



Appeal Decision

Site visit made on 3 December 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal Ref: APP/E5330/C/20/3247413

125 Shooters Hill Road, Blackheath, London SE3 8UQ

- 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 Zabiullah Haydare against an enforcement notice issued by Royal Borough of Greenwich Council.
- The enforcement notice was issued on 14 January 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the material change of use from a car radio shop (Suit (sic) Generis) to selling and fitting tyres (Sui Generis)*.
- The requirements of the notice are:
 - (i) To permanently cease the use of the Property as a tyre supply and fitting service;
 - (ii) To permanently cease the use of the footway to the front of the Property as tyre fitting bays for the purpose of the tyre fitting service;
 - (iii) To permanently remove all structures including the extension to the rear connected to the authorised use of the Property;
 - (iv) To permanently remove all materials and tyres associated with the use of the Property as a tyre supply and fitting service; and
 - (v) To permanently remove all debris and spoil created as a result of the above steps from the property and dispose in an authorised waste disposal centre.
- The period for compliance with the requirements is three 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matters

1. The notice is directed at land "comprising of" 125 Shooters Hill Road but is also described as being shown "edged in black on the plan" attached to the Notice. The plan attached to the Notice appears to edge two areas in black: first, the property itself at 125 Shooters Hill Road, the boundary of which at the front (south) appears consistent with the front of the building; and secondly an area of 'forecourt' to the front of the building which appears to comprise part of the public highway, shown in hatching on the plan attached to the Notice but also edged in black.
2. Although that hatched area comprises land within the control of the Council (as the local highway authority) rather than exclusively of the appellant it is nonetheless clear that both main parties have addressed the proposal as though that 'forecourt' area forms part of the land to which both the notice and the deemed planning application are directed. The local highway authority is not said to have been specifically served with the notice or consulted on the ground (a) appeal, but no prejudice arises from this apparent lack of service or

consultation because the local highway authority is the same body corporate as the local planning authority issuing the notice.

3. Therefore, notwithstanding the slight uncertainty arising from the face of the notice, given the approach of each of the parties I find it tolerably clear that the notice (and hence the deemed planning application) is directed at the land including the 'forecourt' area. I shall therefore proceed to determine the appeal so as to include the 'forecourt' area as part of the proposal.

Main Issues

4. The Council's reasons for issuing the notice reveal three principal issues for consideration: first, the effect of the development on the character of the area, including whether the character of the Sun in the Sands Conservation Area within which the appeal site lies is preserved or enhanced; secondly, the effect of the development on highway safety including that of pedestrians; and thirdly, the effect of the development on the living conditions of neighbouring residents by reason of noise, disturbance and outlook. These are the main issues in the appeal on ground (a) which is to say the deemed planning application. Depending on the outcome of the appeal on that ground, a further main issue, constituting the appeal on ground (g), is whether the time given to comply with the requirements of the notice is unreasonably short.

Reasons

Character of the area including Conservation Area

5. The appellant contends that the site is not located within a Conservation Area, but the Council has supplied a map and a 2007 character appraisal of the Sun in the Sands Conservation Area that is described to straddle Shooters Hill Road east of the Sun in the Sands roundabout, thus including the site that adjoins the original public house from which the CA takes its name (now interspersed with a café). The predominant uses in the area are said to remain derivative of the C19th hamlet origins including vehicle repair workshops close to the highway rest stop, now the public house, on the main Roman road to Canterbury.
6. The Council suggests that the nature of the activity and storage of tyres on the public highway fails to preserve the street scene or maintain the character and appearance of the Conservation Area. The appearance of the Conservation Area was not a reason for issuing the notice and given the lack of evidence as to the property's prior appearance I am unable to find that the development has failed to preserve or enhance the appearance of the property or of the Conservation Area ("the CA"). The property is said to have previously been used as a car radio repair business and given this history, together with the historical context as expressed in the CA appraisal document, I do not find that the continued use of the site for a form of vehicle repair amounts in itself to development inappropriate to the heritage significance of the area's character.
7. However, there is nothing in the CA appraisal document, or the related management strategy, to suggest that commercial or repair activities taking place within the public realm is in any way characteristic of the area. The use of the public highway for the commercial repair and tyre fitting activities of the appellant's business is not commensurate with the preservation of the area's character which, although with some conservation risks arising from the loss of

front boundary walls to facilitate frontage car parking, is nonetheless still characterised by discernible boundaries and delineated uses between public and private spheres. The mix of users in the forecourt area, with private commercial activities overlapping with the public highway users, is not typical of the area and I find it harms the significance of the Conservation Area as a result.

8. Therefore I find conflict with policy DH(h) of the Royal Greenwich Local Plan Core Strategy with Detailed Policies of 2014 ("the 2014 LP") that requires (inter alia) the local scale and the established pattern of development to be taken into account when considering development proposals in Conservation Areas. The desirability of preserving the importance of designated heritage assets acquires considerable importance and weight in assessing development proposals, and I have paid special regard to the statutory duties in this respect. I consider that 'less than substantial' harm arises to the Conservation Area, which requires weighing against the public benefits of the proposal. No such public benefits are cited by the appellant (who contends that the site is not in a Conservation Area) but I am mindful that the appeal site is the location of what appears to be a viable business employing a number of people. This is a benefit of considerable weight. However I do not think it outweighs the harm to the Conservation Area because I have no evidence that the business cannot be successfully relocated elsewhere in a place that would avoid such harm arising, and nor do I have any evidence that another viable business user cannot be found for the premises at the appeal site.

Highway, including pedestrian, safety

9. The building at the appeal site fronts onto a footway and thence onto a layby abutting the carriageway of the A207, Shooters Hill Road. The site is around 30m east of the grade separated 'Sun in the Sands' roundabout where the A207 meets the A2. A pedestrian underpass emerges to the west of the layby onto a footway. That footway does not have a level access to the adjoining footway abutting the building at the appeal site and which follows the north side of Shooters Hill Road from outside the Sun in the Sands public house, through the appeal site, and away to the east. The layby itself does not have a level access to the footway on either the western or most of the eastern end, there being kerbstones at each end, as well as to the north on the western end of the layby. However, approximately level access can be gained in the area to the front of the site used as the 'forecourt' area, where the layby grades into the footway relatively seamlessly.
10. Therefore, at times when the forecourt area is in active use with one or more cars parked across the footway for the purposes of tyre fitting or repairs, there is likely to be obstruction to users of the footway. For most pedestrians this will not present any undue difficulties because there is ample space in the layby, and adequate visibility, to safely pass through from the east of the site to the underpass at the west, or to the café, public house or any other destination. Pedestrians could walk behind the parked cars across the layby rather than using the footway. However, the presence of parked cars in the forecourt area, as well as the use of pressure hoses placed across the footway, potentially presents a considerable difficulty to some users. Those will include the visually impaired or users of a frailer disposition who cannot easily manage the kerbs as well as those relying on wheeled transport on the footway, such as wheelchairs, mobility scooters or buggies. I consider these users are likely to

be limited in number given that there is no level footway access beyond the public house, but nonetheless I find that the use of the forecourt area for car tyre fitting and repairs results in an unreasonable obstruction and hence safety impact on users of the footway.

11. As the supporting text to 2014 LP policy IM(b) sets out, careful design of the pedestrian environment and of the public realm to enable access for people with disabilities is particularly important when considering development proposals. Whilst I accept that any obstruction to footway users is likely to be relatively fleeting, given the relatively short visits and frequent turnaround of customers, it is nonetheless unacceptable on safety grounds, and the overspill of this commercial activity onto the public highway gives rise to unacceptable conflicts between users.
12. As to highway safety in respect of other highway users, the Council's Notice refers only to 2014 LP policy IM(b)(iv) which requires development in the borough to promote walking and cycling safety. Although some cars may have to reverse onto the carriageway when leaving the site, this appears to have been the longstanding position for vehicular users of the layby, and is neither a stated reason for issuing the Notice nor evidently a position made worse with the advent of the existing development. The Council suggests that the development results in an obstruction to cyclists but does not explain how this is the case and I do not see that it is. The appellant's contention that no traffic accidents have arisen involving movements to and from the existing forecourt area is not contradicted by the Council. Nonetheless the hazards to footway users resulting from the development are contrary to the development plan's requirement to promote pedestrian safety.

Living conditions of neighbouring occupiers

13. Policy E(a) of the 2014 LP provides that permission is not normally forthcoming where a development would have a significant adverse effect on the amenities of neighbours; and policy E(b) provides that enforcement action will be taken where appropriate. Policy 7.15 of the London Plan requires development proposals to seek to manage noise by mitigating and minimising potential impacts but without placing unreasonable restrictions on development. It too requires significant adverse effects on quality of life to be avoided.
14. Shooters Hill Road is a busy A class road and the appeal site lies around 30m from a busy roundabout. The appeal premises have been in a longstanding commercial use. From my observations on site, which included observing the attendance by and servicing of customer vehicles, I could not discern the activities to be unacceptably noisy or disturbing for neighbouring occupiers during usual commercial hours, or to unacceptably compromise their outlook, whether to neighbouring residents or to patrons of other commercial premises.
15. The Council points out that the activities continue throughout Saturdays and Sundays and, had I been minded to grant planning permission I would also have been minded to restrict the hours of operation because of the quieter roads and greater relative disturbance to residential neighbours at the weekends. However, as I am dismissing the appeal for other reasons, the question does not arise.

Conclusion on ground (a)

16. Although I have found that any adverse effects on the living conditions of neighbouring occupiers could be overcome, the development is contrary to the development plan as it relates to the particular matters of pedestrian safety and the protection of heritage assets, and I find that it conflicts with the development plan overall. As no material considerations have been raised that would overcome that conflict, I conclude that the appeal on ground (a) should not succeed. Subject to my findings on ground (g) below, I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (g)

17. The Council considers that three months is a reasonable time to comply because contractors would need to be employed to remove structures and dispose of tyres. However this ignores the appellant's need to find alternative business premises and relocate, a process which could reasonably take considerably longer, and a process which the appellant cannot be expected to have begun before knowing the outcome of his appeal on ground (a). The appellant seeks 12 months which is more than ample. In my view a reasonable period for compliance with the steps required by the notice would be nine months, and I shall vary the requirements accordingly.

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a varied period for compliance and refuse to grant planning permission on the deemed application.

Formal Decision

19. It is directed that the enforcement notice be varied by the substitution of "three months" by "nine months" in paragraph 7 of the notice. Subject to that 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.

Laura Renaudon

INSPECTOR