The Planning Inspectorate

Appeal Decision

Site visit made on 30 August 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/B5480/C/21/3276377
Land to the rear of 67 Butts Green Road, Hornchurch RM11 2JS shown edged in black on the plan attached to the notice and is registered under Land Registry Title Number EGL76635

- 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 Shaun Wright (Imperials Prestige Properties Ltd) against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/780/17, was issued on 30 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to use for the storage of motor vehicles.
- The requirements of the notice are to: (i) Cease the use of the land for the storage of motor vehicles as shown in the area hatched in black on the plan attached to the notice; AND (ii) Remove the 'N' shaped metal bollards fixed to the ground to the front of the land (which faces Wykeham Avenue); AND (iii) Remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) and (ii) above.
- The period for compliance with the requirements is 4 weeks.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. The appeal is dismissed and 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.

Procedural Matters

Enforcement notice

2. The appellant says that the notice is "unlawful" but his submissions are not clear in that respect. I can see nothing on the face of the notice which would lead me to find it was a nullity or invalid. Further, in reference to the Council's decision to issue the notice, it is not within my jurisdiction to address and/or determine whether it was expedient for the Council to do so, since case law[1] has confirmed that such challenges must be pursued by way of judicial review.

Past decisions

3. The appellant has critiqued the way the Council allegedly dealt with an application for a certificate of lawful use or development (LDC) in 2019[2] but that refusal has been dealt with on appeal[3] and it is not for me to address.

[1] Britannia Assets v SSCLG & Medway Council [2011] EWHC 1908 (Admin)
[2] Ref E0012.19 refused by the Council on 2 August 2019

4. The appellant also says he is of the view the Council failed to consider whether the imposition of conditions could overcome any of its concerns about the use being made of the site when it considered a retrospective application to regularise the car storage use (ref: P0223.21). I am not aware of any appeal against the refusal of that planning permission and, for the avoidance of doubt (while noting the appellant's wider point about the use of conditions), my remit in dealing with the ground (a) appeal before me is to consider the deemed planning application in respect of the allegation in the notice that has been issued.

'Hidden' ground

5. Although the appeal was started only on ground (a), it is clear from the appellant's submissions that a case is also being put forward on ground (d) – that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice. I have a duty to be alert to any such 'hidden' grounds of appeal and to deal with them.

6. The appellant states:

   "*Operational development was carried out at the site in query for a period in excess of 4 years as is required under the NPPF making the area in question immune from enforcement action*."

7. However, the appellant has misdirected himself in law since the breach of planning control alleged is not operational development but a material change of use of the land. Section 171B(3) of the Act provides in these circumstances that no enforcement action may be taken after the end of the period of 10 years beginning with the breach. The notice was issued on 30 April 2021. In essence therefore, it is for the appellant to demonstrate on the balance of probabilities that the unauthorised material change of use took place before 30 April 2011 (the relevant date) and was continuous throughout a 10-year immunity period.

8. The submitted evidence is not sufficiently precise and unambiguous in the above regard. Moreover, the clarity and credibility of the appellant's evidence as a whole is undermined by the LDC application in 2019 when the existing use of the site at that time was described as "for the parking of cars in association with lawful office use". This is materially different to the use alleged in the notice, which refers to the storage of motor vehicles (associated with the car sales unit at 69-71 Butts Green Road). Accordingly, on the balance of probabilities, the appellant has not demonstrated the accrual (and retention) of immunity from enforcement in respect of the alleged use.

9. The 'hidden' ground (d) appeal therefore fails.

Development plan

10. Following the making of the appeal, the Havering Local Plan 2016-2031 (LP) and Policies Map were adopted on 17 November 2021 and which replaced the Core Strategy and Development Control Policies Development Plan Document (2008). It is against the current development plan that I must determine the deemed planning application (DPA).

[3] Ref APP/B5480/X/19/3239568 dismissed on 11 December 2020

Ground (a) and the DPA

Main issues

11. The main issues are:

- Whether or not the development contributes to the vitality, viability, character or function of the area;
- The effect of the development on the provision of parking at 67 Butts Green Road, and the result of any such effect upon highway safety and upon the living conditions of neighbouring occupiers; and
- The effect of the development on the living conditions of neighbouring occupiers as regards noise and disturbance.

Reasons

Vitality, Viability, Character and Function

12. The Council has provided limited argument and evidence in support of this reason for enforcement, and I have no reason to disagree with the appellant's position that the use of the land contributes to the vitality and viability of the area in that it supports the adjacent car showroom at 69-71 Butts Green Road which is one of the businesses that attracts footfall to the area, and so benefits other businesses as well. In that regard, it facilitates in the functioning of the local commercial centre. Further, the visual appearance and character of the use complements that of the adjacent car showroom to which it is clearly associated and is not out-of-keeping with the mixed commercial nature of this section of Butts Green Road. I agree with the Council that "from a visual perspective, the change of use from a car park to a car storage area would not result in much of a difference"[4]. Therefore, the development causes no harm in these regards and does not conflict with the development plan, including Policy 19 of the LP which encourages and promotes business growth.

Parking provision

13. The building at the front of 67 Butts Green Road (Wykeham House) contains business uses including offices and a beauty clinic. At current, due to the appeal development using the land to the rear which had previously provided on-site car parking, there is no on-site car parking provision for these uses.

14. Furthermore, the site has a PTAL rating of 2 which represents average/poor access to public transport, which suggests that workers and other users of Wykeham House may be more reliant on private vehicular use than would otherwise be the case in an area with good public transport modes.

15. I am also of a view that the need for on-site parking provision is heightened by the extent of local on-street parking restrictions nearby, such as those provided by the crossing restrictions outside of Wykeham House and nearby double yellow lines.

16. It is not advantageous to the appellant's case that other nearby businesses may not themselves provide on-site parking provision, as the overall effect is likely to increase pressure on local on-street parking provision and create

[4] Page 5 of Officer Report on P0223.21

competition for spaces with those working at and visiting Wykeham House given that building's own lack of provision.

17. Taking all of these factors together, notwithstanding that some users of Wykeham House have said in their statutory declarations that parking can be found off-site, I find that the development causes a significant loss of necessary parking provision for those using that building. Further, I place significant weight on the objections to the retrospective planning application centring upon the resultant adverse effects of this lack of provision - including the concern that:

"*Loss of car parking has resulted in traffic and car parking issues in this area, where there are already many parking restrictions with yellow double lines. Cars park on the double lined areas and over the pavement which creates issues for pedestrians.*"[5]

18. Accordingly, I conclude that the off-site parking that has become necessary (as a result of the insufficient level of parking provision for Wykeham House caused by the development) causes an unacceptable impact on highway safety. While being unclear the extent to which it affects the living conditions of neighbouring occupiers, the harm I have identified is in clear conflict for the above reasons with Policy 24 of the LP which requires a robust demonstration that there is no need for parking spaces that have been lost as a result of a development. The development is also in conflict with paragraph 111 of the National Planning Policy Framework (the Framework) on highway safety grounds.

Noise and disturbance

19. The evidence of the statutory declarations submitted by the appellant confirms that vehicles are valeted at the appeal site before being transferred to the sales stock across the road, and that a jet wash is used to clean them. The appeal site, to the rear of Butts Green Road, is closely adjacent to residential properties on Wykeham Avenue and I am concerned that such activities associated with the material change of use of the land has resulted in adverse impacts on neighbours, again as raised in response to the retrospective planning application:

"*Noise impacts when cleaning, repairing and valeting vehicles. Use of pressure washer, hoover etc. Car alarms sound frequently.*"[6]

20. I place significant weight on the evidence of the affected residents, and conclude that the development by reason of the character of the use and its proximity to residential occupiers causes significant adverse impacts to their living conditions through noise and disturbance. Accordingly, the development is in conflict with paragraph 185 of the Framework.

21. The appellant points to noise created by other businesses locally but that does not persuade me that his own use of the appeal site is not causing the significant adverse impact I have described. In particular, there is a very limited substantive case made (technical or otherwise) as to why jet cleaning and vacuuming near homes in these circumstances would be acceptable in environmental noise terms. For instance, no noise assessment has been submitted that I have seen.

[5] Page 3 of Officer Report on P0223.21
[6] As above.

22. I have considered whether conditions could be reasonably imposed with which to make the development acceptable – such as a restriction on cleaning and valeting using powered equipment, or similar – but, while this might reduce adverse impacts from noise associated with the development, this would not remedy the lack of parking provision the development causes for users of Wykeham House.

23. The development does not accord with the development plan as a whole and there are no other considerations which outweigh that finding including the business benefits and the appellant's largely unsubstantiated argument that loss of staff will occur without permission being granted. Accordingly, the ground (a) appeal does not succeed.

Conclusion

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

Andrew Walker

INSPECTOR