



Appeal Decision

Site visit made on 9 February 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2020

Appeal Ref: APP/Q9495/C/19/3239946

Land at Unit 1, Brantfell Place, Bowness-on-Windermere LA23 3FJ

- 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 Lake District Vehicle Sales & Biskey Howe Investments Ltd against an enforcement notice issued by Lake District National Park Authority.
 - The enforcement notice was issued on 12 September 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, material change of use of an office falling within Class B1, Part B of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (Use Class B1) to a use for the preparation of vehicles for sale and the sale of vehicles.
 - The requirements of the notice are to cease the use of the Land for the preparation of vehicles for sale and the sale of vehicles.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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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.

Appeal on ground (b)

2. The main issue is whether as a matter of fact the Land was in use for the preparation of vehicles for sale and the sale of vehicles. The burden of proof falls on the appellant to make out their case.
3. The appellant's case is that the site is not used to display vehicles and there is no operational forecourt function. They claim that the premises are used to superficially valet cars, prior to meeting a prospective purchaser who has found the car on the internet, concluded a want to purchase and hopefully transact a sale to an already agreed value. The sale is a singular specific function: it is not "sales".
4. There does not appear to be any dispute between the parties that the Land is used to clean vehicles both inside and out. Indeed, at the time of my site visit, on a Sunday afternoon, two vehicles were being pressure washed on the forecourt of the premises and there was also a vacuum cleaner available for use. Furthermore, it is not disputed that these tasks, including car valeting,

are undertaken to prepare the vehicle for a sale. The Land is therefore used for the preparation of vehicles for sale as a matter of fact.

5. I have not been provided with any substantive evidence that would lead me to conclude that the Land is used to actively display vehicles for sale. However, the appellant does not dispute that prospective purchasers come to the premises to both view and take possession of vehicles they are interested in or have agreed to purchase, albeit sales transactions predominantly take place electronically. Whether or not the sale price is agreed prior to the transaction taking place does not to my mind alter the fact that the Land is used for the sale and purchase of vehicles. Vehicles can be viewed at the site and purchased from it. Indeed, the sign over the front of the premises on the Land advertises the business as, "Lake District Vehicle Sales." The Land is therefore as a matter of fact also used for the sale of vehicles.
6. The appeal on ground (b) fails.

Appeal on ground (c)

7. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant's case is that a car valeting place and a car valuation place is considered by the Land Use Gazetteer (Leaf Coppin) to fall within Use Class B1 of the Town and Country (Use Classes) Order 1987 (UCO), where there is no detriment to residential amenity. To support their case an Environmental Noise Assessment¹ (NA) has been prepared to demonstrate that their activities do not have a detrimental effect on residential amenity. In addition, the appellant states that on-site activities are restricted to car valeting not "car preparation" and the transaction between Vendor and Vendee is a confirmatory agreement of a valuation not a haggling sale transaction.
8. I have found that the breach of planning control alleged in the notice has occurred as a matter of fact. Moreover, Article 3 (6) (e) of the UCO states that a use for the sale or display of motor vehicles does not fall into any class specified in the Schedule to the UCO. From the evidence before me the preparation of the vehicles on the Land is also intrinsically linked to their subsequent sale and these activities comprise the primary use of the Land. This is therefore a sui generis² use which cannot be a use falling within Class B1.
9. The issue is whether as a matter of fact and degree there was a material change in the use of the Land such as would amount to development requiring planning permission.³ A main consideration is whether there is a significant difference in the character of the activities from what has gone on previously. The onus is on the appellant to prove their case on this legal ground of appeal.
10. From the evidence available to me the last use actual use of the Land was as an office.⁴ The key characteristics of the new use of the premises, i.e. for the preparation of vehicles for sale and the sale of vehicles, include: the cleaning and washing of vehicles with the use of a vacuum cleaner and pressure washer on the forecourt of the premises; vehicle activity, particularly on-street parking

¹ Noise Assessment: Lake District Vehicle Sales, Prepared by Martec Environmental Consultants Ltd, 6 June 2019

² Meaning 'of its kind' when no use classes order fits.

³ In the terms of s55(1) of the 1990 Act

⁴ Letter to Lake District Vehicles Sale from Lake District National Park Authority, dated 18 April 2019.

- and car transporters delivering cars; visiting members of the public; and long hours of use with weekend working.
11. I have not been provided with any information on the exact nature of the previous office use and I recognise that there may have been some weekend working and vehicular activity associated with that use. However, the National Park Authority has drawn my attention to their observations, including photographs taken by officers visiting the site to observe the new use. Photographs show vehicles, including a small car transporter, parked on Brackenfield where there are parking restrictions. In addition, there is car valeting taking place on the forecourt of the premises. An office use would not involve car valeting, retail sales and delivery of cars.
 12. The evidence of the activities associated with the new use leads me to conclude that there is a significant difference in the character of the use of the Land from its previous use. A material change of use occurred and there is no record of a specific permission being granted for that change of use at Unit 1 Brantfell Place.
 13. In the alternative, the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) in Article 3 grants planning permission for the classes of development described as permitted development. None of the classes provide for a change of use to a preparation of vehicles for sale and sale of vehicles use.
 14. My conclusion is that the change in the character of the use has materially changed it from a use as an office to a use for preparation of vehicles for sale and for the sale of vehicles. Development took place for which no planning permission was granted by the local planning authority. This material change of use is not permitted development under any provision of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

Appeal on ground (a), deemed planning application

Main Issue

15. The main issue in this case is the effect of the development on the living conditions of neighbouring residents.

Reasons

16. The appeal site sits at the end of a short terrace which comprises four individual businesses and forms part of a cul-de-sac within what is otherwise a residential housing estate. The rear of the appeal site abuts the boundary of a residential dwelling and there are residential properties directly opposite the premises on Brantfell Place and Brackenfield. Two car parking spaces are available on the forecourt of the site and valeting predominately takes place in that location.
17. The Authority and residents' concerns relate primarily to the inappropriate parking of vehicles associated with the business on the adjoining residential streets and harm to living conditions of neighbouring residents from noise and disturbance relating to the valeting of the vehicles. In addition, there are concerns from neighbours regarding excess water from the cleaning of vehicles creating a hazard on the adjoining pavements.

18. The NA which has been undertaken in accordance with BS4142:2014 Method for Rating and Assessing Industrial and Commercial Sound, concludes that when the power washer and vacuum cleaner are in use, there is an indication of a significant adverse impact. However, it further concludes that based on the context of the existing operations, the noise generated from a domestic power washer and vacuum cleaner is the type of noise that is frequently encountered in residential areas where cars are cleaned on the driveways of residential properties. It is further reasoned by the appellant that the existing operations involve the cleaning of only two or three cars per day and therefore during long periods of the day no significant noise is generated. Taking into account these factors and the context of the operations, the NA concludes that the noise impact is not significantly adverse.
19. I recognise that it is a normal domestic task for residents to clean their private motor vehicles at home. However, it is unlikely that they do this more than once a week. In this case, it is understood that two or three vehicles are cleaned a day and that cleaning takes place on the open forecourt of the premises adjacent to the street. There are no barriers to screen the noise or spray from the adjoining pavements or premises. In addition, there are residential properties with private amenity space directly facing and abutting the Land. It is clear from the results of the NA that the character of the noise from the valeting of vehicles over prolonged periods of time is intrusive and a cause of disturbance to users of the adjacent gardens.
20. The use is currently operating seven days a week. The premises have limited space for parking on the Land, and when the forecourt is being used to prepare vehicles for sale, visitors, customers and employees are parking on the adjoining streets. In addition, evidence from the Authority and third-parties show that vehicles associated with the business often park inappropriately on the adjoining highway. Inappropriate parking on pavements and areas of the highway where there are parking restrictions not only affects the safe operation of the highway, but also results in inconvenience to other users of the highway and has an adverse effect on the amenity of those residential streets and the occupiers of them.
21. I appreciate that there is some support for the business from local residents and that in this rural area a small family business has some positive economic benefits. However, the activities associated with the preparation of vehicles for sale are having a harmful effect on living conditions of neighbouring residents by reason of noise. In addition, although there is no vehicle showroom and customers are encouraged to book an appointment when they come to view and purchase a vehicle, the associated retail sales do attract visiting members of the public. Consequently, vehicle sales on the Land has increased the amount of activity in and around the site.
22. The restricted size of the premises, with limited space for parking or preparing vehicles for sale, coupled with the location of the appeal site within a residential estate, has resulted in a development which has a detrimental impact on the residential amenity of the area and the living conditions of neighbouring residents.
23. I appreciate the existing operators' efforts to minimise the impact of their business on their neighbours and I have taken into consideration the letters of support I have received. However, when planning permission is granted it

relates to the Land and not the occupiers of it. There is no guarantee that if planning permission is granted for this use that future operators would be as considerate.

24. The appellant has indicated that they would be willing to accept conditions should they be deemed necessary make to the development acceptable. Such conditions need to be considered against advice in the National Planning Policy Framework (the Framework) and Planning Practice Guide. In particular, the Framework states that planning conditions should only be imposed where they are: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
25. A condition which would restrict the use of the Land to valeting, and not mechanical or repair activities, would not mitigate the harm which I have found to be associated with the valeting use. Similarly, a restriction on the hours of operation would not mitigate the noise nuisance which arises from the valeting of vehicles within permitted hours of operation. The noise associated with those activities over prolonged periods of time is intrusive and a cause of disturbance to users of the adjacent gardens. This would be particularly the case at the weekends and during the summer months when neighbours are utilising their outdoor space for longer periods of time. Restricting the numbers of vehicles valeted on any one day would be neither reasonable nor enforceable given the description of development for which planning permission is sought. Furthermore, it seems to me that car sales often take place at the weekend when prospective purchasers have more time available to travel for viewings and carryout test drives. The suggested condition to prevent vehicles from being displayed for sale or forecourt activities would not mitigate the harm I have identified from the valeting or activity from vehicles on the neighbouring streets associated with the retail sales.
26. The Council's suggested condition to control the parking of vehicles on the adjoining streets would not prevent visitors to the premises from parking in that location. In addition, given the availability of only two off street parking spaces at the premises, it seems to me that there is insufficient space available to provide for all the vehicles associated with the business for which permission is sought. Two spaces are not sufficient space for the parking of the vehicles to be valeted and sold, and for the vehicles belonging to the business operators, their employees and prospective purchasers.
27. For the reasons given above the development would have a harmful effect on the living conditions of neighbouring residents. There are no planning conditions that could be imposed that would satisfactorily mitigate all the adverse effects of the development and make it acceptable. The development is contrary to the development plan, and in particular with Policy CS11 of the Lake District National Park Core Strategy, 2010 which sets out the Authority's sustainable development principles and seeks to ensure that development, amongst other criteria, minimises noise pollution. I also find conflict with paragraph 127 the Framework which requires planning decisions to create places with a high standard of amenity for existing and future users.

Conclusion

28. The appeal on ground (a) does not succeed.

Overall Conclusion

29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR