The Planning Inspectorate

Appeal Decisions

Site visit made on 18 November 2016

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 16 December 2016

Appeal A, Ref: APP/G5180/C/16/3153373
Bristol Street Motors Ltd., Sevenoaks Road, Pratts Bottom BR6 7LP

- 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 Andy Johnson, Vertu Motors Plc., against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, L15 18/9/14/00649/OPDEV, was issued on 16 June 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of ventilation ductwork, air handling unit and condensers on the building situated on the Land, located approximately at the point marked "X" on the plan.
- The requirements of the notice are, remove the unauthorised ventilation ductwork, air handling unit and condensers from the Land.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed.

Appeal B, Ref: APP/G5180/W/16/3150702
Bristol Street Motors Ltd., Sevenoaks Road, Pratts Bottom BR6 7LP

- 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 Andy Johnson, Vertu Motors Plc., against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/16/01124/FULL1, dated 4 March 2016, was refused by notice dated 6 May 2016.
- The development consists of works already carried out comprising the installation of required ventilation ductwork, air handling unit and condensers, to the rear of the showroom building in association with approved building works (13/04278/full1), including a 2.7m high timber acoustic fence and gates around the plant.

Summary of Decision: The appeal is allowed.

Appeal C, Ref: APP/G5180/W/16/3150712
Bristol Street Motors Ltd., Sevenoaks Road, Pratts Bottom BR6 7LP

- 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 Andy Johnson, Vertu Motors Plc., against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/16/00594/FULL1, dated 4 February 2016, was refused by notice dated 3 May 2016.
- The development proposed is a new wash building and 2m high acoustic timber fencing

Summary of Decision: The appeal is allowed.

Application for costs

1. An application for costs was made by Mr Andy Johnson, Vertu Plc., against the London Borough of Bromley. This application is the subject of a separate Decision.

APPEAL A

Ground (a) – *That planning permission should be granted for what is alleged in the notice*

Main Issue

2. The effect of the development on local residents' living conditions with regard to noise, disturbance and visual amenity.

Reasons

3. A 2.7m high timber acoustic fence with timber acoustic gates has now been installed around the air handling plant, making the built development consistent with the Appeal B application. The reasoning that follows, on ground (a), applies equally to Appeal B.

4. The noise impact assessment report, commissioned by the Appellant, is based on site measurements of background noise and calculated, rather than measured, levels for the plant in operation. The report anticipates the noise level of the plant in operation as being 35dB(A). This value lies 10dB(A) below the minimum measured background noise level of 45dB(A), and accords with the condition suggested by the Council's Environmental Health Officer (EHO). It assumes attenuation by the existing silencer but does not take into account attenuation by the acoustic fence.

5. I see no reason to doubt the accuracy of the background noise level as measured, which appears to have been conducted in line with accepted practice. The question of whether the plant possesses a distinctive tonal or intermittent nature, assumed to incur a 5dB(A) assessment penalty in the Council's suggested condition, is not addressed in the report. However, were it to exist, the acoustic fence would be likely to provide sufficient attenuation to meet the requirements of the EHO's suggested condition.

6. Paragraph 7.8 of the Council's Statement of Case notes that, rather than relying on calculated predictions, the actual impact of the plant could have been verified by measurement first without the plant operating followed by measurement with the plant operating. This process would also test the previously measured background noise level. Further, the assessment was carried out to the old BS4142:1997, rather than to the current BS4142:2014. There are technical differences in methodology between the two versions, including the rating and weighting of sound character, and the treatment of weather conditions and uncertainty. However, the Council tells us that the main difference lies in terminology, the old standard referring to the 'likelihood of complaint', whereas the new standard refers to categories of effect.

7. In Appeal C, the background noise level was measured by a different consultant, using the current version of the BS. The results are consistent with those in the earlier report. In any event, as suggested by the Appellant, an additional condition could be attached to a planning permission requiring a

further noise assessment within a specified period of time of the appeal decision to verify whether noise conditions are acceptable. This would be based on in situ measurements comparing noise levels at sensitive locations, such as the neighbouring resident's garden and most vulnerable windows, with and without the plant in operation, in accordance with a scheme of assessment submitted to and agreed by the Council.

8. An additional suggested condition has been agreed in principle by both parties, requiring that an acoustic fence be built along the boundary of the rear gardens of numbers 11–15 Cudham Lane North within a fixed time limit. With this fence in place, I am satisfied that sufficient safeguards would exist to ensure either satisfactory acoustic conditions with the plant running or, failing that, the plant ceasing to operate.

9. Regarding visual matters, the ductwork attached to the outside of the showroom wall can be seen from number 11, and possibly from other neighbouring properties, but is largely masked from the street. Given that the ductwork is finished in white to match the appearance of the background brickwork, and given the commercial nature of the site, I am satisfied that the development as executed does not give rise to unacceptable visual harm to local residents living conditions or those of the general public.

10. The Larches, a two storey Grade II listed building of classical appearance adjoins the site to the south. Its setting is severely constrained by the car dealership site on the one side and on the other by the buildings of Foxbridge House residential care home. The wall carrying the plant and ductwork does not face towards the listed building, and is some distance from it. In my view, no harm to the listed building arises from the development, and its setting is preserved. The aims of the Unitary Development Plan for Bromley July 2006 (UDP) Policy BE8 (Listed buildings) are met.

11. Overall, the effect of the development as built on local residents' living conditions with regard to noise, disturbance and visual amenity is acceptable subject to the conditions already noted. In addition, a condition requiring adherence to the plans submitted with the Appeal B application is necessary to ensure that unacceptable alterations are not made. However, the suggested condition requiring approval of details of external materials is not necessary because the development is already in place and the details are recorded on the application drawings.

12. Subject to these conditions, the development accords with the development plan overall, including UDP Policy BE1 (Design of new development) which requires a high standard of design and seeks to protect the amenities of the occupiers of neighbouring properties. It also accords with London Plan policy 7.15 (Reducing and managing noise), and with the relevant aims of the National Planning Policy Framework.

13. To ensure that the conditions are effective, Appeal A does not succeed on ground (a), since the development could then remain in its unconditioned state, but Appeal B with conditions attached is allowed.

Ground (f) – *That the steps required are excessive*

14. Since Appeal B is allowed, it is not necessary to consider lesser steps than those required by the notice. The appeal fails on ground (f).

Conclusion

15. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL B

16. The appeal is allowed and planning permission is granted for works already carried out comprising the installation of required ventilation ductwork, air handling unit and condensers, to the rear of the showroom building in association with approved building works (13/04278/full1), including a 2.7m high timber acoustic fence and gates around the plant, at Bristol Street Motors Ltd, Sevenoaks Road, Pratts Bottom BR6 7LP in accordance with the terms of the application, Ref DC/16/01124/FULL1, dated 4 March 2016, and the plans submitted with it, subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the following approved plans:

       Existing Site Plan AR56614-123 Rev A
       Ground Floor Plan AR56614-125 Rev A
       Existing and Approved Elevations AR56614-126 Rev B
       Existing and Approved Elevations AR56614-127 Rev B
       Site Location Plan 56614-200

       The materials and finishes as shown and annotated on these drawings shall be retained for the life of the development.

    2) Details of a timber acoustic fence of surface density ≥ 10kg/m^2, 2m higher than the highest adjacent ground level, to be installed to the rear boundary of 11-15 Cudham Lane North, shall be submitted to the Local Planning Authority for approval in writing within two months of the date of issue of this decision. The fencing shall then be erected in full accordance with the approved details within two months of the approval of the details.

    3) Within two months of the date of issue of this decision, details of a noise assessment scheme to be carried out to measure the levels of background noise and of noise with the plant operating shall be submitted to the Local Planning Authority for approval in writing. The assessment shall be carried out in accordance with the approved details, and the results submitted to the Local Planning Authority within two months of this approval.

       At any time the combined noise level from the air conditioning plant at this site in terms of dB(A) shall be 10 decibels below the relevant minimum background noise level, LA90(15mins) measured at any noise sensitive building or amenity space. If the plant has a distinctive tonal or intermittent nature the measured noise level of the plant shall be increased by a further 5dB(A). Thus, if the measured noise level is 40dB(A) from the plant alone and the plant has a tonal nature, the 40dB(A) shall be increased to 45dB(A) for comparison with the background level. The L90 spectra may be used to help determine whether the plant is perceived as tonal. Should these standards not be met, operation of the plant shall cease immediately.

APPEAL C

Main Issue

17. The effect of the proposal on local residents' living conditions with regard to noise, disturbance and visual amenity.

Reasons

18. An indoor car washing bay, entered through an overhead sectional door in the south west elevation of the main building, was installed as part of a development of alterations and renovations granted planning permission in 2013. The Appellant notes that the present proposal, for a detached building , situated at the southern corner of the main building, is required for van washing, which currently takes place on the site in the open air, as a legitimate ancillary activity. Both vehicle washing facilities would therefore be located near to the Cudham Lane North dwellings.

19. The proposed car wash building was initially to be sited further south, near to The Larches, Grade II listed building. However it was repositioned to avoid harm to the setting and amenity of the listed building. In its currently proposed location, it would lie some distance from the listed building, be no threat to amenity, and would be absorbed into the visual presence of the main building. No harm would arise to the listed building, and its setting would be preserved. The aims of UDP Policy BE8 (Listed buildings) are met.

20. The sound impact assessment commissioned by the Appellant used measurements taken in the existing car wash bay to predict operational sound levels. The results were then subject to reductions arising from the proposed fabric of the enclosure, the sound attenuating properties of the sectional door, and mitigation through the timber acoustic fence required by condition under Appeal B, which would also be a condition of a permission granted under Appeal C. From this analysis, the highest calculated sound rating level at the nearest sound sensitive location was found to be 9dB(A) below the measured background level.

21. The report recommends installing sectional doors of high acoustic performance in both the proposed and existing bays. It outlines a performance specification for the proposed building and cautions against the use of polycarbonate or acrylic glazing in its walls or roof. In addition, it outlines the following operational restrictions:

    - Pressure washing and vacuum cleaning should take place only within the enclosed wash bays.
    - Washing and polishing by hand may be permissible outside the bays but powered tools or equipment should not be used.
    - The wash bay doors should remain shut whenever the bay is in use.
    - Washing activities should cease whenever a door is opened for access or egress.
    - No radios should be used outside the wash bays, or inside the wash bays with any door open.

22. The Council's Statement of Case tells us at paragraph 5.4 that the EHO considers the implementation of these measures, were they to be complied

with, would help to resolve some of the existing noise issues on site by preventing external car washing and ensuring internal washing takes place in properly insulated bays. However, officers question whether the conditions proposed by the EHO are realistic, practical and enforceable. This is because, with an open door to the wash bay (or external car washing taking place) car washing activities would not be sufficiently insulated to prevent unacceptable adverse impacts on neighbours.

23. The existing car wash bay has a power breaker device preventing operation of the car wash with the sectional door open. The Appellant suggests the same device for the proposed bay. Also, in its Grounds of Appeal, at paragraph 7.10, the Appellant accepts the recommendation to replace the existing bay's door with one of higher performance and notes that it could be secured by a suitably worded Grampian condition.

24. I consider that, subject to the mitigation and operational measures set out, the site's noise environment would improve under the proposal. One of the main measures, that the wash bay doors should remain shut whenever the bays are in use, is readily enforceable since it would be easy to see whether the power breaker is being used. The remaining operational measures are, in their nature, less straightforwardly enforceable, but no less so than the time limits condition for car washing suggested by the Council which, in my view, is necessary to protect residents' amenity. In all cases it would involve the monitoring and logging of transgressions, and this is quite possible. The conditions would thus act as a useful reinforcement to possible action under nuisance legislation.

25. Attention has been drawn to general site noise and disturbance including shouting between staff, the use of horns, the revving of engines, constant vehicle movements and so on. However, the proposal would not necessarily exacerbate these effects. The new car wash building would replace unenclosed facilities, but may not involve increased vehicle movements. There is no clear reason to suppose that such movements in the space between the gardens and the main building, towards and away from the valet bays on the north side of the building, would increase.

26. Attention has also been drawn to overdevelopment of the site involving creeping intensification and parking problems. However, these would remain as an issue whether or not the proposal went ahead. Also, to the bay door height of nearly 4m compared to the 2m of the acoustic fence, and to the disturbance of lights and the 'echo chamber' effect of the bays with the door raised, even though the wash may not be operating. The proposed building would be located with its doors facing a zone just to the south of the end fence to the gardens, although there might be some light spillage and noise diffraction effect with the doors open. However, the acoustic fence, replacing an older, slightly lower fence which is in relatively poor condition, would help ameliorate these problems.

27. The point made that the noise impact of the ventilation plant and proposed car washing bays should be assessed as a cumulative effect against the background noise is a fair one. However, the noise reducing effects of the proposal, including the upgrading of the sectional door to the existing wash bay, and the prohibition on powered washing and vacuum cleaning outside the closed bays, as well as the installation of the acoustic fence should be taken

into account. Overall, the site is unlikely to be noisier with the proposed development in place than at present.

28. Overall, I find the effect of the proposal on local residents' living conditions with regard to noise, disturbance and visual amenity acceptable, subject to the conditions outlined, together with the requirement for approval of materials for visual and functional reasons. It accords with the development plan overall, including UDP Policy BE1 (Design of new development) which requires a high standard of design and seeks to protect the amenities of the occupiers of neighbouring properties. It also accords with London Plan policy 7.15 (Reducing and managing noise), and with the relevant aims of the National Planning Policy Framework.

29. The appeal is allowed and planning permission is granted for a new wash building and 2m high acoustic timber fencing at Bristol Street Motors Ltd., Sevenoaks Road, Pratts Bottom BR6 7LP in accordance with the terms of the application, Ref DC/16/00594/FULL1, dated 4 February 2016, and the plans submitted with it, subject to the following conditions:

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans:

   Proposed Site Plan Wash Bay Installation AR58334-100 Rev C
   Wash Bay Plans, Sections and Elevations AR58334-101 Rev A

3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

4) No development shall commence until details of a timber acoustic fence of surface density ≥ 10kg/m^2, 2m higher than the highest adjacent ground level, to be installed to the rear boundary of 11-15 Cudham Lane North, have been submitted to and approved in writing by the Local Planning Authority and the fencing has been erected in full accordance with the approved details.

5) There shall be full compliance with all acoustic mitigation measures detailed in Apex Acoustics report 5073.1 Version B of 1 February 2016 including specification and construction details of the building fabric and sectional doors, to meet the acoustic performance set out in Table 5: Minimum sound reduction. Power break devices allowing the car wash to operate only with the doors closed shall be installed and operated at all times. The mitigation measures shall be installed in full prior to the use commencing and shall remain in place permanently thereafter, as long as the use continues.

6) No development shall commence until the sectional door to the existing car wash bay is removed and a sectional door meeting the requirements set out in Condition 5 above, complete with power break, is installed in its place.

7) No pressure washing or vacuuming cleaning of vehicles shall take place in external areas of the site at any time.

8) The wash bay doors shall remain fully closed at all times whilst the wash bays are in use.

9) No radios shall be used outside the wash bays or inside the wash bays with any door open at any time.

10) The use of the site for the washing of vehicles shall be limited to Mondays to Fridays between 08:30 and 17:30 and Saturdays between 09:00 and 13:00. No washing of vehicles shall take place on Sundays or Public Holidays.

Alan Novitzky

Inspector