

Appeal Decision

Site visit made on 30 May 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 17 July 2017

Appeal Ref: APP/M4320/C/16/3164044

Land and buildings at 88-100 Church Road, Formby, L37 3NG

- 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 Mrs J Johnson against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The notice was issued on 27 October 2016.
 - The breach of planning control as alleged in the notice is without planning permission, within the last 10 years, change of use from motor sales, garage and MOT station to builders merchants.
 - The requirements of the notice are:
 - Cease the use of the land as a builder's merchants.
 - Remove all goods, plant and machinery from the land.
 - Remove all unauthorised signage to the site and the boundary.
 - The period for compliance with the requirements is 2 months after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

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

Preliminary matter

2. Since the notice was issued the Council has adopted the Local Plan for Sefton (LP) on 20 April 2017. Accordingly the saved policies of the Sefton Unitary Development Plan 2006 have been revoked and no longer form part of the development plan. Both of the main parties referred to policies of the draft plan. However I have not sought further comments on the adopted plan since the wording of the relevant adopted policies has not changed from the form in which they considered by the parties.

The appeal on ground (a) and the deemed planning application

Main issues

3. The main issues are the effect of the development on:
 - a. the character and appearance of the area; and
 - b. the living conditions of occupiers of neighbouring properties.
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Character and appearance

4. The appeal property is a large corner site at the junction of Church Road and Cable Street, Formby. The site is in a Primary Residential Area as defined in LP Policy HC3 and Policies Map. This policy would permit non-residential development that does not have an unacceptable impact on the living conditions of neighbouring properties, will otherwise not harm the character of the residential area, and will not undermine objectives of the plan regarding housing delivery. The Council acknowledges that the use of the site for commercial purposes does not undermine any housing objectives, and this is not cited in the reasons for issuing the notice.
5. The immediate environment around the junction is undergoing changes. The former garden centre site has been redeveloped for self-contained apartments and the car showroom adjacent to the parade is being developed as a care home. Also the garage on Cable Street has planning permission for the erection of accommodation connected to the fire station. These changes will consolidate the mainly residential character of the area.
6. However Church Road, off which access to the site is gained, is a busy main through route for traffic. There is a small parade of retail and commercial units further up from the appeal site on the other side of Church Road and other commercial and industrial buildings nearby, some vacant. The area around the junction is not a local or district centre which is catered for elsewhere in the local plan but the appeal premises have been in an established commercial use for many years. In principle there is no reason why continued commercial use on this site would necessarily harm the residential character of the area.
7. LP Policy EQ2 requires development to respond positively to the character, local distinctiveness and form of its surroundings. The term "development" may encompass a material change of use as much as operational development. The policy is therefore relevant to the appeal. Its supporting text emphasises that good quality design covers the site as a whole in its surroundings and wider area, with the focus on how the development looks and how it works.
8. The current development is similar to that which was the subject of an application for a change of use from motor sales, garage and MOT station (*sui generis*) to a builder's merchants, and refused by the Council in 2016. The appellant describes it as a light version of traditional builders' merchants, serving local tradesman and contractors, but also the public. Larger orders would be dealt with elsewhere from other outlets of the appellant's business. The Council is concerned that the size of orders may be difficult to control but other conditions, discussed below, may be appropriate to control the effects of the use such that intensification does not change its fundamental character,.
9. Previously the site would have been relatively open although it had cars parked over the forecourt and hardstanding areas. Building materials are now stacked up behind the palisade fencing at Cable Street. Paladin fencing divides the front half of the site, the public area, from the back half which is used for storage, and fence panels are attached to display types of fencing for sale.
10. In general however the site remains relatively open, the materials are stacked in an orderly fashion and the low barriers to the frontage have been retained, permitting views through the site. Perishable items such as sand and cement are in an indoor storage area to the rear.

11. The current use deploys the same buildings on site when it was a garage and car showroom. The showroom facing Church Road sells smaller scale garden items and, to the front an area of artificial grass displays various plants. The area to the north is laid out to provide a clear drive-through route for deliveries and pick-ups with separate space laid out for parking of customers' vehicles.
12. In visual terms, the clutter referred to by the Council is in my view largely due to the advertisements that cover various structures, including the barriers to the front. The display of advertisements is controlled through a specific approval process and a separate application for consent would be required.
13. The fence at the boundary with the residential properties screens the stored items from the gardens beyond, but I saw several piles of bricks stacked by the fence above its 2m height. However a condition that restricts storage of materials above this height could be effective in my view to protect the appearance of the site and the enjoyment of the gardens from visual intrusion.
14. Taking all of the above into account I consider that the development responds appropriately to its surroundings and is compatible with the mainly residential character of the area. In these respects it would comply with LP Policy HC3, parts 2b and 2c, and LP Policy EQ2, part 1a. It would also comply with the National Planning Policy Framework (Framework), in particular its core planning principles, in that it would be of an appropriately high quality design and enhance the business needs of the local community in making effective use of previously developed land.

Living Conditions

15. There are residential properties immediately to the east of the site and the effect of the development on the occupants' living conditions is an important factor. There are traffic movements within the site arising from deliveries, customers arriving to pick up building materials, and fork lift truck movements. These are a potential source of noise and disturbance. Complaints regarding noise and hours of operation have been received since the use commenced.
16. Some residents have emphasised that there was no significant noise or large industrial vehicles using the site and there is no record supplied of complaints about the previous use. However I do not find the comparisons made with the previous use, including those made in the noise consultant's report, to be conclusive evidence and in any event it is important to focus on the effects of the current operation.
17. The noise consultant's report was revised as requested by the Council to include an assessment using the BS4142 methodology¹. The environmental health officer has not objected to the development provided conditions are imposed to secure the installation of acoustic barriers, the replacement of diesel fork lift trucks with quieter vehicles and agreement is reached on delivery locations and times. The Council acknowledges that these measures would reduce noise levels which I consider to be the main likely adverse effects of deliveries and general movement of stock around the site.
18. Sound monitoring was undertaken at various locations including at the rear boundary where the stacking of materials could cause particular concern to residents. A 2m high close board, solid boundary fence has been erected at

¹ BS4142:2014 - Method for rating industrial and commercial sound.

the boundary that provides some attenuation of noise. From the assessments using the BS4142 methodology, the increase in sound levels above background noise was found where the diesel forklift was used to move materials around and in unloading from a lorry. The report concludes that based on the current site layout and fencing, and a change in the forklift truck, the development is unlikely to significantly adversely impact surrounding residential properties. I see no reason to disagree and note that the diesel fork lift truck is no longer in operation. A suitably worded condition providing for a scheme of noise control to be agreed with the Council would protect against unreasonably adverse noise levels from plant and equipment on site.

19. The evidence suggests that the former garage use operated daily including bank holidays and at times was open in the evenings. The appellant has accepted that with the current use, it is appropriate to control opening and delivery times by conditions. I would agree.
20. Having regard to the above factors, I find on this issue that subject to imposing suitably worded conditions the development would comply with LP Policy HC3 part 2a in that it will not have an unacceptably adverse impact on the living conditions of neighbouring properties.

Other matters

21. The access to the premises is from Church Road where double yellow lines extend alongside most of the length of the site. I note that the local highway authority does not object to the development provided that it can be shown that all loading and unloading can take place off the highway. The submitted tracking plan shows how a large vehicle could enter and leave the premises in forward gear and I am satisfied that a condition could secure that servicing would take place within the site.
22. I acknowledge the concerns of local residents on highway related matters, but particularly given the lack of an in-principle objection from the statutory consultee, I am satisfied that there would be no adverse implications for the safety of users of the highway network.
23. I have taken into account the other concerns of nearby residents and the objections made at application stage and as part of this appeal. Those which relate to the character of the locality, living conditions and highway safety have been considered in my reasoning above and where necessary, could, where appropriate, be adequately dealt with by means of a condition.
24. The appeal site is not in a conservation area. Damage to third party property is not a relevant matter for the purposes of this appeal and in relation to the conduct of operations on site the appellant is subject to the relevant procedures set out in health and safety legislation. These and other concerns expressed do not form a reason for the issue of the notice. Accordingly, I do not regard them as sufficient, either individually or cumulatively, to justify a refusal of planning permission in this instance.

Conclusion on ground (a) and conditions

25. Subject to the imposition of conditions that would enable operating hours and operations on site to be effectively controlled, the development would be compatible with the character and appearance of the area, and would not unacceptably impact on the living conditions of neighbouring residents. The

development would thus be in conformity with the relevant policies of the statutory development plan and the Framework that I have earlier described.

26. I have adopted the conditions suggested by the Council subject to amendments as described below, having considered them in light of advice in Planning Practice Guidance and having regard also to their clarity and enforceability. In addition to those suggested a condition requiring access and egress by delivery vehicles to be in forward gear, is necessary in the interests of highway safety.
27. A condition is necessary in the interests of the living conditions of adjacent residents to approve the specification of an acoustic fence for the boundary to the rear of the site. I note that the appellant would accept a condition restricting the use to Monday to Friday 0730 to 1700 and Saturdays 0800 to 1400. I agree with the Council that in the interests of protecting nearby residents from adverse noise and disturbance, the opening hours should not be before 0800 but might extend to 1730 Monday to Friday. Deliveries to and from the premises should be subject to a similar condition, but restricting deliveries to before 1200 on Saturday in recognition of the desirability to minimise noise and disturbance at weekends. Also to protect living conditions, a scheme to regulate the use of plant and equipment installed or used on site should be approved that will verify noise specifications. It should include permitted hours of use in the event it is sought to operate them shortly before the premises are open.
28. The appellant seeks a maximum storage height of materials of 2m since the 1m maximum suggested by the Council would restrict stacking to no more than a single unit load of bricks. I consider that a limit to the stacking of materials to 2m high would achieve an appropriate use of the site whilst protecting its character and appearance, including from loss of visual intrusion into residential properties. I will therefore impose a condition to this effect.

Overall Conclusion

29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Formal Decision

30. 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 for the development already carried out, namely the change of use from motor sales, garage and MOT station to builders merchants at 88-100 Church Road, Formby, L37 3NG referred to in the notice, subject to the following conditions:
 - 1) Unless within one month of the date of this decision, details of an acoustic fence for the boundary to the rear of the site and a scheme of noise control for any plant and equipment to be installed or used on site including permitted hours of operation, are submitted in writing to the local planning authority for approval, and unless the approved details and the approved scheme are implemented within one month of the local planning authority's approval, 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 the said details and scheme are approved and implemented.

- 2) If no details and scheme in accordance with condition 1) are approved within one month of the date of this decision, the use of the site 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 the details and/or scheme approved by the local planning authority are implemented.
- 3) Upon implementation of the approved details for the fence or as the case may be the approved scheme for noise control, specified in condition 1), the fence or the noise control scheme shall thereafter be retained in use as such.
- 4) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in conditions 1) and 2), the operation of the time limits specified therein will be suspended until that legal challenge has been finally determined.
- 5) The materials stored on site outside buildings shall not be stacked or stored more than 2 metres in height.
- 6) The use hereby permitted shall not be open for business other than between 0800 and 1730 Monday to Friday, 0800 and 1400 on Saturday only and the business shall be closed on Sundays, Bank Holidays and Public Holidays.
- 7) No deliveries to or from the premises shall take place before 0800 Monday to Saturday or after 1730 Monday to Friday or after 1200 on Saturdays. There shall be no deliveries to or from the premises on Sundays, Bank Holidays or Public Holidays.
- 8) Space shall be retained within the site for the loading and unloading of all vehicles arriving at the site and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall be kept available at all times for those purposes.

Grahame Kean

INSPECTOR