



Appeal Decision

Site visit made on 25 May 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/A5270/C/20/3258991

Premises known as 94 South Ealing Road, Ealing, London W5 4QB

- 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 Kantilal Shah against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 21 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the basement (cross hatched on a plan attached to the notice) and land to the rear (diagonally hatched on the plan attached to the notice) to a motor vehicle dealership.
 - The requirements of the notice are:
 1. Cease the use of the basement and land to the rear as a motor vehicle dealership; and
 2. Remove all vehicles and paraphernalia associated with the use of the basement and land to the rear as a motor vehicle dealership.
 - The period for compliance with the requirements is six 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.
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Decision

1. 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.

Application for costs

2. An application for costs was made by the Council of the London Borough of Ealing against Mr Kantilal Shah. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant's appeal was made on grounds (a) (b) (c) and (g) however, in a subsequent email the appellant confirmed that they did not intend to rely on grounds (b) and (c). Consequently, since they submitted no substantive evidence in respect of these grounds, I have considered the appeal on this basis.
4. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. Nevertheless, I do have the power under s177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the planning difficulties, at less

- cost and disruption than total cessation of the use as currently required by the notice.
5. Under the ground (a) appeal the appellant has submitted a Highways and Transport Technical Note and an Operational Management Plan which seek to support the proposed operation of the business. These include proposed layout plans for the car park and a proposal for a fence and gate.
 6. The appellant referred to a ground (f) appeal in their final comments, albeit that ground was not initially pleaded, and their case was not clearly stated. Nevertheless, the appellant's arguments under ground (a) are more pertinent to an appeal under ground (f), that the requirements of the notice exceed what is necessary. As such and since the proposed operation would form part of those matters constituting the breach as stated in the notice, it is open to me to consider the merits of the proposed operation under the ground (a) appeal.
 7. The London Plan Publication London Plan December 2020 The Spatial Development Strategy for Greater London (London Plan 2020) has been adopted since the notice was issued. I have therefore had regard to the policies of the adopted plan in determining the appeal. The Council referred to those policies in their appeal statement upon which the appellant has had the opportunity to comment so there is no prejudice to the appellant.

The appeal on ground (a) and the deemed planning application

8. The main issues are the effect of the use on (i) highway safety and (ii) the living conditions of the occupants of nearby dwellings with particular regard to noise and disturbance; and (iii) the character and appearance of the area.
9. The appeal site consists of a basement office and detached area of land for car parking. The office is located in the basement unit of 94 South Ealing Road which occupies a corner position at the junction of Airedale Road with South Ealing Road, with access to the office and car parking being taken off Airedale Road. The car parking, is located to the rear of 94 Ealing Road behind the pavement and although surrounded to the rear and sides by fencing is largely open to the front, facing Airedale Road.
10. Whilst South Ealing Road is a typically busy high street, Airedale Road is distinctly residential in character, consisting primarily of traditional terrace houses set behind short gardens. Car parking along Airedale Road predominantly consists of on-street parking on both sides of the road with a Controlled Parking Zone (CPZ), restricting parking on the road to permit holders from Monday to Friday between 10am and 7.30pm and Saturday between 10am and 1pm.
11. Close to the appeal site and the junction with South Ealing Road there is on street pay and display parking on both sides of the road. As a consequence of the parking arrangements the carriageway is only wide enough for one vehicle along much of its length.
12. The Council pointed out that Airedale Road, although quieter in character than South Ealing Road, is a relatively busy road, well used by residents and also commercial vehicles accessing the rear of those businesses on South Ealing Road for the purposes of delivery. This is consistent with what I observed at my visit which took place in the middle of the afternoon on a Tuesday.

13. The appellant has offered little explanation about how the business currently operates and their case on this ground is primarily based upon how they propose to operate.
14. My understanding of the current operation, based on the evidence before me, is that customers can first undertake a free online valuation although, based upon an extract from the company's website, provided by the Council, it does not appear to be necessary to arrange an appointment to visit the premises. Cars are inspected at the site and any necessary paperwork, should a deal be agreed, is completed in the basement office. Customers who sell their cars then either leave via public transport, of which there are several options available locally or, leave in a second car.
15. The appellant's proposed layout plans indicate that the land could accommodate five average sized cars with room for a turning area although, there are currently no parking bays marked out. However, the appellant's evidence indicates that there are on average seven customers per day with a peak of around 17 customers throughout one day being possible.
16. Consequently, it seems that the number of customers exceeds the number of parking spaces available. Although the appellant referred to the presence of pay and display parking on the road there are a limited number of such spaces and, it seems to me and I observed that they are also used by those visiting businesses on South Ealing Road.
17. Because of the limited parking for the business and limited on-street parking options, as evidenced by third party representations, it appears that cars cross and re-cross the pavement as customers attempt to park. And, in some cases, park so that they partially or completely block the pavement. Images provided show cars spilling over onto and parking on the pavement, resulting in pedestrians having to detour into the road to avoid parked cars.
18. Furthermore, the images show no room for vehicles to turn around within the site meaning that cars are likely to reverse into the road. Given that such a manoeuvre involves crossing a pavement and joining a relatively busy road where visibility is restricted due to a tree, lamppost, and parked vehicles, this poses a significant risk to all users of the public highway.
19. The proposed operation would see parking for five cars, pre-booked appointments, use of Wickes car park for storing cars, from where they would be later collected by a transporter, with the parking to be fenced off including a secure gate and, only the site operative undertaking access, parking and egress manoeuvres.
20. However, although the layout shows parking for five cars, as the Council pointed out, the swept path analysis diagrams for parking bays two, three and four, appear to show that cars using these bays would drive over the area designated as bay number one. Consequently, I am not satisfied based upon those diagrams and my observations, that the site could realistically provide parking for five cars with sufficient turning space.
21. Additionally, given the number of customers and the limited parking, it seems that the need to remove cars to Wickes car park relatively soon after purchase, is a significant element of the business operation. However, there is no evidence to demonstrate that the land at Wickes car park is within the

appellant's control or that any formal agreement exists between the appellant and Wickes. Consequently, although the appellant suggested that this is a matter which could be secured by condition, since the land does not appear to be within the appellant's control, I consider that such a condition would not be reasonable or enforceable.

22. The use in the absence of such control could result in the need for regular transporter collections from Airedale Road. Given the highway limitations already described, this would undoubtedly pose a risk to the safety and convenience of users of the highway and, disturbance to nearby residential occupiers. Accordingly, since this could not be secured by condition, the arrangement with Wickes is a matter of little weight in my assessment.
23. Whilst the appellant's evidence indicates that the site is estimated to generate a total of 16 two way vehicle trips daily, it is not clear whether this includes the movement of cars from the site to Wickes car park nor does it state how often such movements would take place. In any case, that manoeuvres into and out of the site would only be carried out by a site operative, would not reduce the risk associated with cars crossing the pavement on a reasonably regular basis, to an acceptable degree.
24. Overall, because of the limited parking available and the location of the parking, combined with the number of vehicle movements, I conclude that both the existing and proposed operation would pose an unacceptable risk to both the safety and convenience of users of the public highway. This is contrary to the highway safety aims of Policy T4 of the London Plan (2020). The Council also referred to Policies T1, T2 and T5 of the London Plan (2020) however, in the absence of explanation I find these policies are not directly relevant and as such weigh neither for nor against the development.
25. Given the proximity to the ground floor flat at 94 Ealing Road and those nearest houses on Airedale Road, I consider that the comings and goings of customers including doors opening and closing, people talking, cars manoeuvring and engines running, harms the living conditions of nearby residents during the quieter times of the day and week, in particular on Sundays and in the evening when background noise levels are likely to be lower.
26. Consequently, the use does not preserve the quiet residential character of the road. This is contrary to the amenity protection aims of Policies 7A and 7B of the Ealing Development Management Development Plan Document Adopted 10 December 2013 (DPD) and Policy DS3 of the London Plan (2020).
27. However, given the number of cars parked on the street in the vicinity of the site, the parking of cars does not cause material harm to the appearance of the area and, in any case, fencing could improve the visual appearance and this could be secured by condition. Nevertheless, the lack of harm in this regard is a neutral matter which cannot outweigh the identified harm.
28. The Council identified no harm in relation to the use of the basement as an office and I see no reason to take a different view.

Conclusion on ground (a)

29. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the

enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. 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 to cease and all vehicles and associated paraphernalia to be removed, I find the purpose is to remedy the breach of planning control. No lesser steps would achieve that purpose.
31. I have considered the appellant's proposed operation, including the suggested fencing and gate under ground (a), and found it to be unacceptable.
32. In order to remedy the breach of planning control, it is not excessive to require the use to cease and for all vehicles and associated paraphernalia to be removed. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

33. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the current lessee of the site is signed on a three-year lease and this will leave the owning company with no grounds to evict them. Additionally, they stated that finding alternative premises suitable for the existing tenant will not be easy and may take between eight and 10 months.
34. The purpose of the time period within an enforcement notice is to allow for the use to cease and any physical works associated with the notice to be removed. The appellant's submissions largely relate to legal matters and the time it will take to find and move to alternative premises. However, the appellant has provided no substantive detailed evidence about the availability of alternative premises.
35. The use enforced against poses a risk to highway safety and is causing harm to the living conditions of nearby residents in respect of noise and disturbance and weight must be attached to this harm. Such harm should not be permitted to continue for any longer than absolutely necessary.
36. Whilst I understand the appellant's concerns, the period of six months given is a reasonable and proportionate response to the breach of planning control, to enable the various requirements of the notice to be met, whilst providing an opportunity for an orderly transition to another location. The appeal on ground (g) therefore fails.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR