
Appeal Decision

Site visit made on 30 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Appeal Ref: APP/Y0435/W/19/3229647

74 Newport Road, New Bradwell, Milton Keynes MK13 0AD

- 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 A Habib against the decision of Milton Keynes Council.
 - The application Ref 18/02296/FUL, dated 14 September 2018, was refused by notice dated 29 November 2018.
 - The development proposed is the part change of use for car sales (*sui generis*).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my site visit, the proposed development had already been carried out. I have determined the appeal on that basis.
3. Following the Council's determination of the planning application, the Plan:MK 2016-2031 was adopted March 2019. I have therefore made my determination having regard to the Plan:MK rather than the former development plan policies cited in the Council's reasons for refusal.

Main Issues

4. The main issues are as follows:
 - the effect of the development on the living conditions of the occupants of neighbouring residential properties, with particular regard to noise and disturbance, outlook, air quality and privacy;
 - the effect of the development on highway safety; and
 - the effect of the development on flood risk.

Reasons

Living Conditions

5. The appeal site is accessed via a lane leading off Newport Road, which also serves a pumping station and the rear double garage of 70 Newport Road.
6. At the time of my site visit, cars were parked almost bumper-to-bumper, clearly maximising the number of cars stored on the site. A portacabin was located in the south east corner of the site, adjacent to the boundary with the rear garden of No 74.

7. Due to the size of the site and the large number of cars stored on it, it would appear as a highly prominent feature from the first-floor rear windows in the neighbouring residential properties, in particular Nos 76 and 78 as well as No 74 itself, dominating the outlook from them. The large number of cars and lack of landscaping is read in marked contrast to the neighbouring residential gardens and the open fields in the vicinity, exacerbating the prominence and dominance of the site.
8. Furthermore, at the time of my site visit, a new residential development was under construction a short distance to the west of the site. The site would also dominate the outlook from the rear windows of these properties upon their completion.
9. Therefore, the proposal would significantly diminish the outlook from neighbouring residential properties, to the detriment of the living conditions of their occupants.
10. In terms of privacy, the western boundary of the site abuts the close boarded timber fence boundary with No 76. The fence does not extend the full length of this boundary, with trees and shrubs comprising the furthest northern part of the boundary. At this point, there are clear views of a large portion of No 76's rear garden. Therefore, there is potential for customers and staff to significantly impede the occupants' ability to enjoy the privacy of their rear garden. Whilst this ability to overlook may have been in place when the site was once used as a garden itself, the change of use would have significantly increased this potential.
11. I find therefore that the proposal significantly harms the privacy of neighbouring residents, in particular the occupants of 76 Newport Road.
12. With regard to noise and disturbance, the movement of cars within and around the site would generate some noise. However, this would not be taking place all of the time throughout the day and therefore would not be significantly harmful during daytime hours. Whilst the movement of cars could disturb neighbouring residents during the evenings, were I minded to allow the appeal, I am satisfied that a condition restricting the hours of use would adequately mitigate any such harm.
13. Similarly, there is no substantive evidence before me that the proposal has a significantly harmful effect on air quality. Whilst there are a large number of cars on the site, not all of their engines would be running at the same time, indeed only a few would likely be moved throughout the day and only for short periods of time. Therefore, I find no conflict with Policy NE6 of the Plan:MK.
14. I have had regard to the appellant's contention that some neighbours have not objected to the proposal. However, my assessment has been based on the existing *and* future occupants of neighbouring residential properties.
15. I have also had regard to the presence of other commercial uses within the locality. However, my assessment has been based on the proposal before me.
16. I find therefore that whilst the proposal would not have any significantly harmful effect on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance and air quality, it would with regard to outlook and privacy. As such it is contrary to Policy D5 of the Plan:MK, which seeks to protect residential amenity.

Highway Safety

17. The drawings submitted with the application indicate that customer parking is provided to the east of the access lane upon entering it. The west side is used to access the site. Due to the high number of cars stored on the site, there is little opportunity for vehicles to manoeuvre within the site. As a result, customers would likely have to turn around within the access road itself, which could be difficult if there is a large number of customers at any one time. This could result in customers having to reverse along the access road and onto Newport Road in order to exit the site, which would represent a significant risk to the safety of the driver and other road users. This risk would be exacerbated by the proximity of the site to a pedestrian crossing.
18. In addition, due to the way in which the vehicles are stored on site, in order to drive one out, it would require a number of other cars to first be removed. It is not clear how this takes place without occupying the customer parking spaces or blocking the access to the site.
19. I acknowledge that the number of customers per day is low. However, given the size of the site and the number of cars stored on it, there is potential for this number to increase significantly.
20. I also note that the Council's Highways Development Control section provided no comments on the planning application. However, based on the evidence presented to me and the observations I made on site, I nevertheless consider that the proposal represents an unacceptable risk to highway safety. As such, it is contrary to Policy CT10 of the Plan:MK, which seeks to ensure that parking areas are well designed in terms of safety.

Flood Risk

21. The site is within Flood Zones 2 and 3. The National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG) provide advice on when the Sequential Test does not need to be applied, which includes for a change of use. Therefore, I do not consider that a Sequential Test is necessary for the change of use.
22. There is no dispute between the parties that for the purposes of the Environment Agency's guidelines, the proposed use is 'storage and distribution'. Table 2 of the PPG clearly identifies 'storage and distribution' as 'less vulnerable' development.
23. Whilst a Sequential Test is not required, footnote 50 of the Framework states that a site-specific flood risk assessment should be provided for all development within Flood Zones 2 and 3. No such assessment is before me. The site is within proximity of a number of residential properties and a large area of hardstanding has been created, which facilitates the change of use. Therefore, in the absence of any substantive evidence to the contrary, it is reasonable to conclude that the proposal could increase the risk of flooding. I note the appellant's contention that the proposal does not increase the risk of flooding to the existing residential properties. However, in the absence of any substantive evidence supporting this claim, I attribute it very limited weight.
24. I find therefore that it has not been satisfactorily demonstrated that the change of use would not represent an unacceptable risk to flooding. As such, it fails to accord with the Framework's aim of minimising flood risk.

Conclusion

25. For the reasons given above, the appeal is dismissed.

Alexander Walker

INSPECTOR