



Appeal Decisions

Site visit made on 11 August 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal A Ref: APP/Z5060/C/19/3236146

Land and premises at 194-200 High Road Chadwell Heath Romford Essex RM6 6LU

- 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 AA Auto Service Ltd against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 31 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use from Use Class B8 to Car Repairs shop (Use Class B2).
 - The requirements of the notice are:
 - Cease operating the premises as Car Repairs shop (Use Class B2).
 - Remove all alterations and fixtures related to the Car Repairs shop (Use Class B2).
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.
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Appeal B Ref: APP/Z5060/C/19/3236143

194-200 High Road Chadwell Heath Romford Essex RM6 6LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by AA Auto Service Ltd against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/00493/FUL, dated 15 March 2019, was refused by notice dated 25 July 2019.
 - The development proposed is the replacement of the warehouse roof and a change of use of the warehouse from a B8 storage unit to an electrical and mechanical car repair shop under B2.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:

the deletion of the plan dated 29 July 2019 and substitution with the plan dated 10 August 2020; and

the deletion of the words 'alterations and' from the second bullet point in section 5.

2. Subject to the correction and variation the appeal is dismissed, and 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.

Appeal B

3. The appeal is dismissed.

Procedural Matter (Appeal A and Appeal B)

4. The alleged unlawful development set out in Appeal A is not the same as the description of development set out in Appeal B. In relation to Appeal A the deemed planning application (DPA) derives its terms directly from the words of the allegation, those being the matters stated in the notice as constituting a breach of planning control. Therefore, the DPA if granted would be in respect of 'change of use from Use Class B8 to Car Repairs shop (Use Class B2)'.
5. In the case of Appeal B were I to allow the appeal this would result in planning permission being granted for 'replacement of the warehouse roof and a change of use of the warehouse from a B8 storage unit to an electrical and mechanical car repair shop under B2'.
6. As the difference between these two descriptions of development relates to the replacement of the warehouse roof which is not required to be removed by the notice, I have dealt with the appeals jointly, with reference to the evidence submitted by both main parties on both appeals.

Appeal A – The Notice

7. In response to a request for clarification of a disparity between the enforcement plan and the site plan which is referred to in the Council's decision notice for application reference 19/00493/FUL, a revised enforcement plan has been provided. The Council has also confirmed that the enforcement notice has been served in accordance with the revised plan. The main parties would not be prejudiced by my accepting the revised plan and considering Appeal A with reference to it. Consequently, I shall determine the Appeal A on this basis and correct the notice accordingly.

Appeal A – ground (a) and the DPA and Appeal B

8. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issue

9. The main issue is the effect of the development on the character and appearance of the surrounding area and the living conditions of residents.

Reasons

10. The appeal site lies close to the junction of High Road and Bennett Road and has a frontage facing the latter. High Road is characterised by a mix of uses including flats, commercial units, one of which is a tyre fitter, and a Health Centre. By contrast Bennett Road is dominated by two-storey detached and short terraces of houses on one side of the road and a school on the same side

- as the appeal site. Bennett Road has a quiet, residential character, in contrast to the hustle and bustle of High Road, and whilst the school would generate noise and disturbance those impacts would be during limited parts of the day.
11. The building which is on site has a utilitarian appearance and there is a structure of a similar design on the opposite side of the road. This reflects their position to the rear of the commercial units, and in terms of their appearance they read as being an integral part of the mixed use character of High Road. In the case of Appeal B, the replacement roof does not have a significant impact on the street scene and whilst the opportunity has not been taken to significantly improve the appearance of the building, it does not look out of character with its surroundings.
 12. In terms of the use of the building, its access onto Bennett Road results in the comings and goings associated with it forming part of the movement characteristics of that street.
 13. There are limited hours parking spaces between the site entrance and High Road which, given the lack of on-street parking in front of the commercial units, provide a facility for their customers. When vehicles are parked in these spaces, this has the effect of narrowing the road. There are restrictions on access to the adjacent school and limitations on on-street-car parking in the area. In combination these features require drivers to take care when using Bennett Road and accessing and egressing the junction with High Road. Furthermore, the need for caution would be heightened at school drop off and collection times.
 14. A substantial number of objections have been submitted by local residents from the area surrounding the site and reference is made to a number of impacts associated with the use of the car repairs shop. Whilst a high number of objections does not in itself necessarily mean that an appeal should be dismissed, in this case they do point towards the use having an adverse impact on the area. Local residents have referred to cars being parked on local streets in association with the car repairs shop use. It is alleged that some of these cars are in a poor state of repair, which creates an eyesore, and that some cars have been worked on on those streets as opposed to within the car repairs shop site.
 15. The appellants do not argue that these impacts are not occurring or that they are not derived from the car repairs shop use and he suggests a number of changes that could be made. They suggest that if the appeal was successful, planning permission could be subject to conditions to control the way in which the business operates.
 16. The appellants suggest that a condition could be imposed stating that no repair works can operate from the public highway. The use of the public highway is not controlled via planning legislation and is the subject of a separate legislative regime, thus a planning condition to restrict its use would not pass the test of being enforceable. However, it follows that if the use can be accommodated on the site there would be no need for works to take place elsewhere.
 17. In this respect the appellants consider that a management and servicing plan could be agreed to show how the use can be accommodated on the site without disrupting the public highway. There is no such plan before me and it has not

been shown that, given the constraints of the site, such a plan would be practicable in terms of the operation of the business.

18. The site is modest in size and the appellants refer to two ramps being installed in the building. There is limited outside space and the swept path analysis provided by the appellants shows that in order for vehicles to enter and leave the building in forward gear the majority of this space would have to be kept clear for turning space. This would significantly limit the number of vehicles which could be accommodated on the site to between two and three vehicles at any time, allowing for some outdoor storage space of waste. Given the degree to which the operation currently relies on space on the highway for vehicle parking and works to vehicles as evidenced by third parties, I am not convinced that the car repairs shop use, including the storage of waste, could be carried out solely within the site. Therefore, a condition to restrict the car repairs shop use to within the site only would not meet the test of being reasonable.
19. In the absence of any reasonable control over the operation of the car repairs shop to prevent overspill parking and works within the public highway, the parking of vehicles awaiting repair and the repair of vehicles on the road has a harmful effect on the residential character of Bennett Road. Furthermore, given the constraints of the road and the presence of the school, frequent movements necessitated by the limited space on the site would have the potential to undermine the safety and convenience of local residents, including vulnerable children.
20. The appellants argue that the previous warehouse use would have had a similar impact on the public realm. However, this is not a view shared by local residents and it is reasonable to presume that a storage use would not generate the need to carry out works to vehicles or the storage of cars on the street.
21. The appellant has submitted further information in respect of the noise and fumes impacts of the car repairs shop use. Amongst other things they recommend an acoustic curtain could be installed to reduce noise, hours of use of the premises could be restricted and a ventilation system could be installed. These matters could be controlled by condition and unlike the arrangements to limit the use to the confines of the site, there is nothing about the site or its context to suggest that a satisfactory and practical solution could not be found.
22. The appellants have said that they would be content to have a temporary consent for one year to enable the impact of the change of use to be monitored. However, I am satisfied that the use is having a harmful impact at present and it has not been shown that this would be capable of being overcome. It would not be reasonable to grant planning permission on this basis.
23. Drawing all of these points together I conclude that whilst some of the adverse impacts of the car repairs shop use on the living conditions of local residents could be appropriately controlled, the harmful effect on the character and appearance of the area and the living conditions of residents as a result of the overspill of vehicle storage and repairs on the highway could not be resolved.
24. I conclude that the car repairs shop use has a harmful effect on the character and appearance of the surrounding area and the living conditions of residents.

The development is therefore contrary to Policies 6.3 and 6.13 of the London Plan, Policy CP3 of the Planning for the future of Barking and Dagenham Core Strategy (2010) and Policies BP8, BP11 and BR9 of the Planning for the future of Barking and Dagenham Borough Wide Development Policies Development Plan Document (2011). These policies jointly require that new development respects and strengthens local character, that residential amenity is maintained and protected, that the amenity impacts of parking are considered and that development provides for the needs of businesses for operational parking.

Conclusion Appeal A – ground (a) and the DPA and Appeal B

25. For the reasons set out above, I conclude that ground (a) of Appeal A and Appeal B should fail and that the deemed planning application under Appeal A should be refused.

Ground (f)

26. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
27. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the use as a car repair shop to cease and the removal of all alterations and fixtures related to the car repairs shop, I consider the purpose is to remedy the breach of planning control.
28. The appellants consider that the steps are excessive because they address the raising of the height of the building, installation of a roller shutter and fitting of a new roof. The Council refutes this claim and says that the appellants have simply used the land to carry out car repairs and conduct business. Further the Council states that no structural alterations are needed to comply with the notice.
29. It is not clear from the notice whether or not the works which have been carried out to the building fall within the description of 'alterations' as set out in section 5 of the notice. However, the comments by the Council would suggest that they do not.
30. It is not clear, from the evidence before me, whether planning application 19/00493/FUL (the Appeal B scheme) included the increase in height of the building. Such works amount to development notwithstanding the use of the building and given that Appeal B is to be dismissed, they do not have the benefit of planning permission.
31. Section 173(5) of the Act gives power to require the alteration of buildings for the purposes of remedying a breach, however in this case there is no evidence before me to suggest that the alteration of the building is necessary to remedy the breach. Therefore, I will regard the alterations to the building as a separate planning matter and it is for the Council to determine what action, if any, to take in respect of them. Accordingly, I will vary the requirement under section 5 of the notice to remove the reference to 'alterations'. Retention of the

reference to 'fixtures' will ensure that items such as the car ramps are removed.

32. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal under ground (f) of Appeal A succeeds to that extent.

Ground (g)

33. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of 3 months is too short because it provides insufficient time for the removal of the roller shutter etc.
34. I have varied the notice to remove reference to 'alterations' which removes any potential requirement for the alterations which have been made to the building to be reversed. On this basis and in the absence of any evidence to suggest that the other requirements of the notice cannot be achieved by the end of the 3-month compliance period, I find that the 3-month period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Conclusion

35. For the reasons given above I conclude that the appeals should not succeed. In respect of Appeal A I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application. Appeal B is dismissed.

Sarah Dyer

Inspector