



Appeal Decision

Inquiry Held on 8, 9 and 10 March 2022

Site visit made on 9 March 2022

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 06 June 2022

Appeal Ref: APP/N5090/C/20/3247928

Land at Sopers Yard, 155 Bell Lane, London NW4 2AP

- 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 Buren Holdings Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 23 January 2020.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the change of use of the land to a mixed use of open air storage, waste transfer and used car sales lot.'
 - The requirements of the notice are:
 1. Cease the use of the land for open air storage, waste transfer, disposal storage operations and for the sale of cars.
 2. Permanently remove all vehicles from the land and permit entry onto the land of only of vehicles required in connection with the lawful development or maintenance of the land; or in the case of an emergency; or for purposes unconnected with storage, waste transfer and storage operations or car sales.
 3. Dig up and remove the concrete hardstanding (the edge of which is marked red in the attached photograph '1').
 4. Permanently remove all waste and building materials from the site.
 5. Permanently remove all containers, cabins and all other buildings and enclosures from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:
 - the deletion of the words 'for open air storage, waste transfer, disposal, storage operations and for the sale of cars' in paragraph 5.1.
 - the deletion of the words 'Permanently' and 'and permit entry onto the land of vehicles required in connection with the lawful development or maintenance of the land; or in the case of an emergency; or for purposes unconnected with storage, waste transfer and storage operations or car sales' in paragraph 5.2 and insert the words 'which are on the land for the purposes of the mixed use for open air storage, waste transfer and used car sales lot.'
 - the deletion of the word 'Permanently' in paragraphs 5.4 and 5.5.

- the insertion of the words 'comprising an area of approximately 9m by 14m after the words '..... the attached photograph '1')' in paragraph 5.3.
- the deletion of the words 'and enclosures from the site' from paragraph 5.5.
- the insertion after paragraph 5.5 the following words '6. EITHER the removal of the frontage boundary means of enclosure including gates, facing Bell Lane, OR the reduction of the frontage boundary means of enclosure including gates, facing Bell Lane, to a height not exceeding 1m above ground level.'
- the deletion of three months and the substitution of six months as the period for compliance in paragraph 6.

Subject to these variations the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Preliminary matters

2. All evidence at the Inquiry was under oath or affirmation.

The Notice

3. The first requirement does not follow on directly from the allegation in that it refers to '*disposal storage operations*' which are not cited in the allegation. I will vary the first requirement to cease the use.
4. The second requirement seeks to specify what can take place in relation to vehicles rather than simply what should be removed. I will vary the requirement to require the removal of all vehicles on the land which are on the land for the purposes of the mixed use of the site for open air storage, waste transfer and used car sales lot.
5. The area of hardstanding the subject of requirement 3 was measured at the site visit to be approximately 14m by 9m. I will vary the requirement to include those details. This provides additional clarity in relation to requirement 3 limiting the removal to that area of hardstanding identified.
6. The word permanently in requirements 2, 4 and 5 is superfluous. I will vary these requirements by deleting the word 'Permanently'.
7. The variations to the requirements would not result in injustice or prejudice to either party.

Appeal on ground (b)

8. This ground of appeal is that those matters alleged in the notice have not occurred. The allegation includes three elements to the mixed use: open air storage; waste transfer and used car sales lot.
9. The appellant considers that there was no waste transfer taking place at the time the EN was served and that there was no open storage on the site and that open storage as a term is vague. The appellant has confirmed that he is not pursuing ground (b) in relation to the car sales lot element of the allegation.
10. I accept the Council's definition of open air storage is the storage of anything in the open air. Evidence was provided in relation to numerous articles stored on the site including tyres, oil drums, building materials, ladders debris etc. In addition, it became clear following the site visit, that while some cars on the

site are part of the car sales use others are stored on the site. The 'party bus' and recreational vehicle are also stored on the site when not in use. I am satisfied that an open storage use is taking place on the site.

11. In relation to waste transfer the evidence explained that in clearing the site of rubbish, and to keep the costs as low as possible, lorries which came already loaded from elsewhere would unload the waste, which would then be separated into metal and non-metal loads, clearing the site as well, then the sorted loads were removed from the site for disposal. The lorries would come back for the non-metal load to dispose of as well. In my view, this operation amounted to waste transfer and occurred at a time the Council were carrying out its investigations.
12. The appellant accepted car sales were taking place from the site and I have concluded that open storage and waste transfer were also part of the use of the site. As such the appeal under ground (b) fails.

Appeal on ground (c)

13. This ground of appeal is that the matters alleged in the Notice do not constitute a breach of planning control. The appellant contends that there has been no material change of use of the site from whatever the lawful use was to the alleged mixed use. The appellant stated that the nature of the activities which have taken place in the past and the nature of the current activities are not materially different from each other.
14. In a ground (c) appeal the burden of proof falls on the appellant to make out his or her case. It is for the appellant to demonstrate why the matters alleged do not constitute a breach of planning control.
15. The evidence of what the previous use of the site is limited. The site was owned by the Council and used as a depot in connection with parks maintenance which included the parking of parks maintenance vehicles, storage of machinery and equipment. No evidence was presented in respect of the numbers of vehicles and the volume of machinery stored on the site when it was owned by the Council. On the evidence available it appears that those employed to do works on Council parks would attend the site to collect the vehicles and equipment for the day's work and then carry out the work at the park and then return the vehicles and equipment to the site.
16. There was at some stage use of the site for vehicle parking related to meat trading and at some point unauthorised caravans for residential use were sited on the plot. These intervening uses appear distinctly different to a Nursery Depot and were, in my view, a material change of use. On the basis of the evidence available I consider that these unauthorised uses, which were never subject to enforcement action by the Council, extinguished the lawful use of the site as a Nursery Depot.
17. However, even if I am wrong on this point, the evidence supports the conclusion that the volume of vehicles on the site is now significant, the extent of site coverage of the use which results in the majority of the site being occupied by either vehicles, buildings or stored items or manoeuvring space, is significantly more intense than any written, oral, or aerial photographic evidence available. In addition, car sales are accepted by the appellant to have taken place at the site. On the evidence available I find that the Nursery Depot use was materially different from what is now taking place both in terms of the occupation of the land, the comings and goings to the site and the introduction of retail sales.
18. I therefore conclude that the lawful use of the site was extinguished by the unauthorised uses which took place between the sale of the land by the Council

and the purchase of the land by the current owner. As such, there is no lawful use and the use to which it is being put now requires planning permission. No planning permission has been granted and therefore there is a breach of planning control.

19. In the alternative, on the evidence available, the mixed use for a mixed use of open air storage, waste transfer and used car sales lot is materially different from the Nursery Depot use, including significant open storage on the land of vehicles and items, retail sales of cars and waste transfer when none of these uses were demonstrated to be present in the Nursery Depot use. As such, even if were to accept that the lawful use of the site was for a Nursery Depot planning permission would be required for the use alleged in the Notice.
20. For the reasons given above the appeal on ground (c) fails.

Appeal on ground (a)

21. The appellant stated that he seeks approval for use of the site as a used car sales lot for a period of three years in written evidence and two years at the Inquiry.
22. The deemed application is for the change of use of the land to a mixed use of open air storage, waste transfer and used car sales lot. In my view, it would be inappropriate to consider that the deemed application could be considered only in relation to the car lot use even on a temporary basis. The use enforced against comprises three elements as a mixed use and therefore a single use of the site as a used car sales lot is not before me but is a different use in its own right. This is because the planning merits of a single use operation will not necessarily be the same as the mixed use.
23. The evidence to the Inquiry clarified how the site is operated:
- A party bus vehicle is parked to the rear of the site when not in use. This is adjacent to a recreational vehicle which, when not in use, is stored on the site. A jet wash machine is used to clean one or both of these vehicles, often at the weekend.
 - General car storage takes place on the site. The extent of numbers of vehicles and frequency of delivery and removal was not the subject of any detailed evidence.
 - Used Car Sales Lot use amounts to around 40 cars on the site. Ancillary activities take place in the cabins/buildings towards the front of the site with one area set out with desks and computers which I understand is where the administration of the used car sales lot business is undertaken. Undercover, towards the front of the site, is an area where vehicles are checked/prepped and there is also jet wash car cleaning undertaken for the used car lot use.
 - Deliveries of vehicles for the used car lot business is by BCA transporters twice a week. In addition, there is approximately one sale of a vehicle per day and that results in a delivery of the vehicle to the customer, and a 3.5 tonne vehicle is also in use.

Main Issues

24. The main issues in considering this ground (a) appeal are:
- The effect of the development on the character and appearance of the area;
 - the effect of the use and ancillary structures on the living conditions of nearby residents;
 - the effect of the use on highway safety; and
 - the effect of the use on biodiversity.

Character and Appearance

25. The site was bought by the appellant in 2019. Evidence demonstrates that prior to the current use of the site there were significant areas of vegetation and trees on the site, albeit there were clearly significant amounts of waste material/rubbish which the current owners have cleared from the site. The land was cleared not only of the waste material/rubbish but also a significant amount of vegetation/trees with only a small amount, mostly to the rear of the site remaining.
26. On the eastern boundary of the site is a water course. An interested party described this watercourse as Donnis Brook a tributary of the River Brent. Beyond the watercourse is a public walk known as the Donnis Valley Green Walk. The Green Walk was stated to have opened in 2009, comprising a 10 mile walking route. There are clear views looking west through the remaining sparse vegetation at the end of the site and uninterrupted views from the Green Walk adjacent to the children's playground area of the site.
27. The site is clearly visible from the rear of many properties in Kings Close. These properties are on higher ground, and I saw from a number of the properties I visited the clear views of the site. The outlook is one of parked vehicles and stored items as well as the cabins and buildings.
28. In a predominantly residential area, looking out towards the park and the Green Walk, the site is in stark contrast to the immediate area, appearing industrial and unkempt, with large utilitarian frontage gates/enclosure, and a jumble of buildings and cabins towards the front of the site. The majority of the site is occupied by vehicles or stored items with the remaining areas used for manoeuvring. The waste land area to the rear of the site has a number of items that, I understand, have been dumped by others without the consent of the appellant.
29. In my view, the use and ancillary structures significantly detract from the character and appearance of the area and is a visual intrusion for the immediately adjacent residential occupiers and those viewing the site from the Green Walk and children's playground. Due to the extent of site coverage and the type of uses I am not satisfied that any significant areas of landscaping could be introduced to mitigate the visual effect of the existing uses and ancillary structures.
30. The development has resulted in harm to the character and appearance of the area. This is contrary to Development Management Policies DM01 and Core Strategy Policies CS5 of Barnet's Local Plan (adopted September 2012) (LP) which seeks to ensure development respects local context and distinctive local character and should be of a high quality.

Living conditions

31. The appellant sought to demonstrate that the used car lot operated as an internet only business, with test drives away from the site and no potential customers attending the site. However, a third party gave evidence that they had entered the site, discussed cars for sale and been offered a test drive of the car they had looked at. I am not satisfied on the evidence available that the way in which the site is operated as a used car sales lot is internet only sales and nor am I satisfied that it could reasonably be controlled by the imposition of conditions such that customers could not attend the site. In my view, the used car sales lot cannot be controlled so as to ensure the business operates without customers visiting the site. As such, additional vehicles and activity associated with customers is inevitable and difficult to quantify on the evidence available.

32. The use has resulted in some local residents being disturbed by the comings and goings of vehicles, the starting up and manoeuvring of the party bus regularly at weekends when it is taken off site for events or returned after events, waste into metal containers, vehicle delivery, preparation of vehicles to be sold, and the use of jet wash equipment particularly at the rear of the site at the weekend, and general activity on the site.
33. Complaints in 2019 and 2020, prior to the pandemic, were received by the Environmental Health Department of the Council relating to idling vehicles (giving rise to grey exhaust smoke from old cars) and from waste left on the site. In my view, given the extent of vehicles, inevitable manoeuvrings within the site of vehicles and storage on the site along with the use of jet wash equipment in relatively close proximity to the boundary with residential properties at the rear of the site, I find that the use is one which creates noise and disturbance which causes significant harm to adjacent occupiers' amenity.
34. In relation to waste transfer operations the emerging North London Waste Plan does not identify the site as suitable for waste management facilities. Furthermore, the emerging policies and explanatory text seeks to ensure waste management facilities do not give rise to unacceptable impact or harm the amenity of local residents or the environment. The waste management element of the use is therefore contrary to this emerging plan and in particular Policy 6.
35. I therefore conclude on this issue that the use for open air storage, waste transfer and used car sales lot, results in visual intrusion, noise and disturbance resulting in significant harm to the amenities of local residents. This is contrary to LP Policies DM01, DM04 CS5 which seek high quality development that preserves or enhances local character and resists noise generating development close to noise sensitive uses such as residential properties.

Highway Safety

36. Bell Lane is a link connecting two major/classified road, namely the A406 North Circular and Bret Street (A502). As such there is a risk of right turn conflicts from vehicles entering or leaving the site.
37. The appellant carried out a traffic survey on various days in July and September¹. However, this was during the time of the pandemic and as such I am not satisfied it is representative of what the situation would be outside such a time.
38. The oral evidence at the Inquiry was that there were two deliveries of cars to the used car lot by BCA transporters a week, approximately one sale vehicle per day and a 3.5 tonne vehicle used. No signage for sales is displayed within or at the front of the site. The transporter vehicles cannot enter the site and deliveries therefore inevitably take place on the public highway. No substantiated evidence in relation to the storage of cars, delivering and removal of such cars was provided.
39. The Highway Authority accept that suitable pedestrian vision splays of 2.4m by 2.4m could be provided and I am satisfied that this could be achieved by the imposition of a suitable condition if planning permission were to be granted.
40. I note the Highway Authority consider that Bell Lane suffers parking stress. However, I am not satisfied that the development has or would necessarily result in greater demand for on street parking.

¹ Although the year is not stated in the data on page 9 of Mr Picks proof of evidence it is likely that it was July and September 2021 as the proof of evidence was produced for the original Inquiry date of 23 November 2021.

41. On the evidence available, the delivery of cars to the site on transporters inevitably prevents the free flow of traffic on the public highway as vehicles stop to unload or be loaded. Smaller vehicles can enter the site, but at the time of my site visit there was very limited manoeuvring space within the site for delivery vehicles. As such I find that the development creates conflicting movements on the road network contrary to LP Policy DM17.

SINC

42. The site is within an Area of Borough Importance for Nature Conservation (SINC). The explanatory text to Policy DM16 advises that development proposals should be accompanied with a report supported by survey work that sets out the impacts of the development to the SINC. No such evidence was provided by the appellant.
43. The use of the site has resulted in significant amounts of vegetation being removed. The jet wash facilities both at the front of the site and to the rear of it result in water having to drain away within the site, which may well end up in the water course to the eastern boundary. No provision for dealing with the foul water associated with the jet washing activities has been demonstrated or proposed.
44. In my view, the development has resulted in adverse impacts on the SINC by the removal of the vegetation and the vehicle parking and jet washing on the site. This has resulted in harm to biodiversity and is contrary to LP Policies DM01 and DM16 and London Plan 2021 (adopted March 2021) Policy G6 which seek to protect SINC's and the retention and enhancement or the creation of biodiversity and seeks to require development to include hard and soft landscaping that contributes to biodiversity including the retention of existing wildlife habitat and trees.

Other matters

45. The appellant refers to the development generating a modest but important employment facility to people who reside locally. Limited information has been provided in relation to this point. In my view, the limited employment opportunities do not outweigh the harm I have identified to highway safety, character and appearance, the living conditions of nearby residents and biodiversity.
46. I note the appellant is seeking a temporary consent only. However, the justification for a temporary consent does not outweigh the identified harms.

Conclusion on ground a

47. For the reasons given above I conclude the appeal on ground (a) should not succeed.

Appeal on ground (f)

48. The Council confirmed that the purpose of the EN was to remedy the breach of planning control by requiring the cessation of the use and the restoration of the site to its former condition.
49. While the appellant sought to assert that the purpose of the EN was to remedy any injury to amenity, I am satisfied that the purpose of the EN was to remedy the breach of planning control.
50. The requirements of the EN are to cease the use, and remove all vehicles, an area of concrete hardstanding, waste and building materials and all containers, cabins and other buildings and enclosures.

51. Evidence in relation to the hardstanding was provided by a third party describing the creation of an increased area of hardstanding to the rear of the site. In my view, the EN identifies that area by reference to photographs and I have clarified the area of the hardstanding at the site visit and will modify the relevant requirement to reference that. I am also of the view that this area of hardstanding facilitated the material change of use alleged.
52. Furthermore, the various cabins, containers and other buildings on the site also facilitate the alleged use. They are used for various ancillary uses of the primary mixed use by the occupiers of the land. The evidence provided by the appellant relating to the existence of various cabins and buildings and when they were erected or moved was imprecise and did not demonstrate that they were anything other than used to facilitate the material change of use the subject of the Notice.
53. In relation to the means of enclosure the Council's evidence related to the frontage boundary means of enclosure in relation to street scene and effect on visibility at the access. Other means of enclosure were either low level adjacent to the eastern boundary or timber fencing to the rear of residential properties.
54. The frontage means of enclosure is significantly above 1m in height adjacent to a highway carrying vehicular traffic. I appreciate that a means of enclosure up to 1m in height can be erected as permitted development under Class A of Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. As such, I consider it is reasonable to vary the requirement to either reduce the means of enclosure to the front boundary to no higher than 1m in height or to remove it. I appreciate some third parties are concerned that a fence of only 1m in height or its total removal may not secure the site. However, this does not justify the retention of a significant and unsightly means of enclosure or a lessening of the requirements to permit a means of enclosure greater than 1m in height on the frontage boundary.
55. For the reasons given above I conclude that the requirements are excessive in relation to the frontage boundary means of enclosure only, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Appeal on ground (g)

56. This ground of appeal is that the compliance period of three months falls short of what should reasonably be allowed. The appellant seeks a compliance period of six months on the basis that three months would not be a reasonable period in which to find an alternative venue. The appellant referred to the car sales business, while being internet based, needing to be based locally. He also referred to the cars not being able to be parked on the road without being taxed and if the cars were taxed then it would 'clog up' on street parking spaces.
57. The appellant confirmed that at the time of the enforcement notice was issued the used car sales lot operator also had premises in Tottenham. However, I understand that the Tottenham premises are no longer available to the operator.
58. It is clear from the evidence in relation to the ground (a) appeal that the appellant was seeking temporary planning permission for a single use of the site as a used car sales lot only. However, for the reasons set out in the ground (a) above I have concluded that it was not open to me to consider a single, rather than a mixed, use of the site. I therefore consider it would be appropriate to allow a slightly extended compliance period for the appellant to

seek planning permission for that use. A period of six months would allow for that to take place.

59. In addition, I also consider that a slightly extended period for compliance would allow the operator of the used car sales lot to look for alternative premises from which to operate and seek to maintain the business and the employment it provides.
60. For the reasons given above I conclude that a reasonable period for compliance would be six months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent.

Conclusion

61. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr E Pick BSc (Hons) BTP MRTPI	Acting as advocate and witness for appellant, E M Pick Planning
He called	
Mr Garib	Owner of Car Joint Ltd on behalf of appellant
Mr Schwebel	Acting on behalf of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Lewis	Of Counsel, instructed by Mr Walsh, HB Public Law
He called	
Mr Sutherland Thomas BSc (Hons) PG Dip MA MRTPI	Planning Enforcement Officer, London Borough of Barnet
Mr Torto BEng (Hons) MSc Eng CEng MCIHT MCILT	Highway Officer (Development Control) London Borough of Barnet

INTERESTED PERSONS:

Mr Goldin	Local resident
Mr Stephens	Local resident
Mr M Offord MP	MP
Shira Avrahami	Local resident
Jane Gibson	Interested person
Mr De Marco	Local resident
Mr Rose	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Statement of Alfred Schwebel submitted by the appellant
- 2 Opening submissions submitted by the Council
- 3 Selection of sales invoices for Car Joint Ltd submitted by the appellant
- 4 Statement of common ground submitted by the Council
- 5 Complaints made to Barnet Council from Local Residents submitted by the Council
- 6 Draft conditions submitted by the Council
- 7 Draft conditions submitted by the appellant