



Appeal Decisions

Site visit made on 23 November 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2023

Appeal A Ref: APP/N5090/C/22/3296890

Lock Up Garage at Rear of 1 Churchfield Avenue, London N12 0NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hussein Hassani against an enforcement notice issued by the Council for the London Borough of Barnet.
 - The notice was issued on 9 March 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of a car storage unit into a motorcycle mechanic and repair workshop.
 - The requirements of the notice are to:
 - 1 Cease the use of the car storage unit as a motorcycle mechanic and repair workshop;
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 1 Month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
-

Appeal B Ref: APP/N5090/W/22/3293981

Garage, Churchfield Way, Rear of 1 Churchfield Avenue, London N12 0NS

- 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 Hussein Hassani against the decision of the Council for the London Borough of Barnet.
 - The application Ref 21/6479/FUL, dated 6 December 2021, was refused by notice dated 8 February 2022.
 - The development proposed is described as "Change of use from garage to motorcycle mechanic/repair including side extension."
-

Appeal A Decision

1. It is directed that the enforcement notice is varied by: the deletion of '1 Month' in section 6 of the notice and its replacement with '4 Months'
2. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been.

Appeal B Decision

3. The appeal is dismissed.

Preliminary Matters

4. The site address for Appeal B as shown on the planning application form incorrectly stated 'Rear of 1 Churchfield Road' rather than correctly stating the 'Rear of 1 Churchfield Avenue' which I have therefore used above.
5. As well as seeking the regularisation of the current use, Appeal B also includes a proposal to extend the garage to the side to incorporate a small toilet facility. The Council has not raised any concerns about that extension.

Appeal A Ground (a) and Appeal B

Main issues

6. The main issues in both cases are:
 - The effect of the use on living conditions of neighbouring properties with respect to sounds and activity from the use; and
 - The effect of the use on pedestrian safety along Churchfield Way.

Reasons – Living conditions

7. The site is on the margin of the busy, extensive, mainly commercial area including the High Road to the west and the more tranquil residential areas to the east along Churchfield Avenue. The appeal building is a detached, single-storey garage building positioned at the rear of the dwelling at No 1 Churchfield Avenue. The garage has its access onto the side-lane referred to at times as 'Churchfield Way' which is a no-through road which includes a long line of garages opposite the site, many of which contain workshops and commercial garages. On the corner of Churchfield Way with Churchfield Avenue is a large motor repair workshop.
8. The small workshop on the appeal site is used to repair and maintain motorcycles including scooters. It consists of an internal space which can accommodate 2 motorcycles at a time with 2 hydraulic work-stands centrally positioned and with shelving around each of the walls providing storage of equipment and accessories. There is a rudimentary urinal behind a cupboard door and the proposal within Appeal B is to extend to the side of the building to provide a better standard of toilet facility. From the submissions and what I saw for myself, there is not much free space available within the garage when there are 2 motorcycles inside which there were when I visited. There are no openings other than within the front sliding door that enables access onto the lane. At the time of my visit, the front sliding door was open and a small, portable generator was positioned outside, between the front of the building and a curb which delineates the lane. Externally, the building appears close to the boundaries with adjoining properties apart from the area to the side where the new toilet extension is proposed in Appeal B.
9. A use such as this has the potential to be the cause of noise from machinery, engines, tools, people working within the building as well as the comings and goings of customers with their motorcycles along the public road used to access the site. Furthermore, the operators working within the building will make other sounds when communicating, listening to music and the general hubbub associated with people being with each other in a work environment as well as greeting visitors. The site directly adjoins the gardens of some

residential properties including those which front onto Churchfield Avenue which have windows facing towards the garage as well as the commercial premises opposite the site.

10. The description of the development states that the change of use was from a 'garage' which I interpret as meaning a building where a vehicle was parked in connection with nearby residential premises or possibly other storage or domestic related items. Comments from interested parties confirm my understanding. There is no suggestion by the appellant that the previous use would have caused the degree of noise from machinery, processes or visiting customers that the present use does and the sensitivity of the effects of the proposal is set in that context.
11. The appellant therefore has submitted a noise impact assessment (NIS). The Council's 'Scientific Officer' provided comments before the planning application (Appeal B) was refused including at the stage of an earlier iteration of the NIS than was finally considered before the decision was made. The assessment was changed as a result of those comments. I have no evidence from the Council to rebut or dispute the methodology of the NIS. The NIS itself however refers to noise emissions being "indicative of adverse impact" albeit that a judgement is made to suggest that this could be acceptable due to the nature of surrounding businesses and traffic along Churchfield Way. The lack of objection from the Council's Scientific Officer following the submission of the latest version of the NIS was subject to and underpinned by imposition of a number of conditions. Such planning conditions would only be effective if they were to meet the tests for planning conditions as set out in the National Planning Policy Framework (the Framework)¹ including effective protection from harm to the living environment of nearby properties.
12. One of those suggested conditions would require machinery, which the Council's Scientific officer has not specified, to be at least 5dB(A) below the background level when measured 1m from the outside window of any room of a neighbouring residential property. The NIS indicates that the machinery from the use would be only 3db below the background at the façade of the nearest dwelling. This questions the reasonableness of such a condition as it would appear that the machinery does not currently achieve that stipulation. It is not clear that noise could be enforced at that level in future.
13. I am also not persuaded that bangs, clangs, engines idling/revving would be effectively prevented simply by the prohibition of MOTs even if it was possible to enforce such a condition or a restriction on the number of motorcycles being repaired or serviced each day. The use as a matter of course would appear to require much of that activity to happen whether or not as part of the MOT process. A further suggested condition relates to the submission of a noise management plan. That would require controls over various matters such as idling of engines, arrival and departure noise mitigation measures and prevention of external working. However, such a condition could not control such activities occurring outside of land within the ownership or control of the business operator. The building is small and used to what appeared to me to be its capacity. Even if the servicing and repairs can be contained within it, there is little scope of containment of other ancillary, potentially noisy elements

¹ Necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects

of the business particularly the comings and goings of visiting customers on their motorcycles revving engines and discussing servicing requirements.

14. Furthermore, even if such controls could be enforced, whilst I understand the sensitivity in particular of internal spaces within the nearby residential properties, I am concerned that the comings and goings of customers dropping off motorcycles as well as other effects of the activities within and outside of the building will have harmful impacts that would be noticeable within the nearby gardens of residential properties. The suggested conditions to restrict operating hours would at least be an enforceable prevention of noisy at times that were most sensitive in those respects. However, at other times there would be a likelihood of noisy activities when people are using their gardens. The use could harm nearby residents both when within their houses but also when enjoying their gardens which is a marked contrast to the previous situation before the material change of use took place when the use would have been more passive, being related to those residential activities.
15. In relation to this main issue, the use has a harmful effect on living conditions of neighbouring properties with respect to sounds and activity. This does not protect the borough's amenity value and is not in this respect a high-quality design. This does not therefore comply with Policy CS5 of the Core Strategy² and Policy DM01 of the Council's Development Management Policies document³ (DMP) or the advice in the Framework to create places with a high standard of amenity for existing and future users. I have not been provided with any documents to assist me in considering the development with respect to DMP Policy DM02.

Pedestrian safety

16. The appeal site is located along a public road which leads to a number of properties but is not a through route. I have no evidence that it is heavily used as a pedestrian route. On the same side of the road as the appeal site, there is a section of footpath with a curbed edge which provides a safe route to walk close to the appeal site itself. From that point onwards the path is less distinct and the curb is less raised. However, the comings and goings of mainly motorcycles related to the use of the appeal site would primarily impact upon the first part of the road where I consider pedestrians are suitably and safely catered for. There is a degree of what appeared to be indiscriminate parking in the area but I have no evidence that this is directly as a result of the current activities or is made worse by them.
17. However, in relation to the second main issue the activities at the site do not have a harmful impact upon pedestrian safety along Churchfield Way. The development does not increase conflicting movements on the road network and does not increase the risk to vulnerable road users. As such this does not conflict with DMP Policy DM17.

Other matters

18. The use of the building for these purposes may help to promote a strong and prosperous environment as well as an opportunity for economic benefits particularly as it is a start-up business. I give limited weight to these benefits.

² Barnet's Local Plan, Core Strategy, Development Plan Document, adopted September 2012

³ Barnet's Local Plan, Development Management, Development Plan Document, adopted September 2012

However, these benefits and the lack of harm in relation to the second main issue do not outweigh my conclusion on the first main issue.

19. For the reasons set out above, having had regard to the development plan as a whole and all other material considerations, I conclude that appeal A on ground (a) should not succeed and consequently, the deemed planning application shall be refused. Appeal B should not succeed.

Appeal A on ground (g)

20. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The requirement of the notice is to cease the use within 1 month of the notice coming into effect.
21. The use clearly serves a useful purpose in the area. This provides benefits to the appellant themselves as well as their customers and the wider economy.
22. I have found that the use is harmful to the living conditions for occupants of neighbouring properties. As the appellant points out however, it is reasonable to not have to search for alternative premises until such time as the outcome of these appeals is known. The search for properties can be complicated and it would serve no purpose for the appellant to end up with further unsuitable premises for this beneficial use.
23. As such therefore, I consider that the 4 months as requested by the appellant would strike a more reasonable and proportionate balance between securing compliance in the interests of neighbouring residents whilst providing the best chance for the business to prosper in more suitable premises.
24. The appeal on ground (g) succeeds.

Conclusion

25. For the reasons given above, I conclude that the appeals A and B should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Andy Harwood

INSPECTOR