The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2021

Appeal Ref: APP/P4225/C/20/3259393
Land known as Buersil Service Station, Oldham Road OL11 2AT

- 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 Magdid Abubakr against an enforcement notice issued by Rochdale Metropolitan Borough Council.
- The enforcement notice was issued on 12 August 2020.
- The breach of planning control as alleged in the notice is the material change of use of the Land from a garage and car sales facility to a hand car wash and valeting service.
- The requirements of the notice are:
  a) Cease the use of the Land as a hand car wash and valeting service;
  b) Remove all signage and equipment relating to the use of the land as a hand car wash and valeting service which facilitates the unlawful use.
- The period for compliance with the requirements is within three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (g) of the Town and Country Planning Act 1990 as amended.

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

The Enforcement Notice

1. The appellant has drawn attention to errors in the Annex to the enforcement notice which twice incorrectly refers to "Land known as Land North of Bury New Road, Heywood, Rochdale" rather than "Land known as Buersil Service Station, Oldham Road OL11 2AT". He contends that these errors are obvious and confusing affecting the validity of the notice.

2. S173(2) of the Act states that an enforcement notice complies with s173(1)(a) if it enables any person on whom it is served to know what those matters are, being the matters alleged to constitute the breach. The relevant test is set out in case law[1] and is whether the enforcement notice tells the recipient fairly what they have done wrong and must do to remedy it.

3. In this case the notice tells the persons on whom it was served what they have done wrong and what must be done in order to remedy the breach. The appellant does not argue otherwise. The land in question is correctly identified in the main body of the notice and is clarified on the accompanying plan. The evidence before me is that the appellant has been left in no doubt regarding the alleged breach and where it has taken place. Consequently, the notice tells the recipients fairly what they have done wrong and must do to remedy the alleged breach.

[1] Miller Mead v MHLG [1963] 2 WLR 225

4. There are clear errors in the Annex which sets out information regarding the right of appeal and what happens if there is no appeal. The incorrect address is referred to twice in the Annex, but in this case I consider that, because the enforcement notice is otherwise in order, meets the requirements of the Act and the tests set out in case law, these can be corrected without causing injustice to the main parties.

The appeal on ground (e)

5. The ground of appeal is that the notice was not properly served on everyone with an interest in the land. The appellant's criticism is that it was not served on Mr Magdid Abubakr who is the legal leaseholder and operator of the hand car wash and valeting service which is the alleged breach of planning control. It is contended that the Council's failure to serve the notice on him could have seriously impacted on his ability to make an appeal.

6. The requirements relating to the service of an enforcement notice in S172(2) of the Act provide that an enforcement notice shall be served on the owner and occupier of the land to which it relates and on any other person having an interest in the land, being an interest which in the opinion of the authority is materially affected by the notice. Furthermore, S176(5) of the Act states that if a person who was required to be served was not served, that fact may be disregarded if neither the appellant nor the person required to be served has been substantially prejudiced by the failure to serve.

7. The appellant is the occupier of the appeal site, has clearly found out about the enforcement notice and has subsequently made a valid appeal. Therefore, it cannot be said that he has been substantially prejudiced. The appeal on ground (e) fails.

The appeal on ground (a)

8. The main issues are:

   i. the effect on the living conditions of the occupants of neighbouring residential properties with particular reference to noise and disturbance; and

   ii. whether there is an appropriate and adequate drainage system on site to ensure the proper drainage and discharge of effluent from car washing activities.

Living Conditions

9. The appeal site has historically been used as a petrol filling station and for car sales. It is situated in a predominantly residential area with residential properties in close proximity. The operation of power washers and other cleaning equipment, the movement of vehicles and general disturbance associated with the operation of a business of this type would result in levels of noise and disturbance likely to be harmful to the living conditions of nearby residential occupants. The effect is exacerbated by the operation of the business throughout the week, including weekends when residents can reasonably expect relative quiet.

10. Furthermore, given the nature of activities taking place on the site the levels of noise and disturbance are likely to be greater than those generated by previous

activities. There is no noise impact assessment to determine the effect on nearby residential occupants and I am not satisfied that the issues could be adequately dealt with by planning conditions.

11. Therefore, on this issue I conclude that the development has a harmful effect on the living conditions of the occupants of neighbouring residential properties with particular reference to noise and disturbance. As such it is contrary to Policies DM1 and G9 of the Rochdale Adopted Core Strategy October 2016 (the CS) and the National Planning Policy Framework (the Framework) which among other things state that all development proposals will be expected to demonstrate that they are compatible with surrounding land uses and mitigate against any impacts due to noise.

Drainage

12. The appellant states that it has been shown that water from the jet wash could be satisfactorily drained away. However, no details of the drainage details or installation of a silt trap have been submitted nor is there evidence that consent has been achieved with respect to discharging water into the public sewer. Given the absence of these details there is insufficient evidence that there is an appropriate and adequate drainage system on site to ensure the proper drainage and discharge of effluent from car washing activities. In these particular circumstances I am not satisfied that the evidence before me shows that planning conditions can adequately mitigate this concern.

13. Therefore, on this issue I conclude that the development is contrary to Policies G8, G9 and DM1 of the CS and the Framework. Among other objectives these seek to ensure that development does not lead to any form of increased flooding locally and require a reduction in all forms of pollution and contamination by requiring that development does not have impacts that lead to unacceptable levels of pollution.

The appeal on ground (g)

14. The ground of appeal is that the time given to comply with the requirements is too short. The three months would be sufficient to cease the car washing and valeting use and remove all signage and equipment relating to the use. The six months compliance period suggested by the appellant would be excessive having regard to the continuing on-going harm caused by the development. However, I consider that given the difficult and challenging Covid-19 restrictions it may take longer to find alternative premises and then re-commence trading elsewhere. In this respect I consider four months would strike the appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant permission on the deemed application.

Formal Decision

16. I direct that the enforcement notice shall be corrected by:

a) The deletion from line 2 of the Annex of the words "Land North of Bury New Road, Heywood, Rochdale" and the substitution therefor of the words "Land known as Buersil Service Station, Oldham Road OL11 2AT"; and

b) The deletion from the bold-type final paragraph of the Annex of the words "Land North of Bury New Road, Heywood, Rochdale" and the substitution therefor of the words "Land known as Buersil Service Station, Oldham Road OL11 2AT".

and varied by

c) The deletion from paragraph 6 of the words "three months" and the substitution therefor of the words "four months" as the time for compliance with the requirements

17. Subject to these corrections and variation the appeal 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.

A A Phillips

INSPECTOR