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# Appeal Decision

Site visit made on 10 May 2022

**by Katie Peerless Dip Arch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 May 2022**

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**Appeal Ref: APP/T2215/C/21/3279284**  
**105 Burnham Road, Dartford DA1 5AZ**

- 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 Baljit Gill against an enforcement notice issued by Dartford Borough Council.
  - The enforcement notice, numbered 17/00166/ENF, was issued on 21/06/2021.
  - The breach of planning control as alleged in the notice is the material change of use of the land from a Class E(c)(ii)(commercial) of Schedule 2 of the Town and Country Use Classes Order 1987 (as amended) to a mixed use comprising Classes E(c)(ii) and B2 general industrial (vehicle repairs workshop).
  - The requirements of the notice are: (i) Cease the use of the land (double detached garage) for B2 general industrial i.e. as a vehicle repair workshop. (ii) Remove from the land all plant, machinery, equipment and associated paraphernalia connected with the B2 general industrial use i.e. vehicle repairs workshop. (iii) Reinstate the double detached garage use to storage, ancillary to the Class E(c)(ii) commercial use of No. 105.
  - The period for compliance with the requirements is 2 months.
  - 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. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion 2 months and the substitution of 4 months as the period for compliance. Subject to these variations 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.

## Planning History

2. Planning permission (DA/13/01030/COU) for the change of use enforced against, was allowed in 2014 on appeal (APP/T2215/A/14/2214664). This granted a temporary planning permission (for 18 months) and was subject to a number of conditions which were not discharged prior to its lapse. One of these conditions related to the submission of an acoustic report to assess the levels of noise generated by the vehicle repair business.
3. A further planning application for the development (DA/17/01512/COU) was refused by the Council in 2019 and an appeal against this decision (APP/T2215/W/19/3240660) was dismissed in October 2020.

4. It was not until this second planning application was refused and subject to appeal that an acoustic assessment report was submitted to the Council. I have also been given a copy of this report, dated 2017, which does not appear to have been updated since the last appeal.

### **Main Issues**

5. The main issues in this case are:

on ground (a), the effect of the development on the living conditions of local residents and on the free flow of traffic in Chatsworth Road;

on ground (f), whether the requirements of the enforcement notice exceed what is necessary to remedy the breach of planning control and,

on ground (g), whether the time for compliance is reasonable.

### **The site and surroundings**

6. The appeal site includes a double garage at the rear of No. 105 Burnham Road and adjacent to No. 2 Chatsworth Road. The garage is accessed from a forecourt that fronts Chatsworth Road and this area is also included on the enforcement notice plan. Burnham Road and Chatsworth Road are largely residential although Burnham Road is a busy thoroughfare and there are commercial properties on the ground floors of Nos. 99 – 105 with residential accommodation above. The businesses include a tyre fitting depot at No. 99 on the junction between the two roads.
7. The garage can accommodate 2 vehicles and has roller shutter doors on 2 sides, one facing the back yard of No. 105 and the rear of the other Burnham Road properties and the other facing the forecourt. At the time of my site visit both doors were open and there were 2 vehicles in the garage and 3 on the forecourt.
8. Chatsworth Road was heavily parked, with no available on-road spaces, which are, in any event, limited as most houses have off-road parking needing access from the road across the footway. I noted that any vehicles parked on the forecourt of the appeal site would restrict access to the 2 garages to the rear of Nos. 99 and 101 Burnham Road.

### **Reasons**

#### *Living conditions*

9. In the previous appeals both Inspectors were concerned about the level of noise and disturbance that would be caused by the vehicle repair business. The first granted a temporary permission to allow time for the appellant to demonstrate that any impacts would not be unacceptable. As previously noted, the appellant did not discharge the condition relating to this before the temporary permission lapsed.
10. The second Inspector found that the British Standard used in the 2017 acoustic assessment report was not the most up to date and therefore questioned the accuracy of the report's conclusions, as did the Council's Senior Environmental Health Officer. This led to the finding that concerns about the adverse impacts on the living conditions of neighbouring occupiers had not been satisfactorily addressed and this was one of the reasons for the dismissal of the appeal.

11. I saw at my site visit that the garage is very close to the adjacent property at No. 2 Chatsworth Road and is on the rear side boundary of No. 107 Burnham Road. Any use of mechanical equipment or the running of engines would be clearly audible in these properties, particularly from their gardens, especially if the roller shutter doors were to remain open or work took place on the forecourt. This would, I consider, be unduly disturbing to residents.
12. The acoustic report specifically states that the garage roller doors should remain closed when work is underway within the garage. At my site visit both doors were open and I could clearly hear noise from within the building. I also consider that a condition requiring the doors to remain closed would not be practical or enforceable, for the following reasons.
13. Firstly, no information has been submitted on any workable fume extraction proposals for the building and, without these, working conditions in the garage would be dangerous. Secondly, in the absence of any scheme to limit the noise emitting from the building, it cannot be concluded that the levels would be acceptable. Local residents have continued to object to the development on the grounds of noise and disturbance, indicating that working practices have not changed since the recommendations included the acoustic assessment report were made. The Council has confirmed that there have been no practical or policy changes to the situation that existed at the time the last appeal was considered and I therefore find no reason to disagree with the conclusions reached at that time.
14. I have noted the appellant's comments on other businesses in the area and, in particular, the nearby tyre workshop, which also generates a degree of noise which must contribute the acoustic character of the area. However, I have no details on the planning status of these businesses or specific details of the amount of noise they generate and they do not seem to me to be directly comparable to the business on the appeal site. In any event, to permit the appeal proposal would only increase the noise levels in the area and the examples cited do not, in my view, provide a justification for making an existing situation worse.
15. I therefore find that the use of the garage as a vehicle repair workshop is likely to cause unacceptable noise and disturbance to neighbouring residential occupiers and I have been given no information to enable me to conclude that this could be mitigated by condition. The development is therefore contrary to Policy DP5 of the Dartford Development Policies Plan (2017) (DDPP) which seeks to prevent unacceptable impacts from, amongst other things, noise and disturbance.

#### *Highway issues*

16. The use of the garage has removed 2 parking spaces from local availability, adding to pressure for on-street provision. The business fails to provide the parking provision required through DDPP policies CS15 and DP4 and the adopted Supplementary Planning Document on parking standards. I saw at my site visit that parking spaces in the area were heavily utilised and there were instances of vehicles straddling the pavement.
17. Although the Inspector for the first appeal considered that parking would not be a problem, this decision was taken some years ago and I am told that demand has risen since then. The second Inspector considered that the use of the garage as a workshop would create more vehicle movements and need for parking than a domestic garage and I agree.

18. The development is causing high levels of inconvenience through an increase in on-street parking and the consequent restriction of the free flow of traffic in Chatsworth Road. This is contrary to DDPP policy D3 which seeks to ensure that development does not result in severe impacts on, amongst other things, road traffic congestion and excessive pressure for on-street parking.

*Ground (f)*

19. The appellant's submissions under this ground of appeal concentrate on planning issues and do not explain why it is considered that the requirements of the notice exceed what is necessary to remedy the breach of planning control.
20. The requirements do no more than require the unauthorised use to cease and any equipment that is facilitating that use to be removed. These are not excessive requirements and the appeal on ground (f) therefore fails.

*Ground (g)*

21. The appellant asks for somewhere between 9 and 12 months to comply with the notice in order to complete existing work booked in and to find new employment. The notice allows 2 months for this.
22. I sympathise with the need to find alternative premises or employment and agree that 2 months is an unreasonably short time in which to achieve this. However, the local residents have been subject to the inconvenience of this business for a number of years and it would also be unreasonable to prolong this situation. I therefore consider that a period of 4 months would be a reasonable compromise.

**Conclusions**

23. For the reasons given above I conclude that a reasonable period for compliance would be 4 months, and I am varying the enforcement notice accordingly. The appeal under ground (g) succeeds to that extent. However, I have found that the development causes harm to the living conditions of local residents and to highway conditions, contrary to local plan policy, and planning permission for it will therefore be refused.

*Katie Peerless*

**Inspector**