



Appeal Decision

Site visit made on 25 October 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2023

Appeal Ref: APP/T5150/C/21/3276938

Car Wash, Car Repair and Tyre Garage on Brentfield Road, London NW10 8JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
 - The appeal is made by Mr Naim Osmanovic of AEA Group Ltd against an enforcement notice issued by the Council of London Borough of Brent.
 - The notice, numbered E/20/0184, was issued on 6 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a mixed use as a car wash, car sales, tyre sales, car servicing and repair, and the storage of car tyres and parts ("the unauthorised change of use"); and, without planning permission, the erection of multiple extensions/structures to the North and South of the site, a canopy structure and boundary fencing to the West of the site, and the erection of a roof extension, creating an additional storey to the original building ("the unauthorised development").
 - The requirements of the notice are to:
 - Step 1: Cease the use of the premises as a car wash, car sales, tyre sales, car servicing and repair, and the storage of car tyres and parts,
 - Step 2: Remove all vehicles, tyres, car parts, and all equipment associated with the unauthorised use from the premises
 - Step 3: Demolish the extensions/structures to the North and South of the site,
 - Step 4: Demolish the canopy structure and boundary fencing to the West of the site,
 - Step 5: Demolish the roof extension to the main building, and
 - Step 6: Remove all debris, items and materials arising from the above demolition from the premises, and restore the site to its original condition as shown in the photograph attached to this notice.
 - The period for compliance with the requirements is 4 months.
 - The appeal is made on the grounds set out in section 174(2)(a), (b), (e), (f), 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.
-

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 1990 Act as amended.

Preliminary Matters

2. The Brent Local Plan 2019-2041 (the BLP) was adopted by the Council on 24 February 2022. This suite of policies now forms the statutory development plan for the Borough, and I have therefore had due regard to this in my decision. The parties have had the opportunity to comment on these policy changes over the course of the appeal proceedings.
3. It is argued for the appellant that the allegation and the steps to remedy the breach as set out in the notice are incorrect and too vague to understand what is

wrong and what must be done, rendering the notice a nullity. This stems from the appellant's assertion that the steps for compliance are excessive and impossible to be complied with because no car sales are taking place and there is a lack of clarity over what unauthorised structures and extensions the notice refers.

4. An enforcement notice must state the matters which appear to the Local Planning Authority (LPA) to constitute the breach of planning control¹. A notice shall comply with this requirement if it enables any person receiving a copy of it to know what those matters are². A test applied in deciding whether a notice satisfies the statutory requirement is does the notice fairly tell the recipient what they have done wrong and what they must do to remedy it? Furthermore, the recipient must be able to find out from within the four corners of the document what they are required to do³.
5. Arguments over whether the steps required by the notice are excessive or indeed if any of the matters alleged have not occurred are directed towards my consideration of the appeal on grounds (f) and (b) respectively.
6. With regard to the alleged unauthorised operational development, the notice clearly identifies "extensions/structures to the North and South of the site, a canopy structure and boundary fencing to the west of the site, and the erection of a roof extension, creating an additional storey to the original building". The form of the pre-existing building and the general condition of the site prior to the alleged unauthorised development is established by reference to a plan and a photograph appended to the enforcement notice. Therefore, it is possible, with reference to the supporting plan and photograph, to identify the structures and extensions cited within the notice, and I was able to do so during my visit. Furthermore, the steps required to remedy the alleged breach are clearly set out with reference to the alleged use and the specific structures and extensions, and reference to the aforementioned photograph made in Step 6 of the requirements.
7. Accordingly, on this point, the notice fairly tells the appellant, as the recipient, what they are alleged to have done wrong and what they must do to remedy this. Therefore, I find no ambiguity or uncertainty in these regards and so the notice is not a nullity.
8. The appellant suggests that the canopy structure is only temporary and therefore cannot be deemed as permanent development. They also suggest that the site benefits from planning permission over the years for various building works. I have dealt with these issues as a 'hidden' appeal on ground (c). The LPA has had the opportunity to respond to these points and so there would be no injustice in taking this approach.

The appeal on ground (e)

9. An appeal on ground (e) is that the enforcement notice was not properly served on everyone with an interest in the land affected by the notice.
10. The appellant claims that, following receipt of the notice, they queried its purpose with the LPA's Enforcement Officer and were advised that it was not important or urgent. In their view, this resulted in insufficient time to seek proper legal advice.

¹ s173(1)(a) of the Town & Country Planning Act 1990, as amended

² S173(2) of the Town and Country Planning Act 1990, as amended

³ Miller Mead v MHLG [1963] 1 All ER 459

11. Nevertheless, the appellant does not dispute that the notice was properly served on everyone with an interest in the land. Furthermore, the LPA have provided a certificate of service and supporting 'track and trace' documentation from Royal Mail to demonstrate that the notice was served on 10 May 2021.
12. The appellant has been able to submit an appeal against the enforcement notice and argue it fully in the course of these appeal proceedings. There is no suggestion that any other person may have been prejudiced.
13. For these reasons, the ground (e) appeal must fail.

The appeal on ground (b)

14. An appeal on ground (b) is a claim that the matters stated in the notice as constituting a breach of planning control, have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities'.
15. The appellant does not dispute that the site is in mixed use as a car wash, for tyre sales, car servicing and repair, and for the storage of car tyres and parts. However, they claim that no car sales are taking place and that, while some improvements to the roof have been made, there have been no additional floors created nor any extensions to the premises or the erection of boundary fencing.
16. At the time of my visit there were no car sales taking place and I did not observe any cars marked for sale. However, the question is not whether the alleged use is evident at the time of the site visit, but rather whether the breach had occurred by the date of issue of the notice. In its submission, the LPA has provided photographic evidence from July 2020 showing signage advertising pre-owned cars for sale at the appeal site. The appellant has submitted no substantive evidence to counter this claim. Therefore, I am not persuaded, on the balance of probability, that the alleged mixed use, including car sales, had not occurred.
17. It was apparent from my visit that steel and timber-framed structures with roller shutter doors have been erected on either side, to the north and south, of the main brick-built building. This has resulted in substantial extensions to the building. I was also able to access an enclosed area above the main building, used primarily for the storage of tyres, along with other rooms, accessed via a staircase from the ground floor. Therefore, there is no doubt that an upward extension has taken place, and this has created a first floor extension to the main building.
18. To the front of the original filling station canopy, and along the western boundary of the site, a smaller steel-framed canopy has been erected to facilitate the car wash element of the use. The western elevation of this structure forms part of a steel-framed boundary fence with transparent plastic sheeting and which runs along the western boundary of the site. Furthermore, the LPA's photographic evidence shows these structures in place on 10 May 2021.
19. Drawing all these points together, I conclude that, on the balance of probability, the mixed use and the associated operational development, as alleged in the notice, had occurred as a matter of fact, at the time the notice was served. Therefore, the ground (b) appeal must fail.

The appeal on ground (c)

20. The appeal on ground (c) is made on the basis that the matters alleged, if they occurred, do not constitute a breach of planning control. To succeed on this

ground the appellant would need to demonstrate, on the balance of probability that the alleged breach of planning control did not involve an act of development or that planning permission was not required.

21. The appellant considers the car wash structure and canopy to be temporary structures that cannot be deemed as permanent development. Beyond this claim, no information has been provided to demonstrate why the appellant considers that this structure would not constitute development or why planning permission would not be required.
22. The meaning of development is set out in s55(1) of the Town and Country Planning Act 1990 (the Act). This includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
23. The canopy and attached boundary fence are substantial structures, with steel uprights fixed into the site's concrete forecourt. The structure is comprised of steel frames with perspex panels, and its roof is covered with corrugated steel sheets. There is nothing in their appearance or method of construction that would suggest that these structures are temporary. Consequently, I find that these are substantial and permanent structures that amount to building operations and would therefore constitute acts of development, as defined by the Act, and which, without any evidence to the contrary, would require planning permission.
24. The appellant asserts that the site has received multiple planning approvals for building works over the years. However, I have not been presented with any evidence of planning permission for the alleged development.
25. Drawing these points together, the appeal on ground (c) fails.

The appeal on ground (a)

26. The appeal on ground (a) seeks planning permission for the matters alleged in the notice. In doing so, planning permission is sought for the unauthorised mixed use and the associated operational development, as set out in the notice.
27. The main issues are the effect of the proposal on:
 - the character and appearance of the surrounding area;
 - highway safety; and,
 - the living conditions of nearby residents, with regard to noise and disturbance.

Character and appearance

28. The site enjoys a prominent location on Brentfield Road opposite the junction with Gloucester Close. To the north, west and south the site is predominantly surrounded by residential properties of varying design and scale, including high-rise accommodation opposite the site. To the east are commercial and industrial units.
29. This part of Brentfield Road comprises a wide carriageway lined with trees and bound by the private gardens of residential properties, providing a spacious and verdant character to the area. Prior to the unauthorised development, the site made a modest contribution to this character, with its built form set back from the

street and its overall scale and massing limited to the main building and central canopy.

30. The unauthorised development has introduced substantial extensions to the north and south of the original building, including an upward extension that has created a first floor, and an additional canopy structure and attached fence. These structures are predominantly constructed of a mix of steel and timber frames externally clad with corrugated steel sheeting or timber plywood boards, and enclosed with roller shutter doors with a bright yellow painted finish.
31. The extensions to the main building do not appear to follow any cohesive design approach and are highly utilitarian in their appearance. They overcrowd the original building and tower over the central canopy to the extent that they are overly assertive extensions that fail to articulate any design quality. In this regard, I agree with the LPA's assessment that these extensions appear as rudimentary structures that detract from the overall quality of their surroundings. The excessive use of ply timber boarding as an external finish results in a poor quality façade that lacks any design quality. Similarly, the roller shutter doors to the vehicle repair and servicing bays provide an inactive and bland frontage that negatively detracts from the quality of the street scene.
32. The additional canopy and attached boundary fencing appear as highly intrusive features which have reduced the spatial qualities of the site. This, coupled with the extensive storage of tyres and car parts throughout the site, has resulted in a poor form of development, with a cluttered appearance that harmfully diminishes the spacious characteristics of the area.
33. Consequently, the proposed development has a significant harmful effect on the character and appearance of the surrounding area. Therefore, it is in conflict with policies DMP1 and BD1 of the BLP and Policies D3 and D4 of the London Plan 2021 (the LP), which together, among other things, seek to achieve development of the highest architectural and design quality which responds to the existing character of a place. It would also conflict with the guidance set out in the Brent Design Guide SPD1, which advises that the height, massing and façade of new development should positively respond to the existing context and scale in order to facilitate good urban design.

Highway safety

34. Brentfield Road is a busy arterial route through the Borough with a constant flow of traffic. Other than those vehicles using the car wash, there does not appear to be sufficient space for vehicles to both enter and leave the site in a forward gear. Therefore, vehicles would need to either reverse onto or off the highway to access the site. Indeed, during my visit, I witnessed such a manoeuvre carried out by a delivery vehicle. Such vehicle manoeuvres cause a significant risk of conflict with pedestrians using the pavement and vehicles travelling along Brentfield Road. This would undoubtedly compromise highway safety.
35. The lack of circulation space within the site also gives rise to indiscriminate parking on the adjacent pavement, causing an obstruction for pedestrians and cyclists. There is limited space for vehicles to queue for the carwash, and in doing so, queuing vehicles are likely to block access to the vehicle repair and serving bays to the north of the site and also give rise to vehicles waiting on the highway. Furthermore, no provision has been made for delivery or servicing vehicles to safely access the site, resulting in the potential for further vehicle and/or pedestrian conflict. These issues give rise to further safety concerns, and at peak

times would likely cause congestion and disruption along this part of Brentfield Road.

36. The appellant considers there to be sufficient space within the site to facilitate the mixed use and that an operations management plan would demonstrate that there is adequate space for customers, cars, and delivery or service vehicles to access, park, pass and turn within the site safely. However, no such management plan or any other information has been submitted to support this view.
37. To conclude on this main issue, the development is detrimental to highway safety, posing an unacceptable risk to users of the adjacent highway along Brentfield Road. It is therefore in conflict with Policies DMP1, BT2 and BT3 of the BLP, in so far as these policies seek to achieve the provision of adequate parking and servicing facilities to serve new development in the interests of highway safety.

Living conditions of nearby residents

38. Residential properties exist to the north, west and south of the appeal site, but there is a degree of separation due to the intervening highways along Leicester Road, Brentfield Road, and Artesian Close. The Council is concerned that, by reason of its intensity of use, excessive noise and disturbance would be generated by the development and that this would have an unacceptable adverse impact on the amenity of neighbouring residential occupiers.
39. The proposed use is likely to generate noise via the operation of pressure washers, vacuums and machinery associated with the repair and servicing of vehicles. The use is also likely to generate a significant number of vehicle movements to and from the site. In combination, these effects could have the potential to result in unacceptable levels of noise and disturbance that may adversely impact the living conditions of nearby residential occupiers, particularly during the evening or at weekends when residents would likely expect lower levels of background noise.
40. Nevertheless, the site is not in such close proximity to neighbouring residential properties for these effects to be acute. In addition, there is no evidence before me of any complaints in relation to noise or disturbance as a result of the development. Therefore, if I were minded to grant planning permission, I am satisfied that an appropriately worded condition could be imposed to restrict the hours of operation, particularly during the evening and at weekends. This would provide suitable mitigation to protect the living conditions of neighbouring residents.
41. Bringing these points together, on balance, I find that the development would not have an adverse effect on the living conditions of nearby residents, with regard to noise and disturbance. Therefore, on this issue, there is no conflict with Policies DMP1 and BSUI2 of the BLP or Policies D14 and SI1 of the LP, which together seek to ensure high levels of amenity, avoid significant adverse noise impacts, and seek opportunities to identify and deliver improvements in air quality.

Other matters

42. I acknowledge that the site is adjacent to other commercial and industrial buildings and that the LPA raised no in principle objection to the proposed use of the site. I also note the appellant's assertion that when they purchased the site it was vacant, and the building was in a poor state of repair. The evidence also suggests that the site had been subject to significant levels of fly tipping, pest infestation, anti-social behaviour, and potentially criminal activities. The site also

employs approximately 20 people and provides a facility which contributes to the local economy. However, these matters do not outweigh the harms that I have identified in relation to the main issues in this case.

43. The Council's collection of business rates for the current unauthorised use of the site or its financial business support during the Covid 19 pandemic do not amount to an endorsement from the Council for the ongoing breach of planning control. Instead, planning matters are reserved for the Council's consideration in its capacity as the Local Planning Authority and pursuant to the relevant provisions of the Act.
44. I appreciate that the Covid 19 pandemic is likely to have had a disruptive effect on the appellant's business and finances. It has also resulted in a variety of physical and mental health problems for many people.

Ground (a) conclusion

45. I have found no harm to the living conditions of nearby residents. However, I have found significant harm to the character and appearance of the surrounding area, and harm to highway safety. In these regards, the development is contrary to the above cited policies of the development plan. The other matters and considerations advanced in favour of the scheme are of insufficient weight to justify a decision other than in accordance with the development plan.
46. Therefore, for the reasons given, I conclude that the appeal on ground (a) should fail and that planning permission should be refused in respect of the deemed planning application.

The appeal on ground (f)

47. The issue is whether the steps required to be taken by the notice, or the activities required by the notice to cease, would exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
48. In this case, the notice requires the use to cease in its entirety, for stored items and equipment facilitating the use to be removed, and for the demolition of structures associated with the use. Finally, the notice requires the site to be restored to its original condition. It is clear, therefore, that the purpose of the notice is to remedy the breach of planning control in its entirety.
49. The appellant considers that no car sales are taking place at the premises and therefore there are no vehicles to be removed. However, this argument has been properly considered under the ground (b) appeal. In any case, if there are no longer any cars for sale at the premises, it would appear that the appellant would have partially complied with the first requirement of the notice.
50. The second strand to the appellant's case under ground (f) is that the notice lacks clarity over what structures are being referred to and they assert that some of the alleged matters have not occurred. However, I have considered whether the notice is a nullity as a procedural matter and have properly directed these other arguments to my consideration of the appeal under ground (b).
51. The appellant considers that a requirement to return the site to a functioning petrol filling station is excessive, but this is not a requirement of the notice. The notice simply requires the site to be restored to its original condition as shown in a photograph attached to the notice, which shows the appearance of the site prior

to the unauthorised development having taken place. There is no requirement for the appellant to recommence the use of the site as a petrol filling station and the presence of rubbish on the site at the time it was purchased, does not preclude the requirement to return the site to its original condition as illustrated in the photograph.

52. Consequently, I do not consider the requirements of the notice to be excessive to achieve the purpose of remedying the breach, and the appellant has not put forward any lesser steps that might achieve this. Therefore, the ground (f) appeal cannot succeed.

The appeal on ground (g)

53. The ground of appeal is that the time specified for compliance falls short of what should reasonably be allowed.
54. The appellant contends that 4 months is not enough time to clear the site, given the amount of work and cost that would be involved. Nor do they consider this to be sufficient to give notice to terminate the employment of those working at the site. For these reasons, they are seeking a 12 month period for compliance.
55. I acknowledge the appellants willingness to work with the LPA to find an acceptable way forward. I also appreciate that the Covid 19 pandemic is likely to have had an effect on the finances, health and general well-being of the appellants and those working at the site.
56. Nevertheless, the current unauthorised development is causing significant harm to the character and appearance of the surrounding area and has compromised highway safety to an unacceptable degree. It is therefore in the public interest that the breach of planning control is remedied as soon as reasonably possible. Extending the time period for compliance would unduly perpetuate the breach of planning control and the harmful effects I have identified. In my view, a period of 4 months is a proportionate response to the breach of planning control. This is sufficient time to give notice to employees and provides ample time for the appellant to make the necessary arrangements for the site to be cleared and restored in accordance with the requirements of the notice.
57. Therefore, the appeal on ground (g) fails.

Overall Conclusion

58. For the reasons given above, and having taken account of all other matters raised, 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 1990 Act as amended.

J M Tweddle

INSPECTOR