
Appeal Decision

Site visit made on 24 October 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 8TH November 2016

Appeal Ref: APP/C4615/W/16/3151541

Bromley Lane Service Station, Bromley Lane, Kingswinford DY6 8QF

- 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 King Street Holdings (UK) Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/0328, dated 7 March 2016, was refused by notice dated 3 May 2016.
 - The development proposed is change of use from car wash (sui generis) and associated land to hand car wash and valeting facility (sui generis).
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Decision

1. The appeal is dismissed.

Procedural matter

2. I am informed that the application is retrospective but I noted at my site visit that the car wash site is not currently in operation. I have made my decision on this basis.

Main Issues

3. The main issues in this appeal are (i) the effect of the proposal on the living conditions of the neighbouring occupiers in Lerryn Close and Bromley Lane with regard to noise and disturbance; and (ii) whether the proposal would provide adequate drainage.

Reasons

Living conditions

4. The car wash area forms part of a fuel service station and is located in the northern part of the site close to the rear gardens of a number of dwellings in Lerryn Close. The site also has an access that runs next to the side boundary of a dwelling in Bromley Lane. The western boundary of the site borders the grounds of a school. Overall, the area is predominantly residential in nature.
 5. Before being used for hand car washing and valeting, the previous facility was split between an automated car wash within a purpose-built building that remains in situ and an open area at the side of it for jet washing. In addition to the jet washing area, there are open areas at either end of the building. A substantial screen separates the jet washing area from the fuel forecourt.
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6. There is dispute between the parties in respect of the adequacy of the appellant's submitted Noise Assessment Report¹. From my reading of the report and as the Council suggests, it appears that the noise levels baseline survey data was obtained from a period during which the hand car wash and vacuum were in operation. In my view, this corroborates the Council's data that shows background noise levels to be around 10-16 Db lower than those presented in the appellant's report. This therefore leads me to doubt that the appellant's evidence provides an accurate baseline against which to assess the likely effects of the proposal.
7. Taking this into account with the various representations made by neighbouring occupiers and in the absence of substantive evidence to the contrary, I have no reason to doubt that they suffered from an unacceptable level of noise and disturbance during the period when the hand car was in operation. Consequently, whilst recognising that the site benefits from an existing permitted use as a car wash, I cannot be certain, on the basis of the evidence before me, that the proposal would not result in heightened effects for those living nearby.
8. I note the appellant's proposition that only the area previously used for jet washing would be used for hand car washing and that consequently, this would prevent overspray of neighbouring gardens due to the intervening car wash building. I also accept that the extant permission for the site would provide for the reinstallation of the jet wash area. However, I consider that hand car washing results in a more intensive use than a customer operated jet washing facility. It is also a portable facility in comparison to the previous static jet wash.
9. Furthermore, the greatest use of the facility would be likely to take place during the warmer months of the year when neighbours' would be likely to have the greatest need to open their windows and when they would be making the most use of their outdoor space.
10. Given the number of vehicles that could reasonably be expected to use the facility, I consider it likely that the other areas around the building would also be used for initial water spraying in order to facilitate the throughput of vehicles. Consequently, the potential for overspray would remain. I have considered whether this matter could be overcome by the imposition of a suitably worded planning condition. In order to meet the tests in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG), any such condition must be enforceable. I do not consider that, in practice it would be possible to detect a technical breach of such a condition and it would not, therefore, meet the Framework and PPG test.
11. I accept that the existing building would be used for valeting and vacuuming. However, it seems to me to be impractical for the roller shutter doors to be opened and closed for every car entering and leaving the building, particularly during periods of more intensive use. For the same reasons as those already given, I do not consider that this could be addressed by means of condition. I note the appellant's assertion that such operations would generate less noise than the previous automated car wash, but have no empirical evidence to support this claim.

¹ WYG Report dated February 2016

12. I also note the appellant's suggestion that both noise and overspray could be mitigated by the use of an acoustic barrier. However, I do not have details of this before me so cannot be certain of its effects, if any, on the outlook from the rear of the neighbouring properties. However, it seems to me that such a barrier would need to be of substantial height to prevent overspray and satisfactorily reduce noise. Whilst this might accord with saved UDP Policy EP7 that requires measures to reduce noise intrusion to an acceptable level, in all likelihood, it would appear visually intrusive and overbearing from the rear rooms, and particularly the gardens, of properties in Lerryn Close given the difference in levels between these and the site.
13. The Council has referred to the potential noise from vehicles waiting for the hand car wash although, as the appellant points out, this does not form part of the reasons for refusal. However, I consider that this would generally add to the overall harm to neighbours' living conditions in combination with the various washing and vacuuming operations.
14. The totality of the harm identified above is, in my view sufficient to weigh heavily against the proposal and I consider it runs counter to saved Policy DD4 of the Dudley Borough Unitary Development Plan (2005) (UDP), which amongst other things, only permits development where it would not adversely affect residential amenity. Despite the UDP's age, this policy is in general accordance with paragraph 109 of the Framework, which amongst other things, seeks to prevent both new and existing development from contributing to or being put at risk from, or being adversely affected by unacceptable levels of noise pollution.

Drainage

15. At my site visit, I noted the existing drainage channels and a sump that are clearly associated with the previous automated car wash and jet washing area. Taking this into account with the appellant's submitted a drainage plan, even though I consider that the proposed use would be more intensive than would previously have been the case, there is no clear evidence before me to demonstrate that the existing level of drainage would be so overwhelmed as to be inadequate. I am therefore satisfied that, were I to allow the appeal, drainage would be sufficient.
16. Therefore, I do not find that the proposal would run counter to BCSS policy CSP3 and saved UDP Policy EP3 or with the Framework.

Conclusion

17. Whilst I have not found that the proposal would provide inadequate drainage, this is significantly and demonstrably outweighed by the clear identified harm to the living conditions of neighbouring occupiers.
18. For the above reasons and having had regard to all other matters raised, the appeal does not succeed.

Hayden Baugh-Jones

Inspector