



Appeal Decision

Site visit made on 20 May 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st July 2019

Appeal Ref: APP/N5090/W/19/3224381

The TVR Centre, 129 Barnet Road, Barnet, EN5 3LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Theodhori against the decision of the Council of the London Borough of Barnet.
 - The application Ref: 18/1611/S73, dated 27 September 2017, was refused by notice dated 14 September 2018.
 - The application sought planning permission for the use of the site as a car wash without complying with a condition attached to planning permission Ref: APP/N5090/C/15/3008963, dated 6 November 2015.
 - The condition in dispute is No. 1 which states that: The premises shall not be open to customers outside the following hours: 08.00 – 17.00 Monday – Friday (inclusive); 09.00 – 16.00 Saturday; and 10.00 – 14.00 Sunday and Bank Holidays.
 - The reason given for the condition is: To prevent undue harm to the living conditions of nearby residents outside normal working hours.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The original planning permission for the use of the site as a car wash was granted as a result of the deemed planning application following an appeal against an enforcement notice served by the Council in respect of the use of the land without planning permission (Appeal reference APP/N5090/C/15/3008963). I have therefore referred to this appeal decision as the planning permission.
3. The planning application form and decision notice describe the proposal as a Variation to condition 1 (Opening Hours) of the planning permission. The planning application was made under Section 73 of the Town and Country Planning Act 1990 and, whilst the appeal proposal sought to extend the opening hours of the car wash, the practical effect of a permission granted under S.73 is to create a new planning permission for the original development that is subject to different conditions. I have, therefore, described the proposal as the use of the site as a car wash, as this was the act of development referred to in the previous appeal decision.

4. As originally submitted the appeal proposal sought to extend the hours of operation of the car wash to enable it to be used between the hours of 0900 – 1900, seven days a week. The appellant has advised that the appeal seeks to alter the operating hours to: 09:00 to 18:00 Mondays to Fridays; 09:00 to 18:00 on Saturdays; and, 10:00 to 15:00 on Sundays, Public or Bank Holidays, for a temporary period of nine months. Whilst this may have been agreed with the Council during the consideration of the application, there is no indication that the description of the application was formally amended to propose this. I am required to determine the appeal based on the application as submitted, however, I have also had regard to these alternative proposed opening hours.
5. I have determined the appeal on the above basis.

Main Issue

6. The main issue in the appeal is the effect of varying the opening hours of the car wash on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

7. The appeal site is part of a wider area that contains a number of other automotive related uses that included workshops and vehicles sales at the time of my site visit. It is located to the south side of Barnet Road, which is a busy thoroughfare, and forms part of a small enclave of buildings projecting into open countryside at this point. The site is accessed by a short stretch of private road running from a T-junction with Barnet Road. To the west of the access is a small group of detached houses fronting the main road, and further to the west a detached dwelling and a short terrace of houses are located on Glebe Lane. The north side of Barnet Road is more built up, however, the in the vicinity of the appeal site, the area nevertheless has a semi-rural character.
8. The planning application was accompanied by a noise assessment which concluded that the level of noise generated by the activities at the site is more than 5dB below the prevailing background noise level and as such would be acceptable in planning terms. I note that in the noise assessment the penalty that has been applied for tonality within the noise source is the minimum applicable of +2dB, indicating that the tone is just perceptible at the receptor. During my site visit the car wash was operating and both the pressure washers and vacuum cleaners were being used. I noted that, when standing on the opposite side of Barnet Road from the residential property adjacent to the access to the site, noise from the pressure washers was clearly audible and that the characteristics of the sound were the same as heard when standing adjacent to the area used for washing cars. From my observations, I consider that the noise assessment has underestimated the perceived noise levels arising from the equipment used.
9. The noise assessment also only covers noise from the jet washers and vacuum cleaners and has not accounted for vehicle movements on the access road or from waiting vehicles. At the time of my site visit, which lasted approximately one hour on and in the vicinity of the site, and which took place in the early afternoon on a typical weekday, there was usually at least one vehicle queuing waiting to be washed. Whilst neither party has provided any evidence in respect of vehicle flows at the site it is not unreasonable to assume that at peak times and weekends there will be greater numbers of vehicles present. This

would add to the noise generated from the site at these times. As a consequence of the above, I do not find the conclusions of the noise assessment to be persuasive evidence that there would be no significant impact on the occupiers of the houses fronting onto Barnet Road adjacent to the site access. On the contrary, I find that the operation of the car wash has an adverse effect on the noise climate at the rear of these properties.

10. The properties on Glebe Lane are located further from the appeal site. When I visited the site, I observed that on Glebe Lane, traffic noise from Barnet Road is less audible and that noise from the operations on the appeal site was not audible at the front of the houses or at the end of the terrace, beyond the point where the buildings would provide attenuation. This does not however, alter my finding in respect of the properties fronting Barnet Road.
11. Whilst I accept that there are uses on the site that may not have their operating hours regulated, this does not indicate that an extension of noise generating activities into the early evening or at weekends is acceptable. The residential properties adjacent to the wider area of commercial uses that includes the appeal site will inevitably experience a degree of noise disturbance from the activities carried out on it. However, extending the commercial operations on the site beyond normal weekday working hours and at weekends, when there would otherwise be less activity at the site and in the surrounding area, and when residents are more likely to be at home, would prolong the period during which that disturbance occurs.
12. I would therefore agree with the finding of the previous Inspector that the car wash would cause undue harm to the living conditions of nearby residents outside normal working hours and those currently imposed by the disputed condition.
13. I have had regard to the reduced operating hours that have been proposed by the appellant and the potential for a temporary nine month permission as a trial period. Whilst the proposed operating hours would not increase the overall number of hours the facility could operate on a weekday, it would move the final hour of operation from the late afternoon and into the early evening. These would add two hours to the operation of the car wash on a Saturday, also extending into the early evening, and add a further hour on a Sunday, which is generally accepted as a non-working day and on which activity at the site is more likely to be noticeable. Although of a shorter duration than originally proposed these would, nonetheless, prolong the period during which disturbance occurs at the weekends and into the early evening beyond normal working hours. Whilst the Planning Practice Guidance advises that a temporary permission may be appropriate where a trial run is needed in order to assess the effect of the development, the development in this case has been operating for some time. I am mindful of the objections to the proposal from neighbouring residents and the comments in respect of operating outside of the currently permitted hours. There is no evidence before me that the concerns of these residents would be allayed, nor that the planning circumstances will change in a particular way before the end of that period. Consequently, I do not consider that a temporary planning permission would be appropriate in this case.
14. I have also had regard to the letters submitted in support of the proposal but note that the authors of these are not resident adjacent to the site. Whilst

there may be some small economic benefit arising from the extended business hours, there is no evidence before me that the business is not viable on the basis of the currently permitted operating hours.

15. The reason for refusal given by the Council also refers to the harmful effect of lighting at the site. During the winter months, when daylight is restricted, it would be necessary to use lighting at the car wash facility. However, there is no evidence in respect of the lighting levels and, due to the distance between the car wash and the residential properties and intervening features such as other buildings on the site and trees beyond the boundary, I can see no reason why the design of any lighting could not be controlled through a scheme of lighting design that could be required by a planning condition. Nevertheless, this, of itself, would not overcome the other harm that I have found.
16. I therefore conclude that varying the opening hours of the car wash would cause harm to the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance. It would be contrary to the relevant requirements of Policies DM01 and DM04 of the Barnet Development Management Policies Development Plan Document 2012, which expect development to demonstrate high levels of environmental awareness and seek to ensure that development likely to generate unacceptable noise levels is not sited close to noise sensitive uses. The condition is therefore necessary.
17. The reason for refusal also refers to Policy CS9 of the Barnet Core Strategy 2012. This policy is concerned with providing for safe, effective and efficient travel and is silent in respect of the noise implications of proposed developments. I find no conflict with the requirements of this policy but this does not alter my overall conclusions on the main issue.

Conclusion

18. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR