that the intermittency would not be distinctive the penalty should not be applied, particularly as other significant character corrections had been applied. The EHO's argument was that various pieces of equipment would operate intermittently during an hour and therefore the penalty should be applied. Again, the evidence is not conclusive either way but the appellant's case is predicated on the mitigation measures being effective which as I have already indicated I have concerns about.
15. The Council's assessment of the noise impact, taking account of the proposed mitigation and the shortcomings which it has identified, has determined a Rating Level of 56dB which would be 13dB above background. Such a level, being greater than 10dB above background would be an indication of a significant adverse impact, depending on context.
16. The proposed hours of operation, particularly from 0900 to 1800 on a Sunday would leave neighbours with no relief from the noise generated by business activity, recognising that neighbouring commercial uses do not generally operate on Sundays. In addition to the main sources of noise, consideration needs to be given to other activities associated with the use including vehicle movements, car doors closing and music emanating from cars. These would be particularly intrusive at weekends and especially on Sundays when background noise levels are lower and neighbours are more likely to be outdoors and therefore more aware of the noise. The likelihood would be additional irritation and disturbance. Moreover, the high turnover of vehicles visiting and leaving the site would add to the disturbance.
17. The revised proposals attempt to address the concerns raised in respect of the previous scheme. Whilst neither the evidence of the Council nor the appellant in respect of noise levels is conclusive, to a large extent the appellant's case relies upon their proposed mitigation being effective. This is intended to be achieved through a noise management plan. However, as I have serious doubt about the effectiveness of the mitigation proposed and consequently the management plan to bring this about, I find that the proposals would not overcome the previous concerns and the use would result in unacceptable noise and disturbance.

18. For these reasons I find that the use would cause unacceptable harm to the living conditions of neighbouring residents contrary to Policy BE1 of the London Borough of Bromley Unitary Development Plan (UDP), 2006 which seeks to protect the amenities of occupiers of neighbouring buildings and ensure that their environments are not subject to such adverse effects. In addition, the proposal would be contrary to Policy EMP6 of the UDP which only allows non-conforming business uses where there would be no significant adverse impact on the amenity of surrounding properties. Whilst Policy EMP6 encourages remedial measures to reduce noise levels transmitted to adjoining residential buildings and the surrounding area I find that the measures proposed would not overcome the harm to neighbouring residents.
19. The proposals would also fail to address the requirements of Policy 7.15 of the London Plan, updated 2015, and the Mayor's Ambient Noise Strategy which together seek to reduce and manage noise, avoiding significant adverse noise impacts on health and quality of life.

Highways

20. A previous Inspector found² that the use of the site as a hand car wash / valet facility was materially different from the previous use as a vehicle hire business. I see no reason to depart from this conclusion and do not accept the appellant's case that the current use is no different from that carried out previously in terms of traffic.
21. At busy times for the business, particularly over weekends, I consider it possible that queues of cars, wishing to access the site, may form which would exacerbate the problems of disturbance to local residents. The appellant has confirmed that if the hand car wash site is busy and parking spaces are not available then customers would be instructed to return later to avoid long queues or parking on Lower Road. Such an approach does not appear to me to be an appropriate or manageable arrangement in order to avoid queuing and congestion in Lower Road.
22. In considering the previous proposals the Inspector also raised the concern with regard to manoeuvring on site and the potential knock on effect on the street and that vehicles waiting to the front of the jet wash area would be likely to prevent or deter motorists in Lower Road from immediately turning into the site. As a result the likelihood is that vehicles waiting to turn right would lead to queues building up in both directions. The appellant has indicated that at least one space would be provided between the jet wash and the gate which would prevent long queues or restrictions to the safe and efficient operation of the highway network. However, the appellant has not explained how the obstruction of the highway network would be avoided and consequently I do not find that the measures would be effective.
23. The appellant argued that all necessary measures to avoid any parking or queuing on Lower Road would be enforced, indicating that the appeal site has adequate free space internally to avoid any parking on Lower Road. Whilst it has not been suggested that the number of spaces on site is inadequate for the proposed use I am concerned that manoeuvring into the jet wash area from the car parking spaces proposed would be a somewhat tortuous process because of the limited space between the spaces and the jet wash area.

² APP/G5180/X/15/3131592

24. If potential customers could not easily access the site then there would be a possibility of vehicles reversing onto Lower Road and causing hazards for other motorists. Consequently it appears to me that customers are more likely to want to park on Lower Road. Furthermore, I have concerns about the ability to manage traffic at busy times when resources would be directed to cleaning cars. I am therefore not convinced that the site would be managed in a way to ensure that it would operate as described.
25. Queuing traffic could also have an impact on the safety of pedestrians on Lower Road if vehicles need to reverse because of congestion within the site. Additionally, queuing traffic could cause congestion which may have an effect on local bus services to the detriment of the efficient operation of the highway network.
26. Whilst noting that the appellant states that there have never been any queues at the site as a result of the car wash operation the difficulties with manoeuvring which I have identified lead me to conclude that the change of use is detrimental to the safe and efficient operation of the highway network in the locality. Whilst I have no evidence of highway problems associated with the use to date, I am concerned that problems could arise for the reasons given.
27. I therefore find the use detrimental to the safe and efficient operation of the highway network in the locality and therefore contrary to Policy T18 of the UDP which considers the potential impact on road safety and seeks to ensure that road safety is not adversely affected.

Conclusion

28. For the reasons set out above, the appeal is dismissed.

Kevin Gleeson

INSPECTOR