



Appeal Decision

Site visit made on 7 October 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2019

Appeal Ref: APP/N5090/C/19/3220738

Land At Car Wash In Car Park, Athenaeum Road, London N20 9AE

- 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 Mr Gerry Gilchrist of Realrole Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 18 December 2018.
- The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref 15/01796/FUL granted on 22 September 2015 and condition No 3 of a planning permission Ref 15/06183/S73 granted on 23 December 2015.
- The development to which the first permission relates is: Car wash at the rear of the car park. The condition in question is No 2 which states that: a) Notwithstanding the details shown on the plans submitted and otherwise hereby approved, the development shall not be first brought into use until details, including plans, materials and evidence of suitability, of acoustic screening walls to be erected on the application site have been submitted to the Local Planning Authority and approved in writing. b) The details approved by this condition shall be implemented in their entirety prior to the commencement or first use of the carwash and retained as such thereafter. Reason: To ensure that the operation does not prejudice the enjoyment of the occupiers of their homes in accordance with Policy DM04 of the Development Management Policies DPD (adopted September 2012) and Policy 7.15 of the London Plan 2011. The notice alleges that the condition has not been complied with as there is the absence of appropriate acoustic screening walls.
- The development to which the second permission relates is: Variation of condition 3 (Hours of operation) pursuant to planning permission 15/01796/FUL dated 22.09.2015 for "Car wash at the rear of the car park". Variations to include weekends in the operational days/hours of the car wash. The condition in question is No 3 which states that: a) Notwithstanding the details shown on the plans submitted and otherwise hereby approved, the development shall not be first brought into use until details, including plans, materials and evidence of suitability, of acoustic screening walls to be erected on the application site have been submitted to the Local Planning Authority and approved in writing. b) The details approved by this condition shall be implemented in their entirety prior to the commencement or first use of the carwash and retained as such thereafter. Reason: To ensure that the operation does not prejudice the enjoyment of the occupiers of their homes in accordance with Policy DM04 of the Development Management Policies DPD (adopted September 2012) and Policy 7.15 of the London Plan 2011. The notice alleges that the condition has not been complied with as there is the absence of appropriate acoustic screening walls.
- The requirements of the notice are: 1 Cease the use of the car park as a car wash 2 Permanently remove all structures, shelters and equipment associated with the car wash use from the site.
- The period for compliance with the requirements is 1 Month.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning

permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

Procedural Matters

2. The parties were notified in advance of my intended site visit however the Council were not in attendance. Given the Council did not consider it essential for me to enter the site to check relevant facts¹ I proceeded to inspect the site unaccompanied. I therefore do not consider that injustice arises from determining the appeal on this basis.
3. The appellant's case relates to matters that are suited to consideration under both ground (b), that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact, as well as ground (c). As the Council has responded to the appellant's case, I do not consider that injustice arises from considering these grounds of appeal together.

The Enforcement Notice

4. The enforcement notice seeks to remedy a breach of planning control relating to two planning conditions from two separate planning permissions, albeit they make the same requirement of the appellant. The enforcement notice however cannot require the use to cease and with it the permanent removal from the car park of all structures, shelters and equipment associated with the car wash use. Rather, it can only require compliance with the conditions enforced against in order to remedy the breach of planning control enforced against. I have accordingly corrected the requirements of the enforcement notice as I do not consider that injustice to the parties would result.

The ground (b) and (c) appeal

5. Planning permission was granted Refs 15/01795/FUL and 15/06183/S73 for the same development, namely the car wash. The latter planning permission secured extended operating hours and consequently the two conditions enforced against make the same requirement of the appellant. In summary, this is to submit details for acoustic screening walls to the Council and then implement the measures that are subsequently agreed in writing. This would presumably involve the erection of the approved acoustic screening wall/s.
6. The appellant has brought three noise impact assessments² to my attention, albeit these appear to relate to the requirements of a different planning condition. The appellant considers that as a consequence of these reports an acoustic screening wall is not necessary as they are operating within the noise limits otherwise specified by the planning permissions. However, whilst this may be the case, and other attenuation measures may have been undertaken, the conditions enforced against remain outstanding in that details have not been approved to enable acoustic screening walls to be erected. I have also not been made aware of any planning application seeking the relief of the conditions enforced against.

¹ LPA Questionnaire dated 1 August 2019

² AF Acoustics Noise Impact Assessments and Mach Residential Noise Impact Assessment

7. Whilst it therefore appears that noise related information has been produced on behalf of the appellant, and which has been submitted to the Council, I do not have evidence of the Council's approval in writing pursuant to the conditions enforced against. The Council maintains that it has not received acceptable information for the purposes of the conditions enforced against and that there remains an issue in respect of noise generation. I have little evidence from the appellant to convince me that that he has received a written approval from the Council to either approve details or to otherwise discharge the conditions enforced against. Furthermore, based on what I observed during my site visit, it did not appear that acoustic screening walls had been erected at the site. I have also not been persuaded on the evidence before me as to why the conditions enforced against are not necessary.
8. The appellant has therefore not demonstrated, on the balance of probabilities, that there has not been a breach of planning control. Given there has been a breach of planning control and acceptable details for acoustic screening walls have not been submitted to the Council pursuant to the conditions enforced against, which would then enable the walls to be erected, the appeal on ground (b) and (c) must fail.

Other Matters

9. I appreciate that the planning permissions were granted in 2015 and the appellant had not been aware until more recently, following the expiration of a previous tenant's lease, that all the details required by those planning permissions had not been received by the Council. Whilst I therefore have sympathy for the appellant, nevertheless a breach of planning control was identified by the Council.

Conclusion

10. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decision

11. It is directed that the enforcement notice be corrected by:
 - the deletion of the words "*1 Cease the use of the car park as a car wash 2 Permanently remove all structures, shelters and equipment associated with the car wash use from the site.*" and their replacement with the words "*1. Cease the use of the car park as a car wash other than in accordance with condition 2 of planning permission ref 15/01796/FUL (or condition 3 of planning permission ref 15/06183/S73).*"
12. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR