The Planning Inspectorate

Appeal Decision

Site visit made on 6 December 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 13 January 2017

Appeal Ref : APP/V2255/C/16/3152534
Land and building between 2 and 4 Acorn Street, Sheerness, Kent,ME12 2ST.

- 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 Mirian Gashi against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 22 April 2016.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land for the purposes of fitting, repair and or providing sales, selling of tyres, car servicing and associated storage, shipping containers and material which in the opinion of the Council requires the benefit of planning permission.
- The requirements of the notice are (i) cease the use of the land as identified in paragraph 3 of the notice: (ii) remove the storage containers and any other equipment from the land including signage identifying the activity.
- 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 (b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. The Appellant has made an application for costs against the Council. This is the subject of a separate decision.

Preliminary Matters

2. An enforcement notice shall specify the precise boundaries of the land to which the notice relates whether by reference to a plan or otherwise. The Appellant argues that the land he describes as 'the hatched land' should not be included in the plan attached to the notice. I agree that the plan attached to the notice does not accurately depict the layout of buildings currently on site but that is not a requirement. I saw at my site visit that the single storey workshop on the site is linked to the store currently used by the service station and can be accessed through it. Whilst I recognise that the hatched land is not owned by the Appellant I find as a matter of fact and degree that the land edged red on the plan (including the hatched land) comprises the planning unit in this case and accordingly, I find the plan to be sufficiently precise as not to warrant variation.

3. The Appellant states that historic evidence indicates there is no change of use of the workshop or storage area and refers to information obtained from a local resident. But there is no ground (d) appeal before me to determine.

4. Reference is made in the papers before me to use of the site for car washing, a planning application concerning the Acorn Street boundary walls and an earlier withdrawn enforcement notice. But the notice is not concerned with these matters and therefore these are not issues that I address in this decision. Comments about the accuracy of the Council's website are also not matters for me to comment upon.

5. The Appellant initially lodged a ground (e) appeal but this was withdrawn in correspondence during the course of the appeal.

Ground (b) appeal

6. This ground of appeal is that the alleged breach has not occurred as a matter of fact. The Appellant's arguments refer solely to the hatched land.

7. The onus of proof rests upon the Appellant with the test of evidence being on the balance of probabilities. The Appellant states that the hatched land is not within his ownership and has not been used in connection with the alleged breach of planning control. The Council disputes this and believes that at the time of issue of the notice the alleged breach was occurring as a matter of fact. Whilst it is not necessary for the Appellant's version of event to be independently corroborated in order to be accepted in this case the Council's submissions do not support his assertion. In the absence of any supporting evidence I cannot conclude with any certainty that the alleged breach has not occurred as a matter of fact on the hatched land. The Appellant has not discharged the burden of proof that rests upon him in this ground of appeal.

8. The ground (b) appeal therefore does not succeed.

Ground (a) appeal and deemed application

Main issue

9. The main issue in determining this appeal is the effect of the development on the living conditions of occupiers of nearby residential premises with particular regard to noise and disturbance.

Living conditions

10. The development plan includes the Swale Borough Local Plan (the Local Plan). Policy E1 of the Local Plan provides that development should satisfy a number of criteria. One of these criteria is that it should cause no demonstrable harm to residential amenity. I have taken into account the emerging local plan but as this is not adopted this limits the weight I can attach to it.

11. The appeal site is located between a service station with associated car wash operation and residential properties in Acorn Street. The site can be accessed via the service station and Acorn Street. The surrounding area is in mixed residential and commercial/industrial use. Residential properties are near the site with No 4 Acorn Street in very close proximity.

12. I saw at the site visit that the single storey workshop on the site is equipped to undertake tyre repairs and vehicle servicing with associated storage. It is

linked to another single storey store on the adjacent service station site and can be accessed through it. The workshop has roller shutter doors. To the rear of the site, adjacent to Acorn Street, are two shipping containers that I saw being used for tyre storage.

13. The representations from neighbours describe how their daily lives are adversely affected by noise, including the opening and closing of container and roller doors and the inflating of car tyres. They describe the need to keep their windows closed and in some cases to changing sleeping arrangements. Their complaints about noise from the car wash facility nearby are however not the subject of this appeal.

14. The complaints of local residents are consistent with the findings of the acoustic assessment report submitted by the Appellant. This assessment concludes that the use of the site in its current format will result in an adverse impact should work be undertaken with the shutter doors open. It recommends that shutter doors and windows be closed and no activities take place in the yard area. The assessment is based on no more than one vehicle being serviced or having tyres changes in any one hour period.

15. I conclude that in the context of the close proximity of the site to residential properties and the likely noise to be generated from the unauthorised use the development causes undue harm to the living conditions of occupiers of nearby residential properties (in particular no 4 Acorn Street) with regard to noise and disturbance contrary to the development plan.

16. I have taken into account the economic benefits of the unauthorised use and the location of the site in an edge of town location but these matters do not outweigh the identified harm.

17. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the conditions suggested by the Council and the Appellant.

18. The parties agree that preventing the opening of shutter doors and windows when noise creating activities are taking place would control the identified harm. I agree that noise mitigation measures are reasonable and necessary. But I also agree with the Council that a condition requiring that shutter doors and windows are closed and limiting the level of activity to one vehicle per hour would be difficult to enforce. I am not persuaded that the detection of a contravention of such a condition would be practically possible to monitor and may pose severe difficulties for the Council in proving any future contravention. There is nothing before me to suggest that neighbours affected would be able to provide clear evidence of any contravention.

19. I therefore wrote to the parties during the course of this appeal seeking comments as to whether a condition could be imposed that would require the parties to agree a detailed scheme to control the levels of noise emissions and noise mitigation measures. The Council responded that planning permission should not be granted as it has not been demonstrated that the harm can be mitigated. The Appellant raised no objection and stated that a scheme would be submitted in the event that such a condition was imposed.

20. Whilst I agree with the Council that appropriate noise mitigation measures have not yet been identified I am not satisfied on the evidence before me that

a solution cannot be agreed. The Appellant has suggested that further noise mitigation measures could be considered (such as sound insulation) although there is no assessment of such measures before me. Requiring a scheme would enable the parties to explore further potential noise mitigation measures and provide certainty to local residents. I therefore conclude that an appropriate condition requiring agreement of a scheme to control noise emissions would address the identified harm. I have considered the comments of the parties concerning timescales and process and consider the condition to be reasonable and precise.

21. The Council proposes a condition controlling hours of operation. I agree this is necessary and reasonable. The Council suggests hours of operation which reflect the current hours of operation as set out by the Appellant. I consider the proposed hours reasonable and that weekend and holiday hours reflect the proximity to residential properties. But the suggested condition is not specific about the activities being controlled and I have amended it so that it covers both use of machinery and delivery.

22. I conclude that it is both reasonable and necessary to control the location of noise creating activity. I consider that the Council's suggested condition to restrict activity to the workshop is appropriate. I consider that a condition restricting use to the workshop will prevent the use taking place in the external yard area and therefore this does not require a separate condition.

23. The Council proposes a condition requiring that the shipping containers be removed after three years to enable a more appropriate and better designed long term solution to be found. This appeal concerns the use of the land. There is nothing before me to support an argument that the appearance of the containers causes harm to the character and appearance of the area. I therefore do not find this condition to be reasonable or necessary.

24. The Appellant in his grounds of appeal suggests that vehicular access to the appeal site be restricted to through the filling station to avoid use of the Acorn Street access. I find this to be necessary and reasonable.

25. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to conditions.

Formal Decision

26. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the use of the land and buildings between 2 and 4 Acorn Street, Sheerness, Kent, ME12 2ST as shown on the plan attached to the notice for the purposes of fitting, repair and/or providing sales, selling of tyres, car servicing and associated storage subject to the following conditions:

1) Unless within 1 month of the date of this decision a scheme to demonstrate that the level of noise emitted from the development shall comply with the latest British Standard for assessment of industrial and commercial sound at all times that the use hereby permitted is in operation is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site for the purposes of fitting, repair and/or providing sales, selling of

tyres, car servicing and associated storage including shipping containers shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. Upon implementation of the approved scheme specified in this condition the scheme shall thereafter be retained.

2) If a scheme in accordance with condition 1 is not approved within 3 months of the date of this decision the use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

3) Machinery shall be operated, processes shall be carried out and deliveries shall be taken at or despatched from the site only between 08:00 and 19:00 on Monday – Friday (inclusive), 09:00 – 17:00 on Saturdays and 10:00 – 16:00 on Sundays and Bank or Public Holidays;

4) Activity associated with the use hereby permitted shall not take place anywhere on the site except within the workshop;

5) There shall be means of vehicular access to the site from the Sheerness filling station only which shall be retained thereafter.

S.Prail

Inspector