



Appeal Decision

Site visit made on 16 November 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/G5750/C/20/3263832

79-81 Leytonstone Road, Stratford E15 1JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ghulam Mohammad Khan against an enforcement notice issued by London Borough of Newham.
 - The notice was issued on 28 October 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the material change of use of the land to a motor vehicle dealership.
 - The requirements of the notice are to:
 1. *Cease the use of the land as a motor vehicle dealership.*
 2. *Remove the sales office (as shown edged in blue on the photograph attached as Appendix 1) from the land.*
 3. *Remove all advertisements associated with the motor vehicle dealership from the land.*
 4. *Remove the boundary treatment comprising metal railings and a gate (as shown in the approximate location delineated in yellow on the attached plan) from the land.*
 - The period for compliance with the requirements is 1 month.
The appeal is proceeding on the grounds set out in section 174(2)(a),(f) 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.
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Decision

1. It is directed that the enforcement notice is varied by the substitution of 1 month for the period for compliance with 3 months. 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.

Preliminary Matters

2. The London Plan 2021 was adopted on 2 March 2021, shortly before the Council's questionnaire and statement were submitted. The Council has referred only to the draft London Plan in its statement and provided copies of the draft London Plan in the questionnaire. There are no material differences between the draft policies and those adopted by the Mayor for London (albeit that some are re-numbered) insofar as they relate to the issues relevant to this appeal, and I shall refer to the policies in the adopted plan.
3. The appellant initially appealed under ground (b), that the matters alleged in the notice had not occurred. Although that ground of appeal was withdrawn, it was nevertheless claimed in the appellant's statement that the allegation is not

completely accurate, saying that the main purpose of the development is for the storage of cars which can then be moved to other locations.

4. However, on my visit I saw that although the gates were locked, the cars were displayed for sale, with prices shown in the windscreens and advertising material shown on the roofs of some of them. The appellant says that the site generates employment for 3 people. I am satisfied on the evidence before me that the site has been used for the sale of cars. The specific allegation as set out in the notice "use as a motor vehicle dealership" is a description usually applied to a sales franchise for a particular make of car. It seems to me that the simpler description "vehicle sales" would be more apt, and I shall vary the notice accordingly. No injustice to either party would be caused by my doing so.

Appeal on ground (a) – that planning permission should be granted

Main Issues

5. The main issues are the effect of the development on:
 - i) the viability and vitality of the Borough's town centres;
 - ii) the character and appearance of the surrounding area;
 - iii) the living conditions of nearby residents with particular reference to noise and disturbance;
 - iv) highway safety, and
 - v) biodiversity.

Reasons

The effect on town centres

6. Both the London Plan (LP) and the Newham Local Plan (NLP) seek to locate commercial development within designated town centres, in order to strengthen their roles, to make the most of the agglomeration benefits and accessibility of town centres and to ensure sustainable patterns of development. LP Policy SD7 says that out-of-centre sites should only be considered if it is demonstrated that no suitable sites are (or are expected to become) available within town centre or edge of centre locations, and that applications that fail the sequential test should be refused.
7. The site lies outside of any designated town centre. A car sales dealership is a commercial use which should be located within a town centre unless there are no sites available there. I have not been provided with any evidence to show that the use could not be located within a town centre. Accordingly, the use conflicts with the Council's objectives to bolster the viability and vitality of town centres. Of the policies which have been referred to me, the most important ones are LP Policies SD6 and SD7, both of which deal with town centres and NLP Policies INF5 and J1, which respectively concern the town centre hierarchy and network, and business and business jobs growth. The car sales use conflicts with these policies.

Character and appearance

8. The site sits between a three-storey block of flats and its walled grounds and a two-storey disused public house. A school and flats lie opposite, and there are flats to the rear and commercial uses nearby. Thus, the area has a mixed character with a varied appearance, but residential uses predominate in the immediate vicinity of the site.
9. Parked cars in rows fill much of the site, which in itself is out of keeping with the built-up frontage along this part of the road. A demountable building is sited in a set-back position, having the appearance of a mobile home. It has a shallow pitched roof and is finished in a pale coloured plastic or UPVC or similar material. Both the materials and the design of the building are out of keeping with those of the buildings in the vicinity and do not represent good design, which is a key requirement of both local and national policy.
10. There is a large advertisement displayed in an elevated position on a return section of wall adjacent the southern boundary of the site, and there are several advertisements elsewhere on the site. Whilst the display of advertisements is the subject of a separate regime of control under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, in this case the display amounts to development which enables the unauthorised use, and it is legitimate to require their removal as part of the requirements of the notice. The wall-mounted advertisement is over-large and out of scale with the size of the premises. It is dominant in the street scene when viewed from the footway, and, together with the other advertisements, fails to respect the appearance of the area.
11. I therefore conclude on this issue that the use results in material harm to the character and appearance of the surrounding area and conflicts with LP Policy D4 which deals with delivering good design, as well as with NLP Policies SP1, SP3 and SP8 which respectively deal with borough-wide place making, quality urban design within places, and ensuring neighbourly development.

Living conditions

12. As referred to above, there are numerous flats which lie close to the boundaries of the site. Whilst the nearest do not appear to have habitable rooms facing the site, there are windows to habitable rooms close by. Leytonstone Road is busy and is a bus route, so there is a fairly high level of ambient noise. Even so, it is quieter towards the rear of the site. The sales yard is fairly small, and cars are packed in, so that to take a car from the rear of the site out onto the road would require several others to be moved. I consider that the noise associated with manoeuvring would be likely to cause a degree of disturbance for nearby residents, especially at weekends when peace and quiet are more likely to be valued.
13. I therefore find that the use results in moderate harm to the living conditions of nearby residential occupiers, with particular regard to noise and disturbance. It also conflicts with LP Policy D14 which deals with noise and NLP Policies SP2 (which deals with healthy neighbourhoods) SP3 and SP8.

Highway safety

14. The site frontage is enclosed by metal gates and fencing. The gates open out onto the footway, and because the cars are parked in closely packed rows, it is

likely that it may take some time to move cars out in order to get to one at the rear. Whilst the footway is fairly wide, it is undesirable that any part of it should be obstructed by open gates, and when open they would pose an unexpected obstacle to people with visual impairment. However, were the appeal to have been allowed, it would have been possible to impose a condition to require that sliding gates be installed or that they be inward opening.

15. However, the necessity to drive cars over the footway, particularly if they are reversed into the site as seems to be likely, poses a hazard to pedestrians. The absence of a dropped kerb onto Leytonstone Road exacerbates this hazard because of the lesser degree of control involved in reversing whilst mounting the kerb. I therefore conclude that the use is harmful to highway safety and conflicts with NLP Policy INF2, which deals sustainable transport.

Biodiversity

16. The site currently offers little diversity value. Whilst there was vegetation on the site previously, this was cleared. Both local and national policies aim to enhance the natural environment, and despite being in an urban area, there is scope for the site to make some contribution towards enhancing biodiversity. The appellant has not suggested any measures to overcome this objection, and it is not obvious to me whether there is any scope to retro-fit appropriate measures. Thus, the use fails to enhance biodiversity and conflicts with LP Policy G6 which deals with biodiversity and access to nature and with NLP Policy SC4 which deals with biodiversity.

Other Matters

17. The appellant seeks planning permission for a temporary period of 12 months. However, this would not overcome the objections I have found, and there is insufficient reason to allow them to continue for a further year. The appellant also asks that the permission be for the storage of cars only. This forms part of the matters alleged in the notice, and whilst I am able to consider such a suggestion, it would not fully overcome the reasons for refusing permission on the car sales use, or reduce the scale or nature of the activity to one which would be acceptable for the reasons set out above.
18. I therefore conclude that the appeal on ground (a) should be refused, and that planning permission should not be granted.

Appeal on ground (f) – that the requirements of the notice are excessive

19. The appellant's substantive arguments on this ground of appeal relate to the use of the site for the parking of cars only, which I have dealt with above.

Appeal on ground (g) – that the period for compliance is too short

20. The appellant seeks to extend the period of compliance from one month to 12 months. Whilst I consider that it is physically possible to carry out the steps sought within 1 month, I consider that a balance needs to be struck between ending the planning harm as quickly as possible and the appellant's commercial considerations. A compliance period of 12 months would be akin to granting a temporary planning permission, which I consider is not appropriate in this case. However, I shall extend the compliance period to one of 3 months to provide the appellant with time to make alternative arrangements or to sell his stock and the sales building.

21. Whilst I note that the appellant has entered into a 5-year lease, it was done in the knowledge that no planning permission had been granted for the car sales use, and therefore the appellant ran the risk that the use might be required to cease before the end of the lease term.

Conclusion

22. 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.

JP Roberts

INSPECTOR