



Appeal Decision

Site visit made on 17 January 2022

by Elizabeth Pleasant BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/G5750/C/20/3260798

83 High Street South, East Ham, London, E6 6EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Newham Tyres & 3D Alignment against an enforcement notice issued by London Borough of Newham.
- The notice was issued on 8 September 2020.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use to a car tyre centre and vehicle workshop.
- The requirements of the notice are:
 1. Cease the use of the land as a car tyre centre and vehicle workshop.
 2. Remove from the land all fixtures and fittings that solely facilitate the use as a car tyre centre and vehicle workshop.
 3. Remove from the land all signage and advertisements in respect of the use as a car tyre centre and vehicle workshop.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.

Summary of Decision: the appeal is allowed, the enforcement notice is corrected and quashed, and planning permission is granted in the terms set out in the Formal Decision.

Enforcement Notice

1. The area outlined in red on the plan attached to the notice comprises all the land and premises at 83 High Street South. However, it is clear that the notice is only intended to attack the ground floor use of the building, and not the residential use which occupies the first floor. For precision the breach should therefore refer solely to the material change of use of the ground floor. I am satisfied that the allegation can be corrected to include the words "ground floor", without causing injustice to any party.

Appeal on ground (c)

2. An appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The Appellant does not dispute that the alleged breach has occurred as a matter of fact, although contends that the use of the property, which includes a shop within the front part of the unit, is a mixed use, as a shop and for any industrial process (which can be carried out in any residential area without detriment to the amenity of the area). To the extent that the breach of planning control does not refer to a shop, this could be a ground (b) point, i.e., that the alleged breach has not occurred as a matter of fact. I shall consider this matter alongside the appellant's contention that planning

permission is not required for the change of use of the land to use as a car tyre centre and vehicle workshop.

3. The issue is whether there was a material change in the use of the land such as would amount to development requiring planning permission¹. Whether an activity or business amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there has been a definable change in the character of the use of the land from what has gone on previously. The onus is on the appellant to show that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control.
4. The ground floor of the premises is a single planning unit. From the evidence before me, the last actual use of the land was for the sale and repair of electrical machines². It is not clear from the evidence whether the sales were ancillary to the use of the workshop for repairs, although this seems likely given that in later years the previous owner did not continue with the sales element and focussed solely on repairs. This view is reinforced in correspondence from the Council, dated 9 March, 1984³.
5. In terms of the key characteristics of the new use of the premises, I observed that over half of the ground floor space is used in connection with tyre fitting, 3D alignment/computer diagnostics, with the remainder of the floor space used for sales activities. The retail area is located at the front of the premises, where there are display windows. Car parts and motoring accessories are available in the shop to purchase, and arrangements can also be made in the shop for tyre fitting. The Appellant states that the business attracts around 10-15 customers a day, 6 of whom, on average, bring their car for tyre fitting, with the remainder being walk-in customers seeking car parts from the retail shop.
6. Furthermore, although the opening hours, number of employees and power tools/plant used in the previous and current use are similar, the tyre fitting operation is likely to attract more vehicular movements and daily activity than the previous electrical repair business. The appellant states that on average six cars a day are serviced with new tyres/undergo diagnostics. With a tyre fitting business, vehicles are generally brought into the garage, serviced with new tyres and/or 3D alignment and then leave. All within the course of a day. Although there is no specific evidence before me, it seems unlikely that the last use of the premises would have seen that number of electrical machines brought in for repair in a day. In addition, those machines would often be repaired over a much longer period of time and not whilst the customer waits. Consequently, a much greater level of vehicular activity is associated with the car tyre centre use than the previous electrical repair business.
7. When the nature of these activities is considered, I find that the character of the unit of occupation has materially and significantly changed from its previous use. From the evidence before me and observations on my site visit, the operation is a mixed use. The car tyre centre and retail element exist within the same planning unit; however, one use is not incidental to the other. Furthermore, considering the activities taking place at the appeal site, where

¹ In terms of s55(1) of the 1990 Act.

² Appellant's Statement of Case, Appendix C.

³ Appellant's Statement of Case, Appendix B.

the only repairs are tyre fitting and alignment, the breach of planning control would be more accurately described as a car tyre centre, including 3D alignment and a shop. I am satisfied that there would be no injustice to either party in correcting the description of the breach, as in doing so the purpose of the notice would not be changed. Furthermore, as the terms of an appeal on ground (a) are derived directly from the alleged breach of planning control set out in the notice, it is important that the breach is accurately described.

8. Such a mixed use is referred to as a *sui generis* use⁴. A material change of use occurred and there is no record of a specific permission being granted for that change of use at 83 High Street South.
9. In the alternative, the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) in Article 3 grants planning permission for the classes of development described as permitted development. None of the classes provide for a change of use to a mixed use as a car tyre centre, including 3D alignment and a shop.
10. My conclusion is that the change in the character of the use has materially changed from a primary electrical machine repair business to a mixed use as a car tyre centre, including 3D alignment and a shop. Development took place for which no planning permission was granted by the local planning authority. This material change of use is not permitted under any provision of the GPDO. A breach of planning control occurred and the appeal on ground (c) fails.

Appeal on ground (a), deemed planning application

Main Issues

11. The main issues in this case are:

- Whether the development is suitable in principle in this location, having regard to national and local planning policies and the effect on the character of the area; and
- The effect on the living conditions of neighbouring residents.

Reasons

Suitable location

12. The appeal site fronts onto High Street South and is on the corner of Tilbury Road. It is situated just outside, and to the south of East Ham Town Centre, and in an area which is characterised by a mix of commercial and residential properties. High Street South is a busy road and bus route, whilst Tilbury Road has a more residential character, albeit St Michael's RC Church and Primary School are both situated on Tilbury Road.
13. In this part of the street scene, away from the town centre, there are clusters of commercial properties found in small parades interspersed with residential properties. The appeal site is located close to a public house, a builder's merchants, bathroom and kitchen supplier and a small office. Given the limited size and scale of the frontage, the use of the premises as a car tyre fitting centre and shop does not materially harm the mixed quality and character of the street scene or locality.

⁴ Meaning 'of its kind' when no use classes order fits.

14. I appreciate that the appeal premises are not situated within a Strategic Industrial Location or Locally Significant Industrial Area. However, the use in this case is a small mixed-use business, which includes a shop. In this location, where it is close to the town centre, other commercial uses and on a main transport route, the mixed use is accessible to its customers and clearly supports business and jobs growth. This aligns with one of the key aims of the National Planning Policy Framework (the Framework). Considering the lawful use of the site, the material change of use does not result in the loss of any employment land, and there is therefore no conflict with Policies J2, J1 or SP1 of Newham's Local Plan, 2018 (NLP) which seek, amongst other things, to promote employment, provide for efficient use of employment land, and support successful and distinctive mixed-use places. In addition, Policy E4 of the London Plan, 2021 requires a sufficient supply of land and premises to be available, including non-designated industrial sites, to support London's economic function.
15. For the reasons set out above, and taking into account all other matters raised, I conclude that the mixed use is suitable in principle in this location and does not have a harmful effect on the character of the area. I find no conflict with the aims of the Framework nor conflict with the development plan, including the policies set out above.

Living conditions

16. The appeal premises is located on a busy main road where ambient noise levels are reflective of the urban quality of the environment. Whilst I recognise that there are residential properties adjoining the premises, considering the existing traffic levels in this area, including those associated with the local school, and the level of on-street parking controlled by parking permits, in my view, vehicle movements to and from the appeal site are unlikely to generate significant levels of noise, and general disturbance, given the existing background noise levels and the amount of general activity in the area.
17. The old compressor that the Appellant inherited has been replaced with a new model. This is now situated in a small room in the centre of the building and so reasonably insulated. The compressor is used to operate a machine located within the workshop which removes tyres from metal rims or alloys. Given the new equipment and its location, I do not consider that the noise emitted from it is significantly harmful. The intermittent quality of the noise from the running of this machinery is unlikely to have any significant adverse effect upon the living conditions of nearby residents.
18. The use of the vehicle jack, spanners and other handheld tools generates some level of noise and banging. However, these activities take place within the building. Given the scale of the operation, the type and nature of the activities, and in the absence of any substantive evidence that would demonstrate otherwise, the development does not result in a significant source of annoyance or harm to neighbouring residents. Furthermore, to address any concerns about the use of power tools/machinery, a planning condition regulating opening times, and the operation of machinery, could be imposed on any permission granted. That would ameliorate any potential effect upon the living conditions of nearby residents.
19. Accordingly, subject to the imposition of planning conditions, the development would not have a harmful effect on the living conditions of neighbouring

residents. There would be no conflict with the development plan, and in particular with Policies SP8 and J1 of the NLP which aim to ensure neighbouring development can exist in close proximity to housing with minimal impact. I also find no conflict with Policy D14 of the London Plan which seeks to ensure that new development does not have or mitigates against significant adverse noise impacts on health and quality of light.

Conditions

20. I have had regard to the tests for conditions as set out in the Framework and Planning Practice Guidance, and I have considered the Appellant's willingness to accept conditions to restrict opening hours and noise. To safeguard the living conditions of nearby residents it is reasonable and necessary to impose conditions restricting hours of operation. The Appellant states that the business operates on Monday to Saturday from 0900-1900hours and on Sundays from 1000 to 1600hours. However, the adjoining occupiers require some respite from the commercial activities. In my view, tyre fitting and sales should be restricted to the hours of 0900 to 1800 Mondays to Fridays, 0900 to 1600 on Saturdays and closed on Sundays, Bank and Public Holidays. In addition, to ensure that deliveries to the site do not result in harm to matters of acknowledged importance, it is reasonable and necessary to control delivery times. These should reflect opening times.
21. In addition, a condition can be imposed to ensure that plant, machinery and hand-held tools are only used during opening times. Again, this condition is required to address concerns about noise and disturbance given the site's proximity to a residential property.

Conclusions

22. For the reasons given above, and having considered all other matters, I conclude that the appeal should succeed on ground (a) and planning permission be granted for the use described in the notice, as corrected and subject to conditions set out in the formal decision. As the notice will be quashed, the appeal on grounds (f) and (g) do not fall to be considered.

Formal Decision

23. It is directed that the enforcement notice be corrected by:
- Deleting all the wording in paragraph 3 and substituting it with the following words, "Without planning permission the material change of use of the ground floor of the premises to a car tyre centre, including 3D alignment and a shop."
24. Subject to the correction above, the appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the material change of use of the ground floor of the premises to a car tyre centre, including 3D alignment and a shop on land at 83 High Street South, East Ham, London E6 6EJ referred to and shown on the plan attached to the notice and subject to the following conditions:
- 1) The premises shall not be open for customers outside the following hours: 0900 to 1800 Mondays to Fridays; 0900 to 1600 on Saturdays, and at no other times including Sundays, Bank and Public Holidays.

- 2) No machinery whatsoever, including hand-held tools, shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: 0900 to 1800 Mondays to Fridays; 0900 to 1600 on Saturdays, and at no other times including Sundays, Bank and Public Holidays.

Elizabeth Pleasant

INSPECTOR