

Appeal Decision

Site visit made on 25 October 2016

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/T5150/C/16/3148997

367 Church Lane, London NW9 8JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Sheikh against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/15/0213, was issued on 16 March 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to car rental office (Use Class B1) and use of detached garage for car repairs.
- The requirements of the notice are to:
 - (1) Cease the use of the premises as a car rental office and car repairs;
 - (2) Remove all office equipment, items, materials, car repair equipment, vehicle parts, tyres, and vehicles associated with the use from the premises, and
 - (3) Remove all signs, posters and flyers associated with the use from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as set out below in the Decision.

Ground (b)

1. This ground is directed to the consideration of whether the matters alleged in the notice have occurred as a matter of fact. The onus is firmly upon the appellant to make the case out, on the balance of probabilities. The relevant date is that of the issue of the notice. The appellant claims that the car repair activity did not occur in fact. However, the Council's site visit record and contemporaneous photographic information is particularly instructive of the activity during the period leading up to the issuing of the notice. All of this evidence clearly shows vehicle maintenance and servicing taking place in the rear garage. The existence of considerable amount of paraphernalia, including oil drums and various bits of motor parts within the rear yard, supports that extrapolation. I therefore find that the alleged breach actually occurred at the date of the notice. Therefore, ground (b) must fail.

Ground (a) and the deemed application

Main issues

2. The terms of the deemed application is directly derived from the terms of the allegation. Planning permission is sought for use of the premises for car rental office and use of detached garage for car repairs. A previous retrospective
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application being refused permission by the Council¹. There is no objection, in principle, to the conversion of the retail unit to use of the premises as a car rental office². The Council's reasons for taking enforcement action focus on the development's effect on neighbours, parking and highway safety.

3. The main issues are: (1) The effect of the development upon neighbours' living conditions having particular regard to noise and general disturbance, and (2) the impact of the development on local parking conditions and highway safety.

Reasons

4. No. 367 is a mid-terraced unit comprising retail unit at ground floor with rear yard and detached garage. The ground floor of the premises includes front and rear rooms, a kitchenette and washroom. The front is in use as a reception area. The majority of the ground floor space is in use as an office and there are tables, filing cabinets and office machinery on display. There is residential accommodation above ground floor level. The property is located within a block of similarly designed building where there is a shop, hot-food takeaway and a launderette. The surrounding area is predominantly residential in character interposed by commercial development.

Living conditions - neighbours

5. I understand that servicing and maintenance is now done off-site at Brent Autos Ltd and Euro Auto Centre. The appellant advances no positive case for the garage's use. The detached garage is accessible via an alleyway to the rear of the property. Evidently, the nature and scale of its use for motor vehicle maintenance and servicing has caused considerable upset amongst the neighbours. The level of disturbance caused by noise from hand-held tools, plant and machinery as well sound from people chatting or coming and going is unacceptable. In this mainly residential environment, this type of incompatible use has the potential to generate significant complaint.
6. The office use of the premises is likely to be active during normal working hours and operating days and times could be subject to a suitably worded condition. I am quite satisfied that the nature, frequency and scale of comings and goings associated with the office activity is unlikely to adversely affect nearby residents given the site's location. I therefore find that the change of use of no. 367 into offices does not adversely affect nearby residents' living conditions. The development complies with UDP policies H22, which seeks protection of residential amenity, and EMP10 the environmental impact of employment development, which are broadly consistent with national planning policy found in paragraph 17, 56 and 23 and 37 to the National Planning Policy Framework (NPPF).

Local parking and highway safety

7. The use of the no. 367 as office space is likely to generate limited comings and goings and most customers probably pre-arrange visits; passing trade is unlikely to be significant. I concur with the assessment that the development is

¹ Ref: 15/1605 refused permission on 8 April 2016 – documents submitted included at appendix 3 to the Council's bundle of evidence.

² The Council describes the business activity as one that firmly falls within uses classified as Class B1 to the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). Among other things Class B1(a) relates to activities such as use as an office being a use which can be carried out in any residential area without detriment to the amenity of that area.

unlikely to generate significant level of vehicular movement given the nature and limited scale of the office use.

8. There is some concern about increase in demand for kerbside parking given the fact that there is no off-street parking facility. Some residents complain about the level of inconvenience caused to them by vehicles parked in front of their own homes for example in Boycroft Avenue. However, there appears to be limited control parking zones within the vicinity of the site. I visited at 1500 and ample kerbside parking space was available in Church Lane, which includes one-hour short stay bays. That situation is likely to change in the late afternoons or in the evenings, when residents return home. Nevertheless, during the normal working day there is adequate parking space within the vicinity of the site that would absorb any increase in demand for on-street parking. Additionally, the site is served by public transport and there is potential for staff and visitors to arrive on foot. The development is unlikely to greatly increase demand for on-street parking in Church Lane or the surrounding area.
9. I therefore conclude that the development does not have a materially harmful effect on local parking conditions or highway safety. Accordingly, the change in the use of the retail unit to office complies with UDP policies TRN3 and TRN12, and paragraph 32 of the NPPF.

Conditions

10. Hours of opening are Monday to Friday 0900 to 1730, and on Saturday 0900 to 1600. In the interest of safeguarding nearby residents' living conditions, I shall transpose these operating times into a stipulation. A suggestion is to limit the rental office use to service of public carriage license holders. That type of restriction is too imprecise and has the potential to create future enforcement difficulties, as the site is also used to process accident claims. Given that the Council describe the activity as a use falling within Class B1 of the Schedule to the UCO, it is more appropriate to restrict the use to the latter. It is reasonable to impose a condition limiting use of the garage for a purpose incidental to the office.

Conclusion on ground (a)

11. Clearly, the use of the premises for car rental office is physically and functionally separate from use of the detached garage for car repairs. In terms of merits, I have found that the latter is materially harmful to neighbours' living conditions whereas the former is acceptable subject to conditions. The appeal parties have, explicitly, advanced their respective cases on that basis because the two uses are severable and there would be no prejudice if I am to grant planning permission for part of the matters alleged. I therefore intend to issue a split decision, the implication of which I shall return to later.

Ground (f)

12. In the light of my findings above, I intend to grant planning permission for the site's rental office use. In terms of the car repair element of the allegation, there is no lesser step advanced. Nothing short of total cessation and removal of motor parts would remedy the breach of planning control that the notice seeks to achieve. Therefore, ground (f) fails.

Ground (g)

13. In this context, the arguments relate to the rental office use of the premises as opposed to the car repair activity. A period of three months to comply with the notice in terms of the requirement to cease use of the detached garage for car repairs and remove associated items is reasonable, because of the nature of the work required by the notice. Ground (g) therefore fails.

Split decision: the effect of section 180 of the Act

14. Section 180 provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part with conditions. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under S173(11) as a variation of cutting down the requirements. To avoid this possibility, the requirements of the notice will not be varied in this way and reliance will be placed on S180 to mitigate the effect of the notice in so far as it is inconsistent with the permission.

Formal decision

15. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for change of use of the ground floor to no. 367 Church Lane, London NW9 8JB to a car rental office, subject to the following conditions:
- 1) The car rental office use hereby permitted shall only take place between the following hours:
0900 - 1730 Mondays - Fridays
0900 - 1600 Saturdays.
 - 2) The car rental office use hereby permitted shall not take place on Sundays and Bank Holidays at all.
 - 3) The premises shall be used for car rental office use and for no other purpose (including any other purpose in Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 4) The detached garage building to the rear of the premises shall not be occupied or used at any time other than for purposes incidental to the car rental office use at the premises known as 367 Church Lane, London NW9 8JB.
16. The appeal is dismissed and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended and the enforcement notice is upheld insofar as it relates to the use of a detached garage for car repairs at 367 Church Lane, London NW9 8JB.

A U Ghafoor

Inspector