



Appeal Decisions

Site visit made on 18 May 2021

by **N Thomas MA MRTPI**

An Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Appeal A Ref: APP/D1780/C/20/3258853

Land at 115-121 Wilton Avenue, Southampton SO15 2HB

- 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 Barzam Karim of Excellent Carwash Company against an enforcement notice issued by Southampton City Council.
 - The enforcement notice was issued on 28 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of two car dryer units to existing car wash.
 - The requirements of the notice are:
 - (i) The removal of the two car dryer units and supporting structures from the land.
 - (ii) The removal of all resultant materials from the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
-

Appeal B Ref: APP/D1780/W/20/3255339

115-121 Wilton Avenue, Southampton SO15 2HB

- 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 Barzam Karim against the decision of Southampton City Council.
 - The application Ref 19/1283/FUL, dated 16 August 2019, was refused by notice dated 21 February 2019.
 - The development proposed is application for retrospective consent to retain power car dryers.
-

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of the words '28 days' and the substitution of the words 'two months' in the period for compliance. 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.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The appellant indicated on the enforcement notice appeal form that the appeal was lodged on grounds (a) and (f). The appellant's statement of case however indicates that the appeal is also being made on ground (g). I have dealt with the appeal on this basis.

Appeal A ground (a) and the deemed application and Appeal B

4. The enforcement notice relates to the installation of two car dryer units on the site. The application form makes it clear that it was seeking permission to retain the car dryers. I am satisfied that they relate to the same development. As the reason for issuing the notice is broadly the same as the reason for refusing the application, I have dealt with the ground (a) appeal and Appeal B together. The main issue is therefore the effect of the car dryer units on the living conditions of neighbouring occupiers with regard to noise and disturbance.
5. The appeal site is in a predominantly residential area, facing onto Wilton Avenue. It comprises a forecourt with a building to the rear. There is a canopy over the forecourt and this part of the site is used for washing cars. The rear part of the site fronts onto Milton Road, at a high level due to the local topography, and appears to be in use for car repairs.
6. Immediately adjacent to the site at the junction of Wilton Avenue with Milton Road is a block of flats arranged over three storeys with parking in an undercroft. It has windows to the front and rear, but none on the side overlooking the appeal site. To the other side of the site is a pair of semi-detached two storey dwellings. The closest one is separated from the site by a narrow passageway, and has an upper floor window in the side elevation overlooking the site. There is a large residential development to the rear of the site fronting onto Milton Road at The Dell, as well as dwellings opposite the site on Wilton Avenue.
7. The car dryers consist of a bank of fans arranged so that a car can be driven underneath the fans to blow it dry after it has been washed. The dryers are arranged in two lanes underneath the canopy. Each of the two car dryers consists of four fans, giving a total of eight fans. The appellant has provided a noise assessment to BS4142:2014, which measured the noise levels from the equipment in relation to the nearest residential properties.
8. The assessment was carried out for each piece of equipment separately, as the electricity supply is insufficient to run two dryers at the same time. It concludes that the noise generated by the car dryers caused a 'very significant impact' level of noise for nearby residents. I appreciate that the site has been used for commercial activities for a considerable period of time, and the noise assessment shows that the existing jet wash creates a level of noise that has a significant impact. However, that does not justify further and more harmful noise impacts from the car dryers. Although only one neighbour has objected, that does not indicate that the noise generated by the dryers is not harmful to nearby residents.
9. In order to mitigate the effect of the noise, the appellant has suggested a three metre high acoustic fence and covers for the dryer units. Details of these have not been provided although an example of encasement of dryers has been

submitted. The appellant suggests that this is a matter that could be dealt with through a condition. However, the effectiveness of these measures has not been assessed. It is not clear to me that the noise can be mitigated to an acceptable level. It is therefore not a matter that can be dealt with through a condition.

10. It has also been suggested that the hours of operation of the car wash/dryers could be limited through a condition. This would reduce the impact on neighbouring residents during the evenings/night-time and weekends. However, I have seen no evidence to demonstrate that this would make the noise impact acceptable, given that the impact was assessed as very significant. A further suggestion is to limit the running time of the dryers to 20 seconds rather than 30 seconds. While this may be beneficial it has not been demonstrated that it would be sufficient to reduce the impact on neighbouring occupiers to an acceptable level. I do not therefore consider that the identified harm could be overcome by conditions.
11. It has also been suggested through the ground (f) appeal that the notice should be varied to allow the dryers to remain but not to be used. I have considered whether I could grant permission for the dryers with a condition that they shall not be used. However, it would serve no useful purpose to retain the dryers on site without a use, as I am not satisfied that there is a realistic prospect of a noise mitigation scheme being put forward that would be acceptable in planning terms.
12. I therefore conclude that the development is harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. It is thus in conflict with Policies SDP1(i) and SDP16(i) of the City of Southampton Local Plan Review 2006, which seek to restrict noise-generating development that causes an unacceptable level of noise impact and unacceptably affects the health, safety and amenity of residents. It is also in conflict with the guidance in the National Planning Policy Framework 2019.

Appeal A ground (f)

13. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. As the notice requires the development to be removed in its entirety, the purpose of the notice is to remedy the breach of planning control.
14. The appellant argues that it is excessive to require the dryers to be removed, as they are not objectionable when they are not in use. In order to remedy the injury to amenity, the appellant argues, it would be sufficient to require the use of the dryers to cease. This would allow an opportunity to resolve the noise problem caused by their use. However, the powers given to me by section 176(1)(b) to vary the terms of an enforcement notice cannot be used to attack the substance of the notice. Varying the notice to allow the dryers to remain on site would not remedy the breach. The appeal on ground (f) therefore fails.

Appeal A ground (g)

15. The ground of appeal is that the period for compliance with the requirements of the notice is too short. The period for compliance is 28 days. The appellant requests three months, in order to allow sufficient time to engage a contractor

who can carry out the work while the car wash is in operation. The Council argues that the appellant was aware that the development was unacceptable and should have already complied with the notice. However, the appellant is entitled to assume success at appeal.

16. I consider that a two month compliance period strikes a reasonable balance between the interests of the appellant and the public interest in bringing to an end the breach of planning control. To this limited extent the appeal on ground (g) succeeds and I shall vary the notice accordingly.

Conclusions

Appeal A

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

Appeal B

18. For the reasons given above, and taking into account all matters raised, the appeal is dismissed.

N Thomas

INSPECTOR