



Appeal Decisions

Site visit made on 22 January 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 02 April 2020

Appeal A Ref: APP/Z3635/C/19/3236361

32-34 Feltham Road, Ashford TW15 1DH

- 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 Arsalan Kazim against an enforcement notice issued by Spelthorne Borough Council.
 - The enforcement notice was issued on 27 August 2019.
 - The breach of planning control as alleged in the notice is the unlawful operational development of the Land; by the erection of a large canopy and carwash structure.
 - The requirements of the notice are: Removal of the canopy and carwash structure from the land.
 - The period for compliance with the requirements is three 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. Since the development is exempt from the payment of fees, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
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Appeal B Ref: APP/Z3635/W/19/3235760

32-34 Feltham Road, Ashford TW15 1DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Arsalan Kazim against the decision of Spelthorne Borough Council.
 - The application Ref 19/00714/RVC, dated 20 May 2019, was refused by notice dated 25 July 2019.
 - The application sought planning permission for change of use of part of the site from car sales forecourt and MOT garage to car wash and valet services, and associated installation of canopy structure following demolition of existing building at front of site without complying with a condition attached to planning permission Ref 18/00503/FUL, dated 27 July 2018 (the original planning permission).
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans PLAN/001/, /003 received 05.04.2018 Amended plan PLAN/004 received 26.05.2018 Amended plan PLAN/002 rev B received 27.07.2018.*
 - The reason given for the condition is: *For the avoidance of doubt and to ensure the development is completed as approved.*
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Decisions

1. Appeal A 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.
2. Appeal B is dismissed.

Background

3. The appellant seeks to retrospectively vary condition No 2 of the original planning permission to enable development in accordance with new drawings, namely KAZIM/PLAN/002/REV-1 and KAZIM/PLAN/002/REV-2, rather than those originally approved. These drawings reflect the large canopy and carwash structure that have been built, and which are the subject of the enforcement notice. Since the planning proposal and the development subject of the enforcement notice are the same, I have treated both appeals together.

Appeal A ground (a) and the deemed planning application; Appeal B

Main Issues

4. The main issue in respect of Appeal A is the effect of the development on the living conditions of neighbouring occupiers in terms of noise and general disturbance.
5. The main issue in respect of Appeal B is the effect that varying the condition would have on the living conditions of neighbouring occupiers in terms of noise and general disturbance.

Reasons

6. The appeal site is located in a built-up area of mixed commercial and residential use. Whilst there are several business operations in the vicinity, there are numerous dwellings adjacent to the western and southern boundaries of the site.
7. Notwithstanding that the appeal structures are closer to the plant hire business directly to the east of the site than to neighbouring residential properties, they are located very close to the rear of 2-storey houses at Abbey Gardens. It is clear from the new drawings that the car wash area is significantly closer to the dwellings than approved under the original planning permission. It is also clear, as highlighted in the appeal submissions, that the significantly increased size of the structures as built facilitate a greater number of vehicles to be cleaned at once. Further, the new design results in vehicles manoeuvring a full turn and entering the carwash structure next to the boundary with the Abbey Gardens properties. Additionally, unlike the approved design, the carwash structure as built has a large open elevation facing the dwellings with limited screening of the operations taking place within.
8. While I acknowledge that car cleaning operations are undertaken outside night-time hours and that there is existing road traffic noise in the area, the above features of the appeal development result in an unacceptable and material increase in the amount of noise and disturbance caused to residents relative to the approved scheme.
9. The harm is not outweighed by the appellant's submissions that the development as built, and in variance to the approved scheme, is more efficient and facilitates the growth of his business.
10. The appellant says that a larger canopy and car wash area causes fewer vehicles to queue within the site, and that they do so at the site entrance. I place very limited weight on that argument as the design encourages the movement and manoeuvring of vehicles nearer the southern boundary with

residential properties than the approved scheme (as shown in KAZIM/PLAN/002/REV-2).

11. The appeal development cannot be made acceptable through planning conditions restricting the hours of operation, as the degree of noise and disturbance experienced during any reasonable restriction during the day would still cause unacceptable harm for the reasons I have given.
12. The appeal development's scale, location and design together with the associated noise and vehicle movements causes significant harm to the living conditions of neighbours in terms of noise and general disturbance. As such it is in conflict with Policy EN1 of the Spelthorne Borough Council Core Strategy and Policies Development Plan Document 2009 which seeks to ensure a high standard in the design and layout of new development.

Conclusions

13. For the reasons given above I conclude that the appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
14. Condition No 2 is necessary to prevent significant harm to the living conditions of neighbours and therefore Appeal B is dismissed.

Andrew Walker

INSPECTOR