



Appeal Decision

Site visit made on 3 December 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: APP/U5360/C/19/3227880

Land at garages of 67 Osbaldeston Road, Hackney, London N16 7DL

- 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 Ismail Patel against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 25 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use from C3 residential to B2 general industrial (car modification facility).
 - The requirements of the notice are to cease the use of the property as a car modification facility, remove fixtures and fittings and equipment facilitating the use of the property as a car modification facility, remove from the property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (a) and the deemed planning application

2. The main issues are the effect of the development on the living conditions of the occupiers of surrounding residential properties with particular regard to noise and disturbance and, whether the use preserves or enhances the character or appearance of the Northwold and Cazenove Conservation Area (NCCA).
3. The appeal site consists of a domestic flat roof double garage which is located to the rear of a terrace of houses fronting Cazenove Road, with the garage being sited in close proximity to and fronting Osbaldeston Road. The immediate context is residential in character with the exception of a modest sized mechanics garage which neighbours the appeal site, set back from the road. The use, the subject of the appeal, was not in operation at the time of my visit which took place early in the afternoon on a Tuesday. Whilst the mechanics garage was open, I noted no significant noise emanating from the premises and observed on this occasion that the area is not busy and has a quiet character.

4. The road in front of the garage has double yellow lines with the remaining on-street parking being restricted to permit holders between the hours of 0830 and 1830 Monday to Saturday. As the garage is located immediately adjacent to the pavement, there is no off-street parking for the business other than within the garage.
5. The appeal development consists of the use of the garage as a car modification facility which includes vinyls, wrap designs, installations, window tint installations and shop and marketing signage. The appellant states that the business operates on an appointment only basis and no heavy machinery is used only artificial light and a heat gun. Further, that 40% of his business consists of mobile car cleaning services, carpet and upholstery cleaning, wheelie bin cleaning, garden/patio cleaning and shopfront cleaning which reduces the commercial activity at the garage and limits the potential adverse impact on amenity.
6. However, little detail has been provided about how the car modification business operates including the days or hours of operation. Comments from third parties suggest that the business operates until late at night, that the garage doors are left open when work is taking place and that cars are also worked on in the road.
7. Given the residential context of the site and the relatively low background noise levels in the daytime, which are likely to be lower in the evening and at weekends, the use results in material harm to the living conditions of neighbouring residents as a result of noise and disturbance associated with comings and goings, people talking, and work being carried out on vehicles in the road and within the garage with the doors open. It also causes harm to and therefore does not preserve the quiet residential character of the NCCA.
8. Whilst the appellant states that they would be willing to accept conditions restricting the hours and days of operation and any other reasonable conditions, no suggested wording has been provided. In the absence of details about how the business operates including, for example, the number of employees, how the appointment system works, where vehicles are worked on, what machinery is used including noise levels, I could not construct conditions that would be reasonable and enforceable, and which would safeguard the living conditions of nearby residents. For the same reason I am not certain that the conditions proposed by the Council would safeguard the living conditions of residents.
9. Given the scale of the appeal development within the context of the NCCA as a whole, I consider the harm to the Conservation Area to be less than substantial. Nevertheless, I am mindful that in the National Planning Policy Framework (the Framework) paragraph 193 says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification. Paragraph 196 states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits.
10. Whilst the development provides a service to the public, I have no substantive evidence about demand for that business or need for its current location, so this is a matter of little weight. Consequently, the public benefits do not

outweigh the great weight that I am required to attach to the heritage asset's conservation.

11. Accordingly, the development is contrary to Policy DM2 of the Hackney Development Management Local Plan Adopted July 2015 which requires development to be appropriate to its location and designed to ensure that they will not result in significant adverse impacts on the amenity of occupiers and neighbours. It is also contrary to Policy 7.15 of the London Plan (2016), which states that development proposals should seek to manage noise by avoiding significant adverse noise impacts on health and quality of life as a result of new development. In addition, it conflicts with the Framework which requires a high standard of amenity for existing and future users and fails to accord with national policy, which seeks to conserve and enhance the historic environment.

Other matters

12. The appellant refers to the existence of the neighbouring mechanics garage in support of the appeal scheme. However, I do not know the circumstances of that development being permitted and as already stated that garage is set back from the road with its own forecourt and as such it is not directly comparable to the appeal proposal. In any event, I have determined the appeal scheme on its own merits and the existence of this other business does not justify the harm caused by the appeal development.
13. The appellant's delay in submitting the appeal has no bearing on my assessment of the planning merits of the proposal.
14. Having regard to all the matters raised, I find the appeal on ground (a) fails.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Felicity Thompson

INSPECTOR