



Appeal Decision

Site visit made on 9 August 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/P4605/W/22/3292695

Land at 428 Tyburn Road, Birmingham, B24 8HP

- 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 Mr Harjit Sembhi, BFS Building & Garden Supplies, against the decision of Birmingham City Council.
 - The application Ref 2021/04253/PA, dated 10 May 2021, was refused by notice dated 23 September 2021.
 - The development was originally described as proposed change of use of car sales pitch to garden centre.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I noted on my site visit that the site was currently in use as a builders merchants and garden supplies business. For the avoidance of doubt, I have assessed the appeal proposal and based my decision on the plans before me.

Main Issues

3. The main issues are:
 - The effect of the proposed development on the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance; and
 - Whether or not it has been demonstrated that the proposal would have an acceptable effect upon highway safety.

Reasons

Living conditions

4. The surrounding area is characterised by Tyburn Road, which is a dual carriageway, commercial buildings and residential properties. There are residential properties adjacent to the site which are situated on Tyburn Road and Wheelwright Road. Local residents have highlighted concerns relating to the proposal's impact upon their living conditions.
5. The appellant highlights that the site is currently in operation. Customers can come into the premises and either select items to order and collect in a timeslot or order online via click and collect and have direct delivery. They assert that the majority of sales are made online which are delivered by either

- a light goods vehicle or a HGV. They also set out the operating hours and highlight that the fence panel displays help to reduce noise. They consider that the noise and disturbance from the proposed use would be no greater than the previous car wash and sales pitch business, which used machinery.
6. Based on the evidence before me and my site visit observations, the use of the site would be more similar to a builders merchants and garden supplies business rather than a garden centre. However, I am mindful that the appellant has applied for planning permission for a garden retail centre. At the time of my site visit there was a HGV within the site, forklift truck movement as well as staff and customers which generated a level of noise.
 7. The Council assert that the previous use of the site related to a temporary permission which has expired and therefore it is not a fallback position. In any event, based on the evidence submitted, I consider that the proposal would generate more noise and disturbance than the previous use.
 8. Given the proximity of the neighbouring properties and the activities associated with the use, including movement of vehicles, customer comings and goings, stock being moved within the site, the scheme would result in unacceptable noise and disturbance. On the basis of the information before me, I am not satisfied that planning conditions would adequately address this matter or that the fence panels markedly help to reduce noise.
 9. For the reasons given above, the proposal would significantly harm the living conditions of the occupiers of neighbouring properties, having regard to noise and disturbance. Consequently, it would conflict with Policy PG3 of the Birmingham Development Plan (2017) (BDP) and Policies DM2 and DM6 of the Development Management in Birmingham Development Plan Document (2021) (DPD). These policies seek, amongst other matters, to ensure all development is appropriate to its location and not result in unacceptable adverse impacts on the amenity of neighbours. It would also conflict with the National Planning Policy Framework (the Framework) which states developments should create places with a high standard of amenity for existing and future users and also ensure that new development is appropriate for its location taking into account the likely effects of living conditions.

Highway safety

10. As stated in the previous section, at the time of my site visit there was a HGV within the site. The layout of the site differed to that shown in the submitted plans and there was not sufficient space to turn around within the site. The appellant's transport statement sets out how delivery vehicles would manoeuvre and turn around within the site. The appellant considers that the method of orders, highlighted above, mitigates any traffic or congestion on the road and the site is carefully managed by staff to ensure traffic is not built up.
11. The Council's Transportation Development Officers have advised that the manoeuvres required by articulated HGVs to access and egress the site would be particularly onerous and require the use of Wheelwright Road, which is primarily a residential street, to reverse in and out of the site. In addition, the swept path analysis does not show in sufficient detail how HGVs would manoeuvre in and out of the site. Furthermore, there is insufficient information to demonstrate that the dropped kerb would be of sufficient width. Local residents have also highlighted concerns relating to highway safety.

12. The appellant has not provided satisfactory evidence to demonstrate how delivery vehicles can adequately access and egress the site or that the scheme would not have a detrimental impact on the free flow of traffic along Wheelwright Road. I am not satisfied that there would be sufficient space for loading, servicing, customer parking as well as the storage, display and supply of goods.
13. For the reasons given above, the appellant has not demonstrated that the scheme could operate in a manner that would not have an unacceptable impact on highway safety. Consequently, it would conflict with Policy PG3 of the BDP and Policy DM14 of the DPD. These state, amongst other matters, that development must ensure that safe, convenient and appropriate access arrangements are in place for all users. It would also conflict with the Framework which states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Conclusion

14. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR