

Appeal Decision

Hearing held on 18 January and 19 April 2018

Site visit made on 19 April 2018

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 29 May 2018

Appeal Ref: APP/G5180/W/17/3181668

**National Westminster Bank Sports Ground, Copers Cope Road, Beckenham
BR3 1NZ**

- 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 Ilirjan Madani against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/05845/FULL1, dated 21 December 2016, was refused by notice dated 4 May 2017.
 - The development proposed is the change of use of current car park to car-wash.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Ilirjan Madani against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Procedural matters

3. The Hearing opened on 18 January 2017 but had to be adjourned as it became apparent that adequate notification of the Hearing had not taken place. It reconvened on 19 April 2017, after further notification.
4. It came to light at the reconvened Hearing that the appellant had not correctly served notice on the land owner at the time the planning application was made. However, the appellant's evidence submitted at the Hearing reassured me that the owner was aware of the application and of the appeal, in advance of the Hearing. The appellant has served notice on the land owner, and I have received no representations.
5. The Council has referred to the policies of its emerging Local Plan which is under examination. However, without information on its progress and, specifically so on the policies relevant to this appeal, I cannot be sure that they will not be modified. This limits the weight I can accord them.

Main issues

6. Having considered all the representations made, including those from local residents, the main issues are:
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- i) whether the proposal would be inappropriate development;
- i) its effect on the openness of the Metropolitan Open Land (MOL);
- ii) the effect of the proposed development on the living conditions of surrounding occupiers, with particular regard to noise;
- iii) the effect of the proposed development on the safe and efficient operation of the highway network in the vicinity of the appeal site, with particular regard to intervisibility at the access point and on-street parking; and,
- iv) if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

- 7. The site lies within an area of MOL. Policy 7.17 of the London Plan 2016 (LP) sets out that the strongest possible protection should be given to London's MOL, and that inappropriate development should be refused except in very special circumstances. Its sub-text refers to paragraphs 79-92 of the National Planning Policy Framework (the Framework) which concern Green Belt, and says that these apply equally to MOL.
- 8. Policy G2 of the London Borough of Bromley Unitary Development Plan, 2006 (UDP) says that the material change of use of land or engineering and other operations within MOL will be inappropriate unless they maintain the openness and do not conflict with the purposes of including land within the MOL. UDP policy G2 predates the LP, and conflicts with it, not least, as far as it refers to a material change of use of land. As the LP is the more recent plan, I attach full weight to LP policy 7.17. Policy G2 is also inconsistent with the Framework. In accordance with its paragraph 215, I give only very limited weight to UDP policy G2.
- 9. The Framework sets out in paragraph 90 which forms of development in the Green Belt are considered to be not inappropriate, subject to a range of provisos. The appeal proposal does not fall under one of those forms of development. Accordingly, the appeal proposal would be inappropriate development in the MOL which LP7.17 says should be refused, except in very special circumstances. I attach substantial weight to the harm arising due to the inappropriate nature of the development.

Openness

- 10. The site is part of an undeveloped area of grass which has an enclosed character, between the high boundary wall of the Sports Ground which runs alongside Copers Cope Road, and the even higher, mesh fence of the 5-a-side, artificial, football pitches. The surrounding area includes suburban housing, and beside the site are a parking area and a large building. These factors have a bearing on the sensitivity of the site as regards openness.
- 11. Notwithstanding this, the buffer strip of land is wide relative to the height of the 5-a-side pitches' enclosure and the Sports Ground wall. It is contiguous with the open sports pitches at its other end, and it reflects the open character

of the land of the cricket club across the road. Despite its confines, it nonetheless makes a significant contribution to openness.

12. The proposed use would be open during the day for 7 days a week. It would involve 3 cleaners cleaning on average, 4 or 5 cars per hour, with each taking around 30 or 40 minutes using pressure washing and vacuum cleaning machines, as well as the manipulation of sound absorbing screens beside the cars being cleaned. There would also be a degree of manoeuvring of cars, and short-term parking on the site for cars waiting to be cleaned, or having been cleaned, waiting for collection.
13. This activity and movement would reduce the openness of the site both visually and spatially, as well as undermining one of the essential characteristics of MOL, which is permanence. I acknowledge that the high wall alongside the road would reduce views of the activity from the street. However, it would be in view from the sports pitches and through the gap in the boundary wall for its entrance.
14. While the loss of openness would be limited, it adds to the harm to the MOL by reason of inappropriateness. It would also conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. Paragraph 88 of the Framework states that in considering a planning application, substantial weight should be given to any harm to the Green Belt.

Living conditions of surrounding occupiers

15. While I note the appellant's BS 4142 Assessment Report, submitted with the appeal to address the Council's concerns over the impact of noise on neighbouring occupiers, I have misgivings about its conclusions.
16. For instance, the survey of the background sound level on the site was limited to a 24-hour period in the working week, whereas the proposed use would extend across the whole week. I cannot be sure that the background noise environment is louder at weekends; it may well be quieter, in which case the effect of this proposal may be greater than indicated. Nor are there any details of the noise-generating machinery which have been assumed in the calculations. These factors reduce my confidence in the conclusions of the report.
17. Indeed, at the Hearing, the appellant's expert confirmed that the calculations in the report were based on only 1 jet-wash and 1 vacuum, whereas the operating model requires 2 of each machine. As worked through at the Hearing, when taking account of the correct number of machines proposed, and based on the appellant's attenuation and penalty assumptions, the resultant noise rating level would be 45dB rather than the 42dB indicated in the report. The difference between the measured background sound level and the rating level would then be 3dB rather than zero.
18. The appellant's mitigation measures include portable acoustic screens to be placed between the cars being cleaned and the closest noise receiver, to mitigate the effect of noise from the machinery and cleaning process. No details of the screens were provided in the report. However, it became clear at the Hearing that their effectiveness would rely on them being as wide as the

- profile of the car being cleaned and around 50% higher. The screens would need to be sealed at the ground and would need to have a high density too.
19. The appellant's expert showed photographs of acoustic screens successfully used in construction sites as examples of how such screens might work. However, from my experience, temporary works of the size and weight suggested here, in order to resist loads from wind and movement as well as to reduce damage, are usually supported by stout structures which have a degree of permanence. By contrast, the screens proposed here would need to be transported off-site each evening and brought back every morning.
 20. The acoustic experts of both parties disagreed on the likely effectiveness of the screens in operation. From the evidence I heard, the 12dB attenuation claimed would be difficult to achieve in practice. The level of -5dB suggested by the Council appeared to me more realistic. I appreciate that details of the screens could be secured by a planning condition. However, without any information on their performance, construction, or transportability, I am not convinced of the practicality, effectiveness or indeed the enforceability of portable screens as a means of mitigating the noise impacts of this proposal.
 21. Notwithstanding these doubts, and for the purposes of the calculations, it was agreed at the Hearing that on the basis of a 5dB reduction from the screens, the adjusted rating level would be 49dB. Against the background noise level of 42dB the difference of +7dB would mean the impulsivity and tonality penalties in the report, which relied on the sound being only just perceptible, should increase from 3dB and 2dB respectively to 6dB and 4dB, being then clearly perceptible. This would result in a rating level of 54dB. This would be 12dB above the measured background sound level, which the British Standard¹ suggests is likely to be an indication of a significant adverse impact.
 22. I am mindful of the difficulties of adjusting calculations during a Hearing. I also acknowledge that there are uncertainties in any assessment, including the performance of the screens, and that the calculations only produce an estimate of the impact of the sound. I have also taken into account the context of the proposal; the adjacent uses and car entrance; the distance of the nearest receptor from the furthest position of the machinery; the intervening building in the line of sight; the character of the traffic noise on the adjacent road; and, the hours of use proposed.
 23. However, considering the evidence in the round, I cannot conclude on this issue other than that the proposed use would have a significant adverse impact on the living conditions of surrounding occupiers, with particular regard to noise.
 24. The development would be in conflict with LP policies 5.3 and 7.15 which say that development proposals should avoid significant adverse noise impacts on health and quality of life and should minimise pollution, including noise. It would also be at odds with UDP policy BE1 where it expects development to protect the amenity of the occupiers of neighbouring buildings, and to ensure their environments are not harmed through noise.

¹ British Standard BS 4142:2014 Methods for rating and assessing industrial and commercial sound

Safe and efficient operation of the highway network

25. I understand the concern that there is the potential for the site to be so busy that cars waiting to be cleaned might back-up onto Copers Cope Road. However, based on the operating model, and even assuming no cars were collected, it would take around 2 hours for the parking area to become full with cleaned cars.
26. This is longer than most people would wait on-site while their cars are cleaned, and longer than many of the customers of the gym and play centre nearby might spend there. This suggests that cleaned cars would be driven away before the parking area becomes full.
27. Moreover, the appellant's turnover would depend on there being space for parking dirty cars rather than holding on to clean cars waiting for collection. There is a commercial incentive to control waiting cars to no more than the site's capacity. In my view, it would be most unlikely for waiting cars to back-up onto the road, and very unlikely that customers would wait outside a car-cleaning site which is full. They would simply drive to another operator, of which interested parties advised there are several in the area, or return another time. In any event, the street has single and double yellow lines with demarcated parking bays which already control parking in the street.
28. Based on the size of the site, the operating model, and the control of parking alongside the site, there would be no significant risk of cars backing-up onto the highway and causing a risk to highway safety or adding materially to congestion or parking pressure.
29. The walls alongside the entrance are high and would need adjustment to improve intervisibility sufficiently to make the development acceptable. The Council agreed at the Hearing that a condition to provide and retain visibility splays at the entrance to the site would secure sufficient intervisibility between drivers and pedestrians to the degree where there would be no adverse effect on road safety.
30. The Council is concerned that the development would preclude the implementation of an overflow parking area between the Sports Ground wall and the 5-a-side pitches. This appears to be outstanding work secured by historical planning permissions² for development already part-implemented. However, the Council has not enforced the construction of the overflow parking area. Nor is there any substantive evidence that the overflow parking spaces are needed now or in the future. In these circumstances, the preclusion of the unimplemented overflow parking does not count against the proposal.
31. I conclude on this issue that, subject to a condition for visibility splays, the proposed development would not harm the safe and efficient operation of the highway network in the vicinity of the appeal site, with particular regard to intervisibility at the access point and on-street parking. There would be no conflict with UDP policies BE1 and T18 which expect development to have a high standard of design and to not to have an adverse effect on road safety.

² LPA Refs: DC/99/03611/FULL1 of April 2000 and DC/08/00147/FULL1 of December 2008

Other considerations

32. I acknowledge the appellant's point about the planning permission for overflow parking on the same site as this appeal, and its greater footprint, which could be implemented and which would also have an effect on openness. However, the Council indicated this was intended to be in connection with the sports or recreation activity on the site.
33. Being overflow parking suggests its use would be intermittent, and its effect on openness proportionately limited. Even if I disregard that factor, and the parking were to become more established, and used as the other parking areas in the Sports Ground, the machinery and intense commercial activity of the proposed use would have a far greater impact on the openness of the MOL than static cars in a car-park.
34. I accept that there would be no operations overnight and that the machinery and screens would be removed at the end of each day. However, this would not lessen the effect on openness when the site is in use, whereas the Framework describes the fundamental aim of Green Belt as being to prevent urban sprawl by keeping land permanently open.

Conclusion

35. I have found that there would be no harm to the safe and efficient operation of the highway network in the vicinity of the appeal site, with particular regard to intervisibility at the access point and on-street parking. However, the lack of harm in this regard is a neutral factor.
36. The proposal is inappropriate development, which is by definition, harmful to MOL. In addition, I have found that there would be harm through loss of openness, albeit limited, as well as harm to the living conditions of surrounding occupiers.
37. Against this, I have considered the other considerations cited in support of the proposal. However, they do not amount to the very special circumstances necessary to clearly outweigh the harm to the MOL. For the reasons above, and having regard to all other matters raised, the proposal is in conflict with the development plan and the Framework, and there are no material considerations which outweigh that conflict. The appeal is therefore dismissed.

Patrick Whelan

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Mark Jones
Mr Duncan Arkley
Mr Daniel Green

Director, Jones Town Planning
Consultant, KP Acoustics
Consultant, KP Acoustics

FOR THE LOCAL PLANNING AUTHORITY:

Ms Catherine Leadbeater

Principal Planner
Planning Appeals & Investigations Team
LB Bromley

Ms Charlotte Hennessy

Environmental Health Officer
LB Bromley

INTERESTED PERSONS:

Councillor Russell Mellor
Mr Richard Fielder

Member for Copers Cope Ward
Chair, North Copers Cope Road Action
Group

Mr Bob McQuillen

On behalf of the North Copers Cope
Road Action Group

Mr Richard McKeogh

On behalf of the residents of Gallery
Gallery House and Pavilion House
Local resident

Ms Jane Ward

Documents submitted at the Hearing

By the appellant:

1. Bundle of 5 documents concerning the serving of notice on the landowner
2. Agreed Statement of Common Ground
3. Costs application

By the Council:

1. Costs rebuttal

Documents submitted after the Hearing

By the appellant:

1. Copies of the bundle of 5 documents submitted during the Hearing, together with proof of posting

By the Council:

1. Copy of the costs rebuttal, together with attachments