



Appeal Decision

Site visit made on 12 July 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 02 December 2022

Appeal Ref: APP/T5150/C/21/3285828

182-184, Preston Road, WEMBLEY, HA9 8PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Ramesh Parmar against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/19/0234, was issued on 22 September 2021.
 - The breach of planning control as alleged in the notice is a material change of use of the land to car sales.
 - The requirements of the notice are to:
 1. Cease the unauthorised use of land for car sales.
 2. Remove all outbuildings, materials, vehicles, waste items and debris associated with the unauthorised use from the premises.
 - The period for compliance with the requirement is: four months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) of the Act. 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 dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Preliminary Matter

2. Since the enforcement notice was issued, the Council have formerly adopted the London Borough of Brent Local Plan 2019-2041 ("the LP") in February 2022. I have therefore had regard to the policies of the LP in my determination of this appeal. It has not been necessary to revert to the parties on this matter as the notice referred to the draft policies of the LP. The Council's evidence advises that these policies were adopted without modification. The appellant has had the opportunity to comment upon these but did not do so.

Reasons

The appeal on ground (b)

3. To succeed on this ground the appellant must demonstrate on the balance of probabilities that the use of the land identified in the notice has not changed to a use of the land for car sales on or before the date when the notice was issued.
4. The basis of the appellant's case on this ground is that the land has been used for the storage of vehicles for in excess of ten years rather than the land being used for car sales. I take the view that the use of the land for the storage of

vehicles is materially different to a use of land for parking ancillary to the commercial premises at 182 and 184 Preston Road.

5. There is some uncertainty within the appellant's evidence as to the location of the place where the vehicles are displayed for sale and where sales transactions are undertaken. It is put to me that the appeal site is 'adjacent to the sales office' and that vehicles are 'sold by the neighbouring car dealership', however, no specific location has been identified by the appellant and none was evident at the time of my site visit. The Council advise that there is no business of car sales operating from the commercial premises, Nos 3-7 Lincoln Parade, of which the Council are the freehold owner and are therefore well placed to know the business activities being undertaken in those premises. Furthermore, I noted the presence of a large storage container that had been converted into a neatly arranged office complete with table and several chairs.
6. The Council's evidence shows that a car sales business was registered at the rear of 182 Preston Road in the period running up to the issue of the notice, and the appellant has not shown that the vehicles on the land were not associated with that car sales business, or that the business was operating somewhere else. On the basis of the evidence before me and my own observations, I take the view that the appellant has failed to demonstrate that vehicular sales are being undertaken at some other location and do not occur at the appeal site.
7. Nevertheless, even if the vehicle is advertised for sale elsewhere and an agreement to sell/buy established at some other physical premises or through online sales, the appellant accepts that the appeal site has been used for 'storing vehicles that have been sold and are awaiting customer collection'. To my mind, the purpose is not simply storage, but includes tasks that facilitate the sale such as cleaning. In addition, by reason of my observations at the time of the site visit, given the extent of equipment and tools contained within the site, it appears to me that some minor repairs and maintenance are also carried out.
8. Furthermore, it seems likely that some additional administrative process is undertaken, such as the completion of the vehicle registration document and the collection of the keys. As such, I take the view that, even if the agreement for sale does not take place within the appeal site, these activities are intrinsically linked and form part and parcel of the car sales use.
9. I accept the appellant's evidence that the site was likely to have been originally used as an area for parking in connection with a number of commercial units along Preston Road. The appellant's submitted photographic evidence demonstrates that vehicles have been on the appeal site from 1999 onwards but does not demonstrate for what purposes. There is little evidence before me to demonstrate that the site was not being used as parking for the commercial unit that it served, nor is there any credible evidence to substantiate the view that the land was being used for the storage of vehicles rather than for parking in connection with the commercial premises.
10. Accordingly, I therefore take the view that the only reason vehicles were on the premises at the time that the notice was issued was because they were being sold and that the matters stated in the notice, namely an unauthorised change of use of the land to car sales have occurred. The appeal on ground (b) fails.

The appeal on ground (a)

11. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issues are:-

- i) the effect of the use on the living conditions of occupants of neighbouring dwellings having particular regard to noise and disturbance; and
- ii) whether the access to the appeal site is safe and suitable for the use.

Living conditions

12. The appeal site is a roughly rectangular parcel of land positioned to the rear of a terrace of properties that fronts Carlton Avenue East and Preston Road with commercial uses at ground floor level and some residential use within the floors above. Whilst Preston Road is typically characterised by a mix of commercial and residential properties, Elmstead Avenue and Carlton Avenue East are predominantly residential areas characterised by two-storey residential dwellings and as such these roads display a quieter character than the bustling and noisier environment of Preston Road.

13. The appeal site is positioned in close proximity to dwellings along Elmstead Avenue and adjoins a number of their rear garden boundaries. These gardens are modestly sized and there is no significant buffer space along the common boundary which is defined by a tall close boarded fence. In addition to the appeal site being in close proximity to the private amenity areas of these dwellings, given the short depth of these gardens, the appeal site is also closely positioned to a number of rear windows which are likely to serve some habitable rooms including bedrooms.

14. There is limited information before me as to the days and hours when vehicle related use has taken place. Nevertheless, a third party with a property overlooking the appeal site has commented that there has been an increase in noise caused by the cleaning of cars and the revving of engines together with unpleasant smells caused by the fumes of diesel. In addition, I take the view that the activity is likely to generate general comings and goings associated with the use, raised voices and the opening and closing of doors which are also likely to disturb neighbouring occupiers in the reasonably quiet residential environment.

15. As referred to above, there is dispute between the parties as to the location of the actual sales activity. However, even if vehicles are not advertised for sale within the site and the agreement to sell/buy does not actually take place therein, I consider that the cleaning, maintenance, repair and administrative task of vehicle handover are activities that are incompatible with the predominantly residential environment of the surrounding area. I therefore find that the business operation results in levels of noise and disturbance that materially compromise the living conditions of neighbouring occupiers. Accordingly, the appeal scheme conflicts with LP Policy DMP1 insofar as it requires development to be located to provide a high level of amenity and not to unacceptably increase exposure to noise and smells.

16. I have had regard to the use of an appropriately worded planning condition to restrict the days and hours of use, however, I consider that these would not adequately safeguard residential amenity.

Safe and suitable access

17. By reason of the appeal site's position to the rear of a number of properties, it presently has no frontage to a highway. Consequently, to gain access to the site, access from Preston Road is gained via a gated driveway to the side of commercial properties 3-7 Lincoln Parade and through a yard to the rear of those premises. I am advised that this is a pre-existing right of access.
18. LP Policy DMP1 requires development to be satisfactory in terms of a means of access for all, parking, manoeuvring, servicing and not to have an adverse impact on the movement network. Policy BT2 has similar aims and requires development to be consistent with parking standards. However, there is little information before me to demonstrate that the appeal scheme achieves this.
19. In particular, there is no information regarding the likely number of vehicular trips that are generated as a consequence of the business operated at the appeal site. Although the site is modest in size, there is nothing to suggest that the quantity of vehicular trips to and from the site would be low. By reason of the narrow width of the access and the absence of a separate pedestrian access it is likely that some vehicular conflict could arise such that it is far from clear that safe and suitable access would be capable of being achieved.
20. It is put to me that there would be no greater impact on the access or highway safety. However, in the absence of any clear and convincing information comparing the last use of the land as parking associated with the commercial premises and the use as car sales, that has not been demonstrated.
21. Accordingly, I find that the appeal scheme fails to demonstrate that safe and suitable access to the site would be achieved for all users. It would be contrary to LP Policies DMP1 and BT2 insofar as these policies seek to ensure that development does not have an adverse impact on highway safety. Similarly, it would fail to accord with the aims of the National Planning Policy Framework¹ which sets out that development should ensure safe and suitable access to the site can be achieved for all users.

Other Matters

22. My attention has been drawn to other car dealership businesses within the local area. However, the Council advises that not all of these are engaged with car sales and a number are unauthorised development. With regard to the business 'Twinstar' it occupies a prominent position fronting Carlton Avenue East as it adjoins Preston Road. It is located within a busy area predominantly of commercial uses with most residential dwellings positioned further away from its boundaries. It is not directly comparable with the appeal scheme and a comparison is therefore of limited relevance in this instance. I have determined the appeal scheme before me with regard to its individual planning merits.
23. The scheme makes use of brownfield land, contributes to the local economy and minimises opportunities for crime by reason of its location within a gated compound that is largely hidden from views from the public domain. This

¹ National Planning Policy Framework paragraph 110(b)

accords with the Framework's economic and environmental aims and weighs in favour of the appeal scheme. However, the weight I attach to these benefits of the scheme are modest and, in this instance they do not outweigh the conflict with the development plan.

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 application deemed to have been made under section 177(5) of the Act.

E Brownless

INSPECTOR