
Appeal Decision

Site visit made on 17 February 2020

by Roy Curnow MA BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th March 2020

Appeal Ref: APP/H5390/C/19/3234641
158-160 Goldhawk Road, London W12 8HJ

- 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 Hamid Ali (Top Notch Tyres Ltd) against an enforcement notice issued by the London Borough of Hammersmith and Fulham ('the notice').
- The notice, numbered 2019/01193/FUL, was issued on 26 June 2019.
- The breach of planning control as alleged in the notice is without planning permission the change of use from a car showroom (Class Sui Generis) to a use for the sale and fitting of tyres (Sui Generis), an [sic] MOT Testing Station and the general servicing and repairs of vehicles (Class B2).
- The requirement of the notice is cease the use of the premises for the sale of and fitting of tyres (Sui Generis), an [sic] MOT Testing Station and the general servicing and repairs of vehicles (Class B2).
- The period for compliance with the requirements is within nine (9) months of the date on which this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation to the requirement of the notice, as set out in the Formal Decision.

Costs

1. An application for costs was made by Mr Hamid Ali of Top Notch Tyres Ltd against the Council of the London Borough of Hammersmith and Fulham. This application is the subject of a separate Decision.

Ground (b)

2. This appeal is made on the ground that that the matters alleged in the notice have not occurred. The burden of proof lies with the appellant to make his case.
3. The Council's evidence, which takes the form of an Officer's report, focusses on the planning merits of the alleged breach of planning control. These are assessed in the ground (a) appeal, below. It is very limited with regards to an analysis of the use of the site leading up to and when the notice was issued.
4. The appellant states that the notice is inaccurate in its reference to MOT testing and the servicing of vehicles. Further, he states that although the application for the change of use of the site that was earlier submitted to the Council referred to these uses, he has reviewed the documentation and concluded that

the B2¹ uses have not occurred. At my site visit, I saw no evidence that MOT testing occurs, unlike the premises at nearby 2a Godolphin Road where official blue MOT signage was displayed.

5. Appendix 5 to the appellant's statement states that the company started its business at the appeal site in 2019 and sets out the work undertaken there. Amongst these, it states "We further carry out general servicing on vehicles". The character of the servicing of vehicles falls within Class B2.
6. On the basis of the evidence before me, I find that the use of the site as a MOT testing station has not occurred but that the general servicing and repairs of vehicles has. The use of the property for the sale and fitting of tyres is not disputed.
7. I conclude, therefore, that the notice should be corrected by deleting reference to the MOT testing station, but otherwise the ground (b) fails.

Ground (a) -

Main Issues

8. The main issues are the effect of the development on:
 - The living conditions of occupants of nearby dwellings, by reason of noise and disturbance and fumes;
 - The local highway network; and
 - The character and appearance of the locality, including the Coningham and Lime Grove Conservation Area (CLGCA) and the setting of the Bradmore Conservation Area (BCA).

Living conditions

9. The appeal site's workshop area lies immediately adjacent to No. 1 Stowe Road, a residential property, and close to flats above that part of the site that fronts Goldhawk Road. In the words of Policy CC11 of the Hammersmith and Fulham Local Plan, February 2018, (LP) the appeal site is a noise generating development, whilst residential properties are noise sensitive developments. This policy precludes siting these developments together where it would result in a material increase in noise to the latter's occupants. Its supporting text states that the Council will require a careful assessment of noise levels before permission would be granted.
10. Its terms are reflected in the Key Principles (KPs) in the Council's 'Planning Guidance' Supplementary Planning Document (SPD) adopted February 2018. Although its KP NN1 is not referred to in the notice, it is referred to in the Officer report and a copy has been provided. It, together with KPs NN2, NN3 and NN4 provide a suite of guidance on noise-related issues. Amongst their terms are the requirements, in appropriate circumstances, for proposals for noise generating development to be accompanied by a survey and report produced by a professional acoustician, and the provision of noise mitigation and insulation.

¹ As defined in The Town and Country Planning (Use Classes) Order 1987, as amended

11. The proximity of the workshop to residential properties provides appropriate circumstances for the submission of the evidence required by the KPs. No such information has been provided in support of the application. Therefore, I am not persuaded that the building provides sufficient noise insulation to protect the living conditions of the occupants of nearby residential properties.
12. Although no works are undertaken in the open, given the large openings onto Stowe Road, the workshop area cannot be described as being contained. Noise generated here travels out through them. Shutting these openings when work is carried out in the workshop might help protect neighbours' living conditions, but I cannot be sure that it would sufficiently mitigate the effects of the noisy activities carried out in the workshop.
13. Given the above findings, it would be unreasonable to grant a permission that was thereafter unable to comply with controlling conditions. Furthermore, in order to protect the living conditions of nearby residents, it is imperative that detailed information on the manner and level of noise generated by the use, and how this might be mitigated, is available before approval is given.
14. I note that the workshop at 2a Godolphin Road is also in close proximity to residential properties. However, I have not been given full details of the permission that was granted for its use and whether it was accompanied by information regarding noise generation and mitigation. In any event, I have determined this appeal on the basis of the evidence before me.
15. Although the policy guidance referred to above makes no reference to fumes arising from development proposals, the Government's National Planning Policy Framework (the Framework) emphasises the importance of achieving healthy communities. Given the proximity of the workshop to residential properties, it is essential to show that fumes arising from the business are dealt with appropriately. I have not been provided with such details, and this counts against the development.
16. For the above reasons, I find that the use of the workshop element of the appeal site leads to harm to the living conditions of existing residents in the area by reason of noise and fume generation contrary to the terms of LP Policy CC11, the SPD and the Framework.

Highway safety

17. The workshop entrance is very close to Goldhawk Road, which is a busy road and a bus route. LP Policy T2 requires proposals to be assessed for their contribution to traffic generation and impact on congestion and, in this regard, it makes particular reference to bus routes. As such, proposals should be accompanied by a Transport Assessment (TA), which KP TR1 of the SPD requires to be undertaken in accordance with Transport for London guidance. The underlying policy aim is to avoid exacerbating congestion problems in the borough. No TA has been submitted.
18. Although there might be a single tyre fitting bay, from the evidence before me I cannot be sure that there would not be a high level of use of the workshop. Were it to be used intensively, vehicles entering and leaving the site would be likely to result in an adverse effect on the movement of traffic on the local highway network. These are matters that should be addressed in a TA and, without appropriate details in this regard, I cannot be sure that there would not

be an adverse effect on the highway network. As such, a precautionary approach needs to be taken on this issue. I have not been given any information relating to the previous use of the site, so I cannot be sure that the proposal would result in a relative decrease in vehicle movements when compared with it.

19. Therefore, I find that, in the absence of evidence to the contrary, the use of the site for the sale and fitting of tyres and general servicing of vehicles would have an adverse effect on the highway network contrary to LP Policy T2 and SPD KP TR1.

Character and appearance

20. The site lies within the CLGCA, which runs from Uxbridge Road in the north to Goldhawk Road in the south. Although I have not been given a copy of a conservation area statement for the CLGCA, I saw that its character and appearance varied quite considerably. It is a largely quiet residential area, with development ranging from large detached and semi-detached villas to smaller, more dense terraced housing. Amongst the housing are a number of educational establishments. Its Uxbridge Road and Goldhawk Road frontages differ in character, being busy commercial roads. The CLGCA is a designated heritage asset where there is a statutory duty² for decision-makers to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
21. A narrow part of the BCA lies on the opposite side of the quite wide Goldhawk Road. The site lies within its setting. Paragraph 200 of the Government's National Planning Policy Framework states that proposals that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset should be treated favourably.
22. The site lies at the junction of Goldhawk Road and Stowe Road. The former road is busy and is lined at ground level with commercial premises along much of its length in the vicinity of the appeal site. That part of the appeal site fronting Goldhawk Road contains space for the storage, showing and sales of tyres with two floors of residential accommodation, above. That part of the site fronting Stowe Road has, save for a small area at first floor level, accommodation at ground level only. This is used for workshop purposes associated with the tyre fitting and B2 use referred to in my ground (b) decision. Stowe Road is overwhelmingly residential and far less busy, and becomes noticeably quieter as one moves away from Goldhawk Road.
23. Although clearly visible from Goldhawk Road, the tyres that are displayed behind the windows on this frontage are set out neatly. They do not look unsightly and have no greater effect than displays in the windows of shops on the road. Vehicles being worked on are seen from the Stowe Road frontage. However, as this work is carried out within the building there is no adverse effect on the appearance of the area. The parking area on this frontage could be used irrespective of the use of the building. In these regards, I find that there would be little difference visually between the present use and the car sales business previously undertaken at the site.

² Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

24. Notwithstanding my findings in terms of neighbours' living conditions, given the busy and quite noisy nature of Goldhawk Road around its junction with Stowe Road, noise generated by the use does not have an adverse effect on the character of the area.
25. I find that the character and appearance of the CLGCA and the setting of the BCA are preserved. The development respects its townscape setting as required by LP Policy DC1 and, given its compliance with the statutory test, it complies with LP Policy DC8 that relates to 'Heritage and Conservation'.
26. I have not been provided with copies of KPs CAG1, CAG2 or CAG3. However, given that I find that the scheme complies with development plan policies that these KPs support, this does not undermine my decision. LP Policy DC4 relates to 'Alterations and Extensions'. As the scheme does not involve either, and there is no explanation for its use in the Council's submissions, it is not relevant to my decision.

Conclusion

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

Formal Decision

28. It is directed that the enforcement notice be corrected and varied by:
- 1) omitting the words "an [sic] MOT Testing Station" from the breach of planning control alleged and,
 - 2) varying the requirements of the notice by omitting the words "an [sic] MOT Testing Station".
29. Subject to the above correction and variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

INSPECTOR