



Appeal Decision

Site visit made on 2 July 2019

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 30 July 2019

Appeal Ref: APP/A3655/C/18/3206447

Land to the rear of 291-301 Connaught Road, Woking, Surrey, GU24 0AD.

- 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 Daniel Bellairs against an enforcement notice issued by Woking Borough Council.
 - The enforcement notice, numbered ENF/2017/00024, was issued on 24 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land from office (Class B1a) to a mixed use as office (Class B1a) and builders yard (sui generis) including storage (Class B8) of plant equipment and metal storage containers and materials in connection with a building contractors business.
 - The requirements of the notice are: (i) Cease the use of the Land as a builders yard including storage described at paragraph 3 above; (ii) Remove from the Land any items stored in connection with the use of the Land as a builders yard and storage including but not limited to the metal storage containers, skips and building materials; and (iii) Remove from the Land all materials, rubble and debris arising from compliance with requirements (i) and (ii) above.
 - The period for compliance with the requirements is 4 months.
 - 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal succeeds on ground (g) and it is directed that the enforcement notice be varied by the deletion of 4 months and the substitution of 8 months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

2. The appeal site is an L-shaped piece of open ground with an access between 2 properties on the southern side of Connaught Road, Nos. 299 and 301, then extending eastwards behind the rear gardens of Nos. 299 to 291. To the south is a railway embankment. Planning permission¹ was granted in 2016 for "Erection of first floor side and front extension, 3 No. front dormer windows and re-fenestration and change of use from B8 (Storage/Distribution) to B1(a) (Office)." The building concerned is sited directly behind 301 Connaught Road

¹ Council Ref. PLAN/2016/0260

on the western boundary of the site and apparently was formerly a bakery. The external alterations approved appear to have been substantially completed, but the office use does not appear to have commenced. It appears from an Operational Management Plan for the site submitted in the course of the appeal that the office use is intended to be carried out by the firm using the land as a builder's yard. Another building on the site is a double garage building, now roofless, abutting the rear garden of 295 Connaught Road. Building materials are currently stored in the open on hardstanding in front of the garage building and on other rough hardstanding around the site. There are also 4 shipping containers near the rear of the site and two large skips. The shipping containers are apparently being used for storing building materials and equipment, while the skips are said to be used for building operations waste.

Ground (a) and the deemed planning application

3. The basis of an appeal on ground (a) is that planning permission should be granted for the development enforced against. A retrospective planning application² for the development described in the notice was refused in April 2018, leading to the issuing of the notice, whose reasons mirrored the reasons for refusing planning permission. These were, in essence, that it had not been demonstrated that the use as a builders yard does not give rise to adverse impact upon the environmental amenity of the surrounding area, including the quality of residential amenity enjoyed by adjacent and nearby dwellings, by reason of noise, fumes, dust, vibration and smell, including that resulting from associated vehicular movements, along with reasons related to risks from pollution and land instability. Those matters form the main issues on this ground.
4. Relevant development plan policies include Policy CS21 of the Woking Core Strategy (WSC), which seeks amongst other things to ensure that new development respects the character of the area and avoids significant harm to the environment and general amenity, and WCS Policies DM5, DM7 and DM8 which seek, respectively, to avoid environmental pollution, noise and light pollution, and land contamination.
5. The appellant's building business is apparently concerned mainly with emergency repairs, sometimes outside of normal business hours. On the appeal site the skips are used as a waste holding facility for the day to day operations, work vehicles often returning to the site with waste materials outside of the opening hours of local waste facilities. Building waste is transferred to the skips and some building materials are placed in the storage containers, along with equipment. Work vehicles are loaded up in the morning and emptied in the evening. Normal working hours are 7.30 am to 7pm on weekdays and 8am to 6pm on Saturdays, although it seems, by the nature of the business, that some use of the yard occurs outside of these times.
6. Morning loading and associated activities, including the coming and going of vehicles, and the evening unloading are likely to be noise generating, while moving the waste materials to the skips at the end of the working day also has the potential to generate dust. Neighbours have complained about dust and noise emanating from the site, and I consider, given the close proximity of the rear gardens of neighbouring residential properties, and the very close proximity of residential accommodation to the narrow site entrance, that there

² Council ref. PLAN/2017/0403

is clear potential for the builder's yard use to adversely affect the living conditions of the occupiers of neighbouring properties in these respects.

7. The submitted Operational Management Plan proposes to avoid adverse noise and disturbance by generally restricting operating hours to the businesses normal hours, while limiting but not precluding operations outside of these hours, managing vehicle movements, siting the skips and storage containers towards the rear of the site with the skips between containers, and some boundary planting. The positioning of the storage containers and skips, along with surface finishing with tarmac and concrete, is also proposed as a dust management measure. Burning of materials on the site would be precluded.
8. Implementation and adherence to the management plan can be required by condition, but there is little in the way of evidence to support the assertion that the measures proposed would prevent or avoid harm to the living conditions of neighbours due to noise and disturbance, or indeed dust. Operational areas within the site would remain in relatively close proximity to residential gardens where a fair degree of tranquillity would be expected, even taking the proximity of the railway line into account, and it is likely that there would be noise generation at what would normally be relatively quiet times in the morning and evening. The number of vehicles using the site would be likely to be significantly more than that generated by the office use alone, and vehicles entering the site by the narrow passageway between 299 and 301 Connaught Road, which would include skip lorries, would pass in very close proximity to these residential buildings. This is likely, in my view, to adversely affect the amenity of occupiers through noise and disturbance. I note in this respect that that No 299 is in the appellant's ownership, but that does not mean that the activity will not affect the living conditions of the occupiers. I have also noted that planning permission was granted in 2016 for reduction in the width of No 299, which I understand from the appellant's submissions would widen the accessway, but that permission does not appear to have been implemented.
9. The appellant also asserts that the land has a lawful use for storage, but aside from a reference to a former "B8 (Storage/Distribution)" use in the office building planning application and permission I have not been provided with any cogent evidence that a lawful B8 storage use of the site subsists.
10. Overall, I consider, on the evidence before me, that the mixed use, even if operated in accordance with the appellant's proposed conditions, would be likely to harm the living conditions of neighbouring residential properties in terms of noise and disturbance and dust generation. As such it would fail to accord with WSC Policies CS21, DM5 and DM7.
11. Regarding the creation of the hardstanding, while I could see no issue regarding stability, I have not been provided with any evidence to demonstrate that the materials deposited as the base of the hardstanding are exempt from environmental control, and in the absence of confirmation of its composition I consider that the development is contrary to WCS Policy DM8. However, since there is no requirement to remove the hardstanding, and parking and manoeuvring areas are required in any case for the office use, this matter does not, in my view, provide a reason for withholding planning permission. It remains the responsibility of the appellant nonetheless to ensure that the materials used to form the hardstanding can lawfully be so used.

12. My overall conclusion, having considered all other matters raised, is that the development would be likely to adversely affect the living conditions of neighbours in terms of noise, disturbance and dust generation and fails to accord with the development plan read as a whole. I have not found material considerations sufficient to outweigh the conflict with the development plan and hence the appeal on ground (a) must fail and planning permission must be refused.

Ground (g)

13. This ground is that the period specified for compliance, 4 months, falls short of what should reasonably be allowed. The Council is now of the view that a period of 8 months would strike a proportionate balance between the need to remedy the breach and the need for the appellant to relocate to an alternative site without unreasonable impact upon business operations. The appellant has agreed to this period, and while I have not been provided with evidence of the availability of alternative sites, I am satisfied that a period of 8 months is a reasonable time to look for suitable alternative premises. The appeal succeeds to this extent.

Paul Dignan

INSPECTOR