



Appeal Decision

Site visit made on 12 February 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 02 March 2020

Appeal Ref: APP/J4525/C/19/3239451

Car park adjacent to The Scullery, Silksworth Lane, Sunderland SR3 1BN

- 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 Neil Ramsey against an enforcement notice issued by Sunderland City Council.
 - The enforcement notice was issued on 20 September 2019.
 - The breach of planning control as alleged in the notice is *Without planning permission the material change of use of the land from private car park to mixed use as a private car park and use for the washing and valeting of vehicles.*
 - The requirements of the notice are to:
 - (i) Stop using the land for the washing and valeting of vehicles
 - (ii) Remove from the land all related plant, machinery and containers used for the storage of water and chemicals.
 - The period for compliance with the requirements is two calendar months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

2. Since issuing the enforcement notice the Council has adopted new planning policies, in the form of the Core Strategy and Development Plan ('CSDP'), on 30 January 2020. The relevant then-emerging policies were referenced in the notice, and their status was correctly recorded at the time the notice was issued. The status of the now-adopted policies is relevant to my decision, but the notice does not require correction given the date of its issue last September.

Main Issues

3. The appeal is made on ground (a) only, which is to say that planning permission is sought for the development alleged in the notice. The Council's reasons for issuing the notice related to the impacts on the amenity of nearby residents and to the impacts of the development on the availability of car parking and highway safety in the area. These are therefore the main issues in the appeal.

Reasons

Amenity of residents

4. The Scullery is a large 2-storey restaurant building located at the corner of Warwick and Durham Terraces, close to the busier Silksworth Lane thoroughfare. Durham Terrace runs to its eastern side, with a small layby adjacent to the road. Opposite lies a row of terraced houses with commercial premises, largely with small front courtyards or opening directly onto the street. The Scullery stands in the grounds of a car park, laid mainly to the rear north of the building. Towards the eastern side of the car park a car washing operation has been established, against which the notice is directed. The appellant describes a one-man operation taking up 3 of the car parking bays to the rear of the restaurant, and this is what I observed on my site visit.
5. The car wash operation is set up at the closest part of the car park to the dwellings opposite on the other side of the road at Durham Terrace. No noise impact assessments have been carried out, but at my site visit I was barely able to discern the noise from the operation (at which customers were present and the operation was in full flow) above the background traffic noise from the surrounding streets. Some water overspray was observed (in a moderate westerly/south-westerly wind) but which dissipated shortly away from the site.
6. I did observe the operation on a weekday afternoon when traffic will have been relatively busy, and I acknowledge that the impacts of the noise emanating from the site will be discernibly greater at otherwise quieter times. I shall therefore impose the Council's proposed condition restricting the hours of operation, and prohibiting the car washing and valeting activities on Sundays and Bank Holidays. Otherwise however I consider that the noise impacts of the development could be made acceptable with the Council's suggested third condition to require noise mitigation measures to be agreed and installed, and with a further condition to limit the size of the car washing operation to take up no more than three standard-sized parking bays in order to prevent an unacceptable intensification of that element of the mixed use. With these limitations I am unable to conclude that any unacceptable harm results from the operation that would give rise to any conflict with development plan policies, particularly policy BH1 which requires developments to ensure a good standard of amenity for existing occupiers of land and buildings. The Council have not stated what form any noise mitigation measures might take, although the appellant has suggested relocating the car wash to a different part of the car park, or using a hand wash only without a generator between certain times.
7. Some re-wording of the Council's proposed condition to require the approval and subsequent installation of noise mitigation measures is required. The purpose of condition (4) below is to require the appellant to comply with a strict timetable for dealing with noise mitigation which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding details, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant

of planning permission may only continue if the appellant complies with each one of a series of requirements.

8. I do not consider the Council's second proposed condition, preventing the use from being carried out on the highway, to be necessary to protect the amenity of local residents, because the appellant does not control the public highway and this does not in any event comprise land that is touched by the notice.

Parking and highway safety

9. Comments from local highway engineers suggest that The Scullery is partly used for takeaway meals and that the short-term parking associated with this takes place on the roadside rather than in The Scullery's rear car park. Concerns are also raised that the car washing operation displaces customer parking at The Scullery onto surrounding streets, where parking is largely unrestricted, with concomitant highway safety concerns.
10. I am not aware of any existing planning conditions that would require all parts of the car park at The Scullery to be made available to patrons of the restaurant. The notice does not apply to The Scullery itself, and the Council has identified the material change of use as being from a 'private car park' (rather than from one ancillary to the restaurant) and this is not disputed. Nonetheless I acknowledge that the car washing operation would be likely to preclude the use of customer car parking spaces that otherwise could be available. As the appellant points out, however, most of The Scullery business takes place in the evenings when the 'car wash' parking spaces can be made available to restaurant customers. Although there is some permanent paraphernalia associated with the car wash operation, this can be kept outside the parking bays and thus the spaces can be made available in the evenings when the restaurant is busier.
11. As a result of these considerations, I am unable to conclude that the use of the car wash operation displaces the use of the car park by patrons of The Scullery to any unreasonable degree such as to warrant a Transport Assessment or otherwise conflict with CSDP Policy ST3. I shall however impose an additional condition requiring that, outside of the permitted hours of operation of the car wash, the 3 parking bays shall be kept clear and made available for the private car parking use.

Conclusion

12. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Formal Decision

13. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried, namely the mixed use of the car park land adjacent to The Scullery, Silksworth Lane, Sunderland SR3 1BN as a private car park and use for the washing and valeting of vehicles, subject to the following conditions:
 - (1) The vehicle washing and valeting activities hereby permitted shall not take place outside of the following hours:

Mondays to Saturdays, excluding Bank Holidays: 09.00 to 18.00; and
At no time on Sundays or Bank or Public Holidays.

- (2) The vehicle washing and valeting activities hereby permitted shall not at any time occupy more than 3 contiguous standard-sized car parking spaces.
- (3) Except during the permitted hours of operation identified in condition (1) the 3 contiguous parking spaces used for the activities hereby permitted shall be kept clear and available at all times for use as private car parking spaces.
- (4) Unless within 1 month of the date of this decision a scheme for noise mitigation measures is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 1 month of the local planning authority's approval, the use of the site for vehicle washing and valeting activities shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented. If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site for vehicle washing and valeting shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved noise mitigation scheme specified in this condition, that scheme shall thereafter be maintained and retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Laura Renaudon

INSPECTOR