



Appeal Decision

Site visit made on 4 September 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2020

Appeal Ref: APP/B5480/C/19/3234609

42 Dymoke Road, Hornchurch RM11 1AA

- 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 Dymoke Properties Limited against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 9 July 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the premises to a sui-generis use as an automotive vehicles garage, vehicle servicing, body repairs and vehicle storage business.
- The requirements of the notice are:
 1. cease the use of the property for use as automotive vehicles garage, vehicle servicing, body repairs or vehicle storage.
 2. Remove all vehicles, vehicle parts, machinery, rubble, equipment and debris accumulated when taking step 1 above.
- The period for compliance with the requirements is:
 1. 1 month.
 2. 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

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

The Notice

1. The notice alleges a material change of use of the Land to a mixed use of automotive vehicles garage, vehicle servicing, body repairs and vehicle storage. It requires the use of the Land as an automotive vehicles garage, vehicle servicing, body repairs or vehicle storage to cease. In order to reflect the alleged breach of planning control the notice should require the use of the Land as an automotive vehicles garage, vehicle servicing, body repairs and vehicle storage use to cease. I can vary the notice accordingly without causing injustice to the appellant or the local planning authority.

The appeal on ground (a)

Main Issues

2. The main issues are:
 - the effect of the development on the living conditions of neighbouring occupiers with particular regard to noise and disturbance; and,

- the effect of the development on highway safety.

Living Conditions

3. The appeal property comprises a two-store building. It has a large extension to the side and rear which covers almost the entirety of the Land. The property adjoins the two-storey residential property of 40 Dymoke Road. Opposite to the north are the dwellings of Kyme Road whilst to the east the gardens and residential properties of Craigdale Road.
4. The alleged use of the property comprises a garage for vehicles, with vehicle servicing, vehicle body repairs and the storage of vehicles. Given the size of the building there is the potential for significant levels of such activities to take place. Indeed, I saw from my site visit that there were a considerable number of vehicles at the property. I have no reason to believe my observations were atypical for the activities carried out at the site. As such, the use will likely give rise to noise from multiple sources, including engine noise, noise from machinery and tools and noise from the coming and going of vehicles and people. Given the scale of such activities that could be accommodated from the site, those levels of noise are likely to be considerable.
5. Policy DC55 of the LB Havering Core Strategy and Development Control Policies Development Plan Document (CS) states that that planning permission will not be granted if it will result in the exposure of noise sensitive developments, such as residential accommodation, to noise or vibrations above acceptable levels. It goes on to state that where a proposal would lead to a noise sensitive development being located near to a noise generating activity, a formal assessment will be required. No such assessment has been provided.
6. Consequently, on the basis of the limited evidence before me, it seems to me that, given the scale of the property, the nature of the activities carried out as part of the mixed use and the close proximity of the Land to residential properties, the development will result in the transmission of harmful levels of noise to neighbouring occupiers.
7. I note a suitably worded condition could restrict the use of the premises at certain times in the morning and evening when residents would have higher expectations for lower levels of noise. However, in the absence of compelling evidence regarding the overall noise levels of the alleged use, it seems to me that noise levels during the day would still be of a sufficiently high level to result in disturbance to residents. Indeed, there is a reasonable expectation for noise levels during the day to reflect the predominately residential character of the area. The development would be at odds with that. Thus, I am not satisfied that conditions would overcome the resultant harm.
8. I conclude, therefore, that the development will have a harmful effect on the living conditions of neighbouring occupiers with particular regard to noise and disturbance. It would, as such, conflict with Policy DC55 of the CS, as well as Policy DC61 of the CS which states that planning permission will not be granted where the proposal has unreasonable adverse effects on the environment by way of noise impact.

Highway Safety

9. The Council indicates that there is inadequate off-street parking provision within the site to accommodate the parking demand arising from the use. It

states that the use has utilised on-street parking both for the storage of vehicles and for customer parking.

10. I saw from my site visit that there is space within the external areas of the site for the parking of several vehicles. However, customers would have been unable to park within the site since the external area was being used at the time of my visit for the storage of cars. I have no evidence to suggest that my observations are not typical conditions for the operation. Moreover, I have not been provided with any plans or evidence which demonstrates how many off-street spaces could be accommodated within the site in accordance with the standards set out in CS Policy DC33.
11. Furthermore, if customers were unable to park within the site, on-street parking on this part of Dymoke Road is limited to residents only during daytime hours. Outside of the permitted spaces, there are single yellow line parking restrictions. I did note that there are three on-street paid parking bays on Kyme Road at the junction with Brentwood Road. However, these are some way from the appeal site and the distance is likely to discourage customers from their use. Moreover, at the time of my site visit they were fully occupied, presumably as they also serve businesses much closer to them on Brentwood Road. To that end, I consider the lack of on and off-street parking serving the appeal premises is likely to result in indiscriminate, on-street parking by customers and staff.
12. In addition, I saw at the time of my site visit that a car which was subject to repair was sited on the highway to the front of the appeal site. Given its condition, it was unlikely to have been located there for as brief a period as one would expect from customer parking. Thus, in the absence of evidence to the contrary, it seems that part of the highway to the front of the site is utilised to carry out some of the activities as alleged on the notice. Indeed, this is supported by the evidence of local residents.
13. Although it does not carry heavy volumes of traffic, Dymoke Road and Kyme Road narrow to the width of one vehicle due to the on-street parking bays. In addition, the area to the front of the appeal site lies directly on the 90 degree angled corner of the two. Visibility in both directions is limited by street trees and the three-storey property of 1 Kyme Road. In addition, some of the properties on Craigdale Road have garages in their rear gardens which are accessed from the highway directly to the front of the appeal site. Also, 1 Kyme Road has a driveway which is accessed from the same corner of the highway. Thus, there is presently the potential for conflict between vehicles travelling either direction around the bend, either between one another or with vehicles entering the highway from the surrounding garages and driveway.
14. As a result, in the absence of compelling evidence to the contrary, it seems to me that indiscriminate on-street parking arising either from customers or from the storage of vehicles associated with the use, would likely harmfully exacerbate that potential conflict, as it would reduce visibility for motorists in either direction and increase the number of hazards in an already difficult part of the highway to negotiate.
15. I conclude, therefore, on the evidence before me, that the development will have a harmful effect on highway safety, in conflict with CS Policy DC33 and the National Planning Policy Framework which states that development should

only be refused on highway grounds if there would be an unacceptable impact on highway safety (paragraph 109).

Other Matters

16. The appellant indicates that the lawful use of the building is general industrial with the building have previously being used as a steelworks. It is said, therefore, that the fallback position has the potential to be more harmful through the unmitigated use of the Land for such activities. However, the evidence regarding the last lawful use of the Land is limited at best. The appellant refers to reference having been made in a 2007 planning application to the use of the land at that time being a steelworks. However, no documents from that application have been provided. Nor has any other evidence which is of sufficient weight to demonstrate that a realistic fallback position of a general industrial use exists. Even then, given the limited evidence, I cannot be satisfied that such use would be of equal or greater harm than the development before me here. Thus, the availability or otherwise of such a fallback position would not outweigh the harm I have identified here.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed.

The appeal on ground (g)

18. An appeal on ground (g) is brought on the basis that the time for compliance with the requirements of the notice falls short of what should reasonably be allowed. The appellant argues that the compliance period of 1 month to cease the use and 2 months to remove all vehicles, vehicle parts, machinery, rubble, equipment and debris is insufficient as it would be necessary for the occupier to find suitable alternative premises to operate from.
19. I note the Council's view that the notice was issued in July 2019 so the appellant has had time to consider alternative premises. However, such an argument carries little weight since the appellant is entitled to take up their right of appeal and assume success in doing so. Nevertheless, it does not seem to me that ceasing the use and then removing all vehicles, vehicle parts, machinery, rubble, equipment and debris associated with doing so would be a particularly lengthy or time consuming task.
20. Whilst I note the potential difficulties in relocation, little evidence has been provided to demonstrate that relocation would not be possible within 1 month and that the job losses would subsequently occur. On that basis, the need to rectify the planning harm that arises from the continued use carries greater weight and I am satisfied that 1 month to cease the use and then a further month to remove all associated vehicles, vehicle parts, machinery, rubble, equipment and debris is a reasonable timescale to carry out the requirements of the notice.
21. The appeal on ground (g) therefore fails.

Formal Decision

22. It is directed that the enforcement notice is varied by the deletion of the word 'or' after the word 'repairs' in section 5(i) of the notice and its substitution with the word 'and'.
23. Subject to the 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.

J Whitfield

INSPECTOR