



Appeal Decisions

Inquiry held on 18 to 20 October and 8 November 2022

Site visit made on 20 October 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2023

Appeal A Ref: APP/U5930/C/21/3275895

Land at the rear of 48-50 Station Road, Chingford, London E4 7BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Consortium Properties UK Limited against an enforcement notice issued by Waltham Forest London Borough Council.
- The notice, numbered 475145, was issued on 29 April 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised material change of use of the land for the maintenance and repair of motor vehicles.
- The requirements of the notice are to:
 1. Cease the use of the property as a workshop for the repair and maintenance of motor vehicles (Use Class B2).
 2. Remove all machinery, hydraulic lifts, pneumatic drills along with minor tools, fixtures fittings associated with the unauthorised use.
 3. Remove all associated debris and detritus from the land in respect of steps 1 and 2 outline above.
- The period for compliance with the requirements is six months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) 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.

Summary Decision: Appeal A is dismissed and the enforcement notice is upheld with corrections as set out in the decision below.

Appeal B Ref: APP/U5930/X/21/3285564

Land to the rear of 48-50 Station Road, Chingford, London E4 7BE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mohammad Saeed Akhtar of Consortium Properties against Waltham Forest London Borough Council.
- The application ref 210661 is dated 3 March 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is stated in the application form as: 'The entire premises has been used for General Industrial (B2) for in excess of ten years. At present it contains a motor vehicle repair workshop. Need to clarify the use.'

Summary Decision: Appeal B is dismissed.

Application for Costs

1. An application for costs was made by Consortium Properties UK Limited against Waltham Forest London Borough Council. This application is the subject of a separate decision.

Preliminary Matters

2. Mr Mohammad Saeed Akhtar of Consortium Properties is the applicant for the LDC application subject of Appeal B, whereas the appellant for Appeal A is Consortium Properties UK Limited. As the latter of these is referred to in the evidence, I have regarded this company as the appellant for the purposes of both appeals. Evidence was given at the inquiry by Mr Mohammad Saeed Akhtar, the director of Consortium Properties UK Limited, as the appellant.
3. Mr Akhtar gave two sessions of oral evidence to the inquiry. After he had completed giving his initial evidence, all parties agreed that he could be brought back to the inquiry to give further evidence on certain matters.
4. All evidence at the inquiry was given under oath.

The Notice and the LDC application

5. Before considering the grounds of appeal on Appeal A, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
6. In the case of Appeal B, the powers of correction include those set out in section 191(4) of the 1990 Act.

Description of Development

7. The description of the development in the enforcement notice and that given in the LDC application form differs. There was some discussion on this at the inquiry, where it was agreed that the use of the land subject of the enforcement notice is the same as the use intended to be the subject of the LDC application. At the inquiry I suggested that the description of development subject of each appeal be altered as follows.
8. For Appeal A, I suggested that the notice be corrected to allege:

Without planning permission, the material change of use of the Land for the maintenance and repair of motor vehicles falling within use Class B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 as amended.
9. And for Appeal B, I suggested that the development for which the LDC is sought be described as:

The use of the land and building for the maintenance and repair of motor vehicles falling within use Class B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 as amended.

10. The parties agreed to the above descriptions and I am satisfied that no injustice would be caused were I to make these corrections.

The Notice – Remaining Matters

11. Having regard to the correction I intend to make to the allegation, as set out above, it must follow that the notice require the cessation of the breach, as corrected. I will, therefore, make the necessary corrections to requirement 1.
12. The land is occupied by a building, yet the description of the land to which the notice relates does not refer to this. In the interests of precision and clarity, I will include reference to the building in part 2 of the notice.
13. The short form of the land to which the notice relates is given in part 2 of the notice as 'the Land'. This short form will relate to the land and building, once the notice is corrected as I intend. Requirement 1 of the notice is not, however, consistent with this as it refers to 'the property'. In the interests of precision and consistency, I will correct requirement 1 of the notice to refer to 'the Land'. I will also include reference to 'the Land' in requirements 2 and 3.
14. The above corrections were discussed at the start of the inquiry. None of the parties identified any injustice that might be caused, were I to make these corrections. I am also unable to identify any injustice, particularly having regard to the minor nature of these corrections.

Ground (d) and Appeal B

The Main Considerations

15. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The starting point for the ground (d) appeal is the date of the breach. In order to succeed on this ground, the appellant must show that, prior to the issue of the enforcement notice, the use subject of the notice, once corrected as intended, had been continuous for a period of ten years beginning with the date of the breach¹. The relevant date for the ground (d) appeal is, therefore, 29 April 2011.
16. As for Appeal B, section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. For the appellant to succeed, they must demonstrate that on the date the LDC application was made, the use of the appeal site for the maintenance and repair of motor vehicles falling within use Class B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order) had been continuous for a period of ten years or more. The relevant date for Appeal B is, therefore, 3 March 2011.
17. Whilst I refer in the paragraphs above to the need for the appellant to demonstrate the continuity of the motor vehicle maintenance and repair use during the relevant 10 year periods, I note that there have been a number of other uses of the appeal site during these periods. Accordingly, the provisions

¹ In accordance with section 171B (3) of the 1990 Act.

of section 55(2)(f) of the 1990 Act are relevant in this case. In short, this states that a change from a use falling within a particular use class to another use falling within the same use class shall not be taken to involve the development of land.

18. Having regard to the matters in dispute between the parties, the main considerations in this case are, namely:
- whether or not the use of the appeal site for any purpose falling within Class B2 of the 1987 Order commenced prior to the relevant dates in this case; and
 - whether or not there has been a continuous use of the appeal site for a purpose falling within Class B2 of the 1987 Order for a period of 10 years beginning with the date (i.e. commencement) of the breach.
19. The test of the evidence in the case of both the ground (d) and Appeal B is the balance of probability and the burden of proof is on the appellant². Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. This advice is relevant to the ground (d) appeal, as well as Appeal B.

Reasons

20. As noted above, the relevant date of the ground (d) appeal is 29 April 2011 and 3 March 2011 for Appeal B. I note the parties' evidence provides details of the occupiers of the site in the years prior to these dates. I also note the appeal decision³ referred to in evidence, which relates to an LDC application for a use falling within Class B2. In dismissing the appeal, the Inspector concluded that the use would not have been lawful on the date the LDC application was made, which was 7 January 2011.
21. In that case the Inspector was principally concerned with how the earlier occupiers used the appeal site (Thomas Powell, in particular). There is little said in the decision about how the subsequent occupiers, referred to in evidence as Chingford Auto Services and Tormo and Mario Auto Services, used the site. Despite this, the appellant does not rely on the use of the appeal site by either of these two occupiers in order to date the commencement of the use of the site for a Class B2 purpose. The reason for this might be the suggested period of time when the site was vacant following its occupation by Tormo and Mario Auto Services. Instead, the appellant relies on the subsequent occupiers to date the commencement of the Class B2 use. The first of these is St Feida Ltd.
- *St Feida Ltd.*
22. The parties agree that St Feida Ltd. (SFL) used the appeal site for a purpose falling within Class B2, and that SFL's use of the site commenced on

² *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin).

³ Appeal decision reference APP/U5930/X/11/2154643.

- 1 July 2010. The appellant has provided a copy of the 9 year lease for the property for Mr Wan and Miss Wei Gao (i.e. SFL), which commenced on 1 July 2010. They have also provided the document referred to as the surrender of the lease, which states that Mr Wan and Miss Wei Gao were released from all future liabilities and obligations under the terms of the lease with effect from 30 April 2011. In his initial evidence given at the inquiry, Mr Akhtar said that SFL occupied and continued trading from the site from 1 July 2010 to 30 April 2011. This is consistent with his written evidence⁴.
23. The appellant's evidence of the continuous use of the site by SFL during Mr Wan and Miss Wei Gao's tenancy is not, however, supported by the Council's business rates information for the property⁵. This indicates that they only paid full business rates for the property for 4 months, until 1 November 2010, and that an 'empty exemption' applied for the remainder of their liability.
24. I do not consider this evidence to be contradicted by the email of 22 August 2011 from the Council's revenue officer to Mr Akhtar⁶ in which it states, 'the previous tenants vacated on 30th April 2011'. This email was clearly written to demonstrate the gap of a day between two of the appellant's tenants for the purposes of the liability for business rates, rather than for the purposes of demonstrating SFL's occupation and/or use of the site. Accordingly, the Council's records indicate that the site was not occupied and, therefore, not in use, between the beginning of November 2010 and the end of April 2011. The relevant dates are, of course, before the end of this period.
25. I note that the November 2010 date coincides with correspondence between SFL and the Council regarding the lawfulness of its use of the appeal site⁷. The Council's letter states that enforcement action is likely to be taken should their use of the site continue, which might explain the wish of Mr Wan and Miss Wei Gao to cease using the site as a vehicle repair garage. Added to this is the letter from the appellant dated 23 December 2010 in which it states that SFL vacated the site during 2010. This is consistent with the recollections of Mr Turner, the Rule 6 party, who is a neighbour of the site, although it was acknowledged that he had not been into the site during this period.
26. The evidence of both the Council and the Rule 6 party point to a break of some 6 months between SFL's last use of the site and the start of the use of the site by the next tenant. In view of the dispute between the parties with regard to the continuity of SFL's use of the site during this period, I have had regard to the two cases that have been drawn to my attention. These are *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 and the later *Bansal v SSHCLG & LB of Hounslow* (IP) [2021] EWHC 1604 (Admin). Both assist in determining lawfulness through the continuity of use. *Thurrock* confirms that a use could only become lawful if it continued throughout the relevant period, to the extent that the Council could have taken enforcement action at any time.

⁴ Both versions of Mr Akhtar's statutory declaration dated 6 September 2021 and 16 September 2022 at pages 672 and 513 of the inquiry bundle.

⁵ The business rates information is included in the Council's table at its appendix 12 and is also set out in ID04.

⁶ Page 747 of the inquiry bundle.

⁷ Letter dated 1 November 2010 from Mr and Mrs Wan to John Harrison (page 744 of the inquiry bundle) and the letter dated 5 November 2010 from John Harrison, Planning Officer, to Mr and Mrs Wan (page 742 of the Inquiry Bundle).

27. I acknowledge that SFL were still in possession of the site as tenants during the 6 month period. However, there is no dispute between the parties that a tenant might vacate a property prior to being released from the terms and conditions of a lease for that property; that the two need not happen at the same time. In these circumstances the property might not be in use by the tenant, but the tenant will still be required to pay the agreed rent up until they are released from the lease. That Mr Wan and Miss Wei Gao trading as SFL were bound by the terms and conditions of their lease of the site from July 2010 to April 2011 is not, therefore, determinative of whether or not they used the property for a Class B2 purpose for the duration of this whole period.
28. Mr Akhtar was asked about the inconsistency of his evidence with that of the other parties regarding the use of the site during the November 2010 to April 2011 period. His evidence on this matter was given during his second session of oral evidence. Mr Akhtar conceded that Mr Wan and Miss Wei Gao ceased their use of the site in November 2010, but suggested that this was temporary and that they recommenced their use of the site in the new year in 2011.
29. I find it surprising that Mr Akhtar did not mention this suggested two month gap in SFL's use of the site in either of his statutory declarations or during his first session of oral evidence to the inquiry, despite this being around a fifth of the period of the lease. Furthermore, Mr Akhtar's recollections of his visits to the site changed during the inquiry. Initially, he said that he had visited the site 2 or 3 times during the whole period of the lease, whereas his later evidence was of more regular visits during the period of January to April 2011.
30. This is a period of SFL's use of the site that is clearly crucial to the appellant's case and relevant to the lawfulness of the use. Mr Akhtar would have already viewed the Council's evidence, including the business rates details⁸, before giving his own oral evidence at the inquiry. Yet there is inconsistency in Mr Akhtar's evidence. As such, I do not find his recollections of activity at the site during this period sufficiently precise and unambiguous in demonstrating that SFL returned to the site and continued to use it for the repair of motor vehicles between January and April 2011.
31. There may have been times when Mr Wan and Miss Wei Gao were at the site during this period. They may well have told Mr Akhtar that they would trade from the site from January 2011 until they were released from their lease at the end of April 2011. Whether they kept to their agreement is another matter. For the reasons given above, I give limited weight to the evidence of their actual use of the site for a Class B2 purpose between January and April 2011.
32. Balanced against this is the evidence relied on by the Council, which includes the business rates records. These are corroborated by other correspondence and the recollections of the Rule 6 party. I have considered the possibility that SFL may have occupied and used the site, whilst still claiming an empty exemption for the purposes of business rates. I do not, however, have any evidence from SFL about this matter or their use of the site. That said, Mr Wan and Miss Wei Gao clearly understood the business rates process. It is, therefore, reasonable to say that they would have been aware that such

⁸ Included in the table at appendix 12 of the Council's evidence.

dishonesty may have resulted in some form of legal action against them. That they wished to avoid any form of action against them is evidenced by their response to the threat of enforcement action in the Council's November 2010 letter. This clearly prompted them to cease their use of the site in November 2010 and advise their landlord of their wish to move on.

33. All things considered, I cannot find that the appellant has discharged the burden of proof that is upon them with regard to SFL's use of the site during the period between the start of January to the end of April 2011. I am satisfied that the evidence relied on by the Council is sufficient to contradict and make the appellant's version of events less than probable. Whilst the site may well have been used for a purpose falling within Class B2 from 1 July 2010, it is agreed that this use ceased at the start of November 2010. I find it more likely than not that SFL's use of the site for a purpose falling within Class B2 did not commence again.
34. I do not find the 6 month break in the use of the site to be an insubstantial period. I acknowledge that there are likely to be gaps between tenants in the use of any premises like this, but that has not happened in this case. SFL were still in possession of the property up until the end of April 2011 and the lease of the next tenant started only a few days later. The appellant suggests that there was some activity towards the end of the 6 month period to prepare the site for use by the next tenant (which I move on to consider below). This does not, however, account for the remainder of the 6 month period. I find this break in the use of the site to be significant, as a matter of fact and degree, during which I conclude that the Council could not have taken enforcement action against the use of the site for a purpose falling within Class B2.
35. Accordingly, and applying the relevant test of the evidence, whilst it is agreed that the use of the site for a Class B2 use commenced in July 2010, this use did not continue beyond November 2010. The appellant has, therefore, failed to demonstrate, on the balance of probability, that the site has been used continuously for a period of 10 years beginning with SFL's first use of the site on 1 July 2010.

- *Branch Studios Ltd.*

36. Notwithstanding my conclusions above, I now move on to consider whether the commencement of the use of the site by Branch Studio Ltd. (BSL) might give the appellant success on the ground (d) appeal and/or Appeal B.
37. The appellant has provided a copy of the lease for the site for Mr Christian Gill of BSL, which commenced on 1 May 2011. This is, of course, after the relevant date for both the ground (d) appeal and Appeal B. Despite this, I note Mr Coward's reference to an email⁹ from Mr Gill, dated 24 March 2011. He said that this supports his suggestion that BSL's use of the site commenced prior to 1 May 2011 and that BSL would have been getting 'up and running' prior to the start of their tenancy. Mr Coward confirmed that he had not, however, been to the site prior to 2022, which is when he was first engaged by the appellant.
38. In the email Mr Gill asks if he can hand over the lease and collect the keys to

⁹ Page 468 of the inquiry bundle.

the site the following day (i.e. 25 March 2011). Were I to regard this date as the commencement of BSL's use of the site and, therefore, the date of the breach, this would not assist the appellant in his Appeal B as this is some 21 days after the relevant date in this case (i.e. 3 March 2011).

39. Notwithstanding this, despite the request in the email to hand the lease over on 25 March 2011, the lease was not signed until 1 May 2011. Mr Akhtar said that he visited the site regularly during BSL's tenancy. However, neither in his written nor oral evidence did he say that any of these visits to the site, at the very start of BSL's occupation, were prior to 1 May 2011. Neither did he say that he had passed the keys to the site to Mr Gill, as requested in the email, before the lease was signed.
40. Indeed, I am mindful that Mr Wan and Miss Wei Gao's lease did not end until 29 April 2011. That they were still in possession of the property as tenants up until that date is not consistent with the suggestion that, prior to this date, Mr Gill had started to prepare the site and use it for his own purposes. I have no corroborative evidence before me from Mr Gill regarding the commencement of his company's occupation and use of the site prior to 1 May 2011. I do have the Council's business rates records, which show that BSL's liability for business rates started on 1 May 2011.
41. The evidence before me does not support Mr Coward's suggestion that Mr Gill had been making preparations to use the site, or that his company's use of the site had started prior to 1 May 2011. For the reasons given above, I find it more likely than not that BSL's use of the site did not commence prior to 1 May 2011. Even if I were to conclude that the use by BSL fell within Class B2 of the 1987 Order, and that the Class B2 use had been continuous since BSL's first use of the site, the appellant would not succeed in either of the appeals. This is because I do not find the evidence sufficiently precise and unambiguous to demonstrate that, on the balance of probability, there has been a period of 10 years between the date of the breach starting with BSL's first use of the site and either the date of the Appeal B LDC application or the date the enforcement notice was issued.

Conclusion on ground (d) appeal and Appeal B

42. My conclusions with regard to SFL and BSL's use of the site can only mean that both the ground (d) appeal and Appeal B should fail. I have not, therefore, considered the remaining ground (d) and Appeal B matters in dispute between the parties.

Ground (a) and the deemed application for planning permission

Main Issues

43. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. It is important at this stage to clarify that the deemed application for planning permission under a ground (a) appeal is for the matters stated in the enforcement notice, once corrected as I intend. If I allow Appeal A on ground (a), permission would be granted for the use of the site for the maintenance and repair of motor vehicles falling within Class B2 of the 1987 Order, which the parties agree is the current use of the site. It is on this basis that I have considered the deemed planning application.

44. I note the substantive reasons for issuing the enforcement notice and from these I have identified the following main issues:
- i. The effect of the development on the living conditions of nearby residents by reason of noise, disturbance, fumes and odours; and
 - ii. Whether or not the development results in inconveniences for road users and is prejudicial to highway safety, having regard to the access to the site and any additional demand for on-street parking.
45. In addition to this is, of course, the matter of the weight I should give to other material considerations.

Relevant policy and guidance

46. Policy DM1 (Sustainable Development and Mixed Use Development) of the London Borough of Waltham Forest Development Management Policies Local Plan adopted October 2013 (WFLP) reinforces the presumption in favour of sustainable development, set out in the National Planning Policy Framework (the Framework).
47. Policy DM24 (Environmental Protection) of the WFLP deals with the matter of air quality and noise pollution. It informs that new development should not contribute to unacceptable levels of air pollution, and that noisy new development should normally be located away from noise sensitive uses. This is supported by Policy D14 (Noise) of the London Plan dated March 2021 (LP), which states that development proposals should manage noise by, amongst other matters, avoiding significant adverse noise impacts on health and quality of life, and mitigating and minimising the existing and potential adverse impacts from new development.
48. Policy CS13 (Promoting Health and Wellbeing) of the Waltham Forest Local Plan Core Strategy adopted March 2012 (WFCS) requires, amongst other matters, new development to ensure satisfactory amenity is provided for surrounding occupiers. Whilst the Policy refers to environmental standards that include noise and air pollution, these standards have not been drawn to my attention.
49. I note reference to WFLP Policy DM16 (Parking), criteria C) and F) in particular. The first of these lists the circumstances where development proposals will be resisted. These include where a proposal would hinder pedestrian movement or prove injurious to highway safety. The second requires development to provide sufficient on-site facilities for operational or servicing needs and sufficient pick-up, drop-off and waiting areas for taxis, cars and coaches, where these activities are likely to be associated with the development.
50. There is also reference to Policy T6 (Car Parking) of the LP. The Policy seeks to restrict parking in the interests of promoting the use of more sustainable modes of transport. It does, however, require adequate provision for efficient deliveries, servicing and emergency access.
51. LP Policy E7 (Industrial intensification, co-location and substitution) advocates a proactive approach to encourage the intensification of business uses in Use Classes B1c, B2 and B8 occupying all categories of industrial land.

52. The above mentioned policies are supported by the Framework. Section 8 in particular promotes healthy and safe communities and section 9 gives guidance on matters of highway safety.
53. Whilst the above development plan policies are the most relevant to the determination of the ground (a) appeal, a number of other policies have been referred to in the notice and in evidence. These include Policy DM32 (Managing Impact of Development on Occupiers and Neighbours) of the WFLP. The Council refer to criterion B)(iv) of the policy, which is relevant to the provision of facilities for the storage, collection and disposal of refuse for new development. The Council do not, however, suggest that the matter of waste and how it is dealt with is of concern in this case.
54. The Notice also refers to WFCS Policy CS14 (Attractive and Vibrant Town Centres), but I find the relevance of this policy to be limited. Its aim is to safeguard and strengthen the function of the Council's commercial centres and the policy sets out how this is to be achieved. Although Station Road may well be one such centre, there is no suggestion from the Council that the development would in any way harm its function.
55. The Council refer to Policy T1 (Strategic approach to transport) of the LP, although the Policy does not require what the Council suggests it does. Nevertheless, whilst I note the strategic aims of the policy, they are of limited relevance to the main issues in this case.

The appeal site and surrounding area

56. The appeal site is located to the rear of a busy row of commercial properties on Station Road. There is a mix of uses along this section of Station Road, including an estate agent, hot food take aways and retail stores. The majority of these commercial premises have residential accommodation above. Some of the adjoining properties along Station Road have the benefit of a long rear yard from which access can be gained to the rear lane. In other properties within this row the yard has been developed with various extensions, outbuildings or small warehouse type buildings.
57. To the rear of the site is Rale Lane, which can be accessed off Buxton Road. Beyond Rale Lane is a predominantly residential area characterised by rows of terrace properties. When travelling along Buxton Road from Station Road, there is a marked shift in the character of the area, from a busy high street and commercial area to a predominantly residential area.
58. The appeal site is occupied by a warehouse type building, which is large when compared to others in the area. It appears to straddle the former boundary between 48 and 50 Station Road. There is a large roller shutter opening and a smaller pedestrian door on the front elevation of the building, facing Rale Lane, as well as a pedestrian door opening to the rear of the building, facing the rear of Nos. 48 and 50. The internal layout comprises a spacious working area, within which there is space to accommodate and work on around 4 or 5 cars. There are small rooms to the rear and an enclosed office area towards the front.
59. The appeal site faces the rear boundary enclosures of a number of residential properties along Buxton Road, numbers 1a and 1b Buxton Road in particular.

Reasons

- Living conditions - noise and disturbance

60. The current occupier of the site is Evolution Vehicles London Ltd. (EVLL). At the inquiry the director of EVLL, Mr Nedelchev, described in detail how he currently uses the appeal site and the activity his company's use of the site generates. He employs 1 or 2 other mechanics and EVLL work on between 2 and 6 vehicles at the site each day. The size of the building is such that there is capacity to work on numerous vehicles at any one time. Mr Nedelchev described how vehicles are moved in and out of the site during the day; how customers deliver their vehicles to him; and how vehicles are delivered by recovery trucks.
61. The appellant has provided a noise assessment, which concludes that the use of the site is unlikely to cause excessive noise at the measurement point. Whilst the conclusions of the assessment are noted, the author was not at the inquiry to clarify how he undertook the measurements or to answer any questions about the assessment. For example, the report states that the noise survey was carried out for representative periods, but it does not indicate the duration of these periods. Furthermore, the assessment suggests that measurements were taken while only two separate pieces of equipment were in use and when the roller shutter door was closed. However, the size of the appeal building is such that 3 mechanics are able to work on site on a typical day and that work can be carried out on numerous vehicles at any one time. It is not entirely clear in the assessment what other activity was going on at the site, in addition to the operation of the machinery listed, when the noise measurements were taken. For these reasons I have limited the weight I can attribute to this evidence.
62. Notwithstanding the above, there is no dispute that the use of the site for the maintenance and repair of motor vehicles generates noise from numerous sources, not just those mentioned in the noise assessment. These sources include the other equipment used in the building; the engines of vehicles running both inside the site and on Rale Lane; the roller shutter door opening and closing; and the voices of staff working and directing vehicles into and out of the site. I was able to see a lot of the equipment and machinery used. I was also able to hear the noise made by various pieces of equipment when I was stood inside the building and then when I stood in Rale Lane, adjacent to the rear boundary of the closest Buxton Road properties, with the roller shutter door closed. I have also had the benefit of seeing the video recordings of activity at the site from the Rule 6 party, which included the difficult manoeuvring of large vehicles into and out of the site.
63. I acknowledge that not all noise generating activity, such as the sound of vehicles running inside the building, would cause detriment to nearby residents. I also acknowledge that the equipment I observed in use at the site is not likely to be used continuously throughout the day, and that noise generated by the use is not likely to be constant. I am, however, mindful of the numerous pieces of equipment at the site that generate varying levels of noise when in use. There was no suggestion that this equipment is rarely used or that it is not typical of a motor vehicle maintenance and repair garage. I am also mindful of the size of the building; the number of mechanics that can work at the site; and the number of vehicles that can be

accommodated at the site and worked on in a typical day by these mechanics. All of this indicates that the noise and disturbance generated by the use is likely to be noticeable and substantial, rather than low level and intermittent.

64. Indeed, the noise from the roller shutter door itself opening and closing is particularly notable. In view of the number of vehicles moved in and out of the building on a typical day and the need to test drive the vehicles being worked on, as described by Mr Nedelchev, the evidence before me indicates that the roller shutter door is frequently opened and closed during the day.
65. With the above in mind, I noted the very short distance between the main entrance to the site and the gardens of the properties opposite. These properties have much shorter gardens than those of their neighbours further along Buxton Road. The rear of the properties are, therefore, particularly close to the boundary with Rale Lane and, therefore, close to the appeal site. Noise and disturbance from the use of the site, including that from the use of machinery within the building, the roller shutter door opening and closing, the disturbance caused by the manoeuvring of large vehicles into and out of the site, is all experienced at close quarters by the occupiers of the nearby properties while in their garden and, to a lesser degree, while in rooms in the rear of their properties. In my judgement, this noise and disturbance is likely to cause an unacceptable degree of detriment to the living conditions of the residents of these properties.
66. I have had regard to the evidence of other interested parties who live near the site. In particular that given by Mr Prasath, who occupies a flat above the commercial premises at 46 Station Road. His evidence is that he is not disturbed by any noise from the appeal site. Whilst Mr Prasath's property is also close to the appeal site, it is located to the rear of the building, away from the activity at the main entrance and on Rale Lane. There is, therefore, likely to be a difference in the noise and disturbance experienced at his property when compared to that experienced by the occupiers of the Buxton Road properties, mentioned above.
67. I have considered the conditions suggested by the parties, including those relating to operating hours and sound insulation. However, I have limited information before me to indicate what type of noise mitigation measures could be implemented. I cannot, therefore, be satisfied that the adverse impacts of noise generated by the use, even if during daytime hours, could be adequately mitigated, in accordance with the relevant development plan policies.
68. Action could be pursued under other legislation, such as the Environmental Protection Act 1990. However, the considerations for action to be pursued under this legislation (i.e. whether or not there is a statutory nuisance) are different to those relevant to this appeal.
69. I am mindful that a degree of noise is to be expected from a commercial property such as this, if it were to be used for a purpose falling within use Class E(g)(iii) of the 1987 Order, which the appellant suggests is the lawful use of the site. However, noise generated by such a use must not cause detriment to the amenity of that area. As I cannot conclude that this would be the case for the use of the site subject of this appeal, I cannot draw any useful comparisons between the existing use and the suggested fall back use.

70. Having regard to all of the above, I conclude that, on balance, the noise and disturbance generated by the use of the site for the maintenance and repair of motor vehicles falling within use Class B2 of the 1987 Order has a detrimental effect on the living conditions of nearby residents. For this reason the use is in conflict with Policy DM24 of the WFLP, Policy CS13 of the WFCS, and Policy D14 of the LP. The development is also in conflict with the Framework and its advice on healthy and safe communities.

- Living conditions - fumes and odours

71. The use that is the subject of this appeal does not include vehicle body work and the current occupier of the site confirmed that this is not a service he provides. The matter of odours and air pollutants associated with such an activity is not, therefore, in dispute in this case. The parties' dispute is principally with regard to the effect of vehicle emissions, in particular the emissions from vehicles idling in Rale Lane.
72. I have been provided with an air quality assessment from the appellant and an air quality and odour appraisal from the Rule 6 party. Whilst the appellant's assessment considers emissions experienced on Rale Lane from activity within the garage, the author does not appear to have considered the effect of vehicles idling on Rale Lane. This matter is considered in the Rule 6 party's appraisal. There have not, however, been any on site measurements taken. Notwithstanding this, both assessments acknowledge that the appeal site is within a busy urban area where air quality is already adversely affected.
73. Access to the site is restricted, particularly for larger vehicles. There is a need for multiple manoeuvres to get these vehicles into and out of the site. The manoeuvring of all vehicles takes place within the confines of Rale Lane. The lane is narrow and this manoeuvring occurs within very close proximity to the gardens of the Buxton Road properties referred to above. Whilst I note the dispute between the parties with regard to prevailing winds, Rale Lane at the appeal site appears to be a fairly enclosed and sheltered location. The movement of up to 6 vehicles into and out of the site each day means that vehicles idling in Rale Lane is a daily occurrence that is likely to happen more than twice a day. That said, I acknowledge that the incidents may only last a few minutes.
74. With the above in mind, I have had regard to the experiences of the Rule 6 party as an occupier of the property adjoining Rale Lane opposite the appeal site. The evidence at appendix 17 of Mr Turner's proof of evidence are diary entries taken over a period of a month. Even if some of these incidents are a result of delivery vehicles to the rear of other properties along Station Road, this demonstrates a persistent problem of fumes and odour experienced by the nearby occupiers whilst the appeal site is in use. I find the evidence persuasive in demonstrating the detrimental effect of the use that is the subject of this appeal.
75. I cannot be satisfied that the movement of vehicles and incidents of idling vehicles in Rale Lane could be adequately controlled by way of the management plan condition suggested. These movements are necessary for the existing use of the site to continue. The necessary mitigation measures are likely to unreasonably restrict the operation of EVLL's business from the site. Despite the suggested condition restricting the size of the vehicles

entering the site, there is insufficient evidence before me to demonstrate that even the permitted vehicles would be able to enter and leave the site without multiple manoeuvres in Rale Lane.

76. I have had regard to the evidence of the use of Rale Lane by delivery vehicles accessing other commercial properties along Station Road. The emissions from vehicles idling in Rale Lane as a result of the use of the appeal site would, however, be in addition to the emissions from these delivery vehicles. This is in a location where the air quality is already affected by emissions from the existing activity in the surrounding area, which is described in the conclusion of the appellant's air quality assessment.
77. Having regard to the evidence of the occupiers of nearby properties, as well as all other evidence before me, I conclude that, on balance, the use of the appeal site for the maintenance and repair of motor vehicles falling within Class B2 of the 1987 Order has a detrimental effect on the living conditions of nearby residents by reason of fumes and odours. I find the use of the site to be in conflict with Policy DM24 of the WFLP and Policy CS13 of the WFCS. Again, I also find conflict with the Framework and its advice on healthy and safe communities.

- Highway matters - parking

78. As I refer to above, at the inquiry Mr Nedelchev indicated that up to 6 vehicles are worked on at the site each day and that he, along with 2 other mechanics work at the site. He suggested that the building can currently accommodate 5 vehicles. However, his evidence was that these spaces were taken up by the vehicles that he works on, rather than for customer or staff parking. He indicated that vehicles waiting to be repaired, or waiting for parts were not kept at the site. He also said that some customers would park in nearby streets when delivering their vehicles for repairs or servicing.
79. Clearly, the way the site is used at present does not allow for any on-site allocated vehicle parking, either for customers or staff. Furthermore, the appellant does not propose such on-site parking provision, reducing the number of vehicles that could be worked on at the site in a day. In lieu of on-site provision, Mr Nedelchev has referred to the site he uses for vehicle storage, which is a short drive from the appeal site.
80. I acknowledge that, in general, the relevant development plan policies seek to manage and restrict on-site parking for new development. Such an approach would be appropriate to the provision of employee parking, particularly in view of the location of the site and the reasonable access to public transport. However, the use clearly generates an operational need for parking. It is not a development that can be 'car capped' or car-free, as encouraged by the development plan.
81. Whilst I have no doubt that Mr Nedelchev uses the nearby site to store vehicles, there was no evidence of this being used by customers delivering their cars for repair. Neither was there evidence of this being used to deliver vehicles by tow truck. There was video evidence of such vehicles being deposited on the streets near the site.
82. I have considered whether the suggested management plan condition might sufficiently control the use of the nearby parking site. However, I cannot be

satisfied that such a condition would be reasonable, and that Mr Nedelchev has sufficient control over how vehicles are delivered by his customers and by the tow trucks, so as to ensure that the nearby storage site is used by all. Accordingly, I cannot regard the development subject of this appeal as providing sufficient parking facilities, either on-site or elsewhere, for the operational needs of the use. This is a particular requirement of WFLP Policy DM16.

83. In view of the above, I can only conclude that the use has created a demand for on-street parking in the area. In this regard, some parking spaces on Rale Lane were drawn to my attention. These were not, however, marked and their use would narrow the passing space in the lane. Also, it was not clear whether these were on private land within the control of the appellant.
84. At the entrance of Buxton Road from Station Road, parking longer than 15 minutes must be paid for. Otherwise, there is unrestricted parking in the wider residential area. There is, however, no dispute that on-street parking on the streets within the vicinity of the appeal site is limited. Indeed, during my site visit I observed the streets close to the appeal site and noted that there was very limited availability for on-street parking.
85. The supporting text of Policy DM16 advises that 'on-street parking spaces in particular, are a limited resource and demand exceeds supply in much of the borough'. I have no doubt that the streets surrounding the appeal site are such an area. The development subject of this appeal results in additional pressure for on-street parking in this area. The evidence, particularly that of interested parties, indicates that this additional pressure has led to inconveniences for road users, which cannot in my judgement be mitigated. Poor residential amenity is an inevitable result of an increase in the demand for on-street car parking in areas where demand is already high.
86. I acknowledge that there is limited evidence of any risks to highway safety that might be directly attributed to the current use of the appeal site. I am also mindful of the advice in paragraph 111 of the Framework. I cannot, however, disregard my findings above, that the use does not comply with Policy DM16 with regard to the provision of sufficient on-site facilities for the operational needs of the use. Neither does it comply with LP Policy T6 and the requirement for adequate provision for servicing.
87. The evidence before me may not be sufficient to demonstrate that the development is prejudicial to highway safety. I conclude, however, that it causes an unacceptable degree of inconvenience to road users as a result of the demand it generates for on-street parking. Although the harm caused in this case (and, therefore, conflict with policy) might not carry significant weight in the planning balance, it still weighs against the approval of the deemed planning application before me.

- Highway matters - access

88. I note both the Council and the Rule 6 party's concerns with regard to access to and egress from the site, particularly by large vehicles. I have had regard to the highway evidence and video evidence of the Rule 6 party, which is supported by the Council. This clearly demonstrates that access to the site by larger delivery vehicles is difficult. I am, however, mindful that Rale Lane is a rear lane. There was no suggestion that the lane is regularly used as a

through route or that it is heavily trafficked. There is also limited evidence of incidents of vehicles queuing on the lane, or of the use causing an unacceptable degree of inconvenience to other drivers.

89. Pedestrian movement in Rale Lane may be hindered when some vehicles manoeuvre in the lane in order to enter and leave the site. I am not, however, persuaded that there is significant pedestrian traffic on the lane, such that I could find an unacceptable degree of harm to these road users. Rale Lane does not provide direct access from Buxton Road to Willow Street, and it is a much less attractive pedestrian route to and from Mornington Road, when compared to the route along Buxton Road itself.
90. Turning to the junction of Rale Lane with Buxton Road, I have had regard to the Rule 6 party's evidence of the inadequacies of the junction, which is not disputed by the appellant. However, the suggested vehicle movements to and from the site have not been taken from any on site surveys. These are not consistent with Mr Nedelchev's evidence on this matter, which I found to be persuasive.
91. Both the Council and the Rule 6 party acknowledge that the appeal site is a commercial site. Whilst I have not considered whether the site would have a lawful use as a fall back to the development subject of this appeal, the Council has indicated that they would not oppose an alternative, and more appropriate use. With this in mind, and having regard to the limited evidence I have about the traffic at the junction prior to the commencement of the enforced against use, I do not have sufficient evidence to demonstrate that the additional traffic generated by the use has an unacceptable impact on highway safety at the junction.
92. All things considered, I have insufficient evidence to conclude that the use of the site causes an unacceptable degree of inconvenience to road users and is prejudicial to highway safety with regard to the access to the site. I do not, therefore, find the development to be in conflict with WFLP Policy DM16 or any of the other relevant development plan policies with regard to this matter. Neither do I find conflict with the Framework.

Other Matters

93. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
94. I acknowledge the support for business uses through the introduction of small units in Policy E7 of the LP. Whilst I have not determined what the lawful use of the site would be, in the event that I dismiss the ground (a) appeal, I am mindful of the Council's suggestion that a (former) Class B1 use¹⁰ of the site would be more consistent with the location. Such a use would also have the

¹⁰ A use that might now fall within Class E(g)(iii) of the 1987 Order.

support of Policy E7.

95. Indeed, the Council's approach is positive with regard to an alternative, and more appropriate use of the site. The appellant did not suggest that he would have difficulty finding tenants for the site, in the event that permission is refused for the deemed planning application. It is not, therefore, likely that the site would become and remain vacant, should the appeal be dismissed. Accordingly, I give minimum weight to the economic benefits of the development, suggested by the appellant, as I have no reason to find that these benefits would not occur, should I dismiss the appeal.
96. The appeal site may be in a location that has easy access to more sustainable transport modes. In view of the presumption in favour of sustainable development, set out in both the Framework and development plan policies, such a matter would have a neutral effect in the planning balance
97. I have considered whether conditions would overcome the harm caused in this case. Having regard to the evidence before me, I can only conclude that they would not.

Planning Balance and Conclusion

98. All things considered, I have no reason to conclude that my determination of this ground (a) appeal should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought not to be granted and that the ground (a) appeal should fail.

Ground (f)

99. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. Having regard to the requirements of the notice, its purpose must be to remedy the breach of planning control that has occurred.
100. The appellant suggests that his case under ground (f) should be read in conjunction with his case under ground (a). Whilst I note the appellant's suggestion, that the service of the enforcement notice is not proportionate in this case, I have concluded that planning permission ought not to be granted for the development that is the subject of this appeal. The Council may have previously investigated the use of the site and concluded that no enforcement action should be pursued. This does not, however, alter my conclusion with regard to the ground (d) appeal.
101. No alternative or lesser steps have been suggested to achieve the purpose of remedying the breach in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice, once corrected as I intend, are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.

Conclusion – Appeal A

102. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

Conclusion – Appeal B

103. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the use of the land and building for the maintenance and repair of motor vehicles falling within use Class B2 of the 1987 Order was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Formal Decision – Appeal A

104. It is directed that the enforcement notice is corrected by:

- The insertion in part 2 of the words 'and building' between the words 'Land' and 'at the rear';
- The deletion in its entirety of part 3.1. and its substitution with the words 'Without planning permission, the material change of use of the Land for the maintenance and repair of motor vehicles falling within use Class B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 as amended';
- The deletion in its entirety of part 5.1. and its substitution with the words 'Cease the use of the Land for the maintenance and repair of motor vehicles falling within use Class B2 (General industrial) of The Town and Country Planning (Use Classes) Order 1987 as amended'; and
- The insertion in part 5.2. and 5.3. of the words 'from the Land' after the word 'Remove'.

105. Subject to the corrections, 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.

Formal Decision – Appeal B

106. The appeal is dismissed.

J Moss

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Phillip Robson - Barrister	Kings Chambers
He called:	
Mr M S Akhtar	Director of the Appellant company
Mr Ian Coward MRTPI	Collins Coward Planning and Development Consultancy
Mr Dimitar Yordanov Nedelchev	Current tenant of the appeal site
Mr Wesley Prasath	Interested party - 46 Station Road Chingford London E4 7BE

FOR THE LOCAL PLANNING AUTHORITY:

Mr Roderick Morton – Solicitor	Ivy Legal Limited
He called:	
Ms Ingrid Smith	Waltham Forest London Borough Council

FOR THE RULE 6 PARTY:

Mr Martin Edwards – Barrister	Cornerstone Barristers
He called:	
Mr Andrew Turner	Interested party
Mrs Turner	Interested party
Ms E Hall BA(Hons) MSc MRTPI	WS Planning & Architecture
Dr Michael Bull	Michael Bull & Associates
Mr Paul Mew BSc MSc CMILT	Paul Mew Associates

INQUIRY DOCUMENTS

- ID01 Freedom of Information response from the Council
- ID02 Companies House details
- ID03 Rule 6 party – Rebuttal to the appellant’s Noise Assessment
- ID04 Email dated 16 September 2022 from the Council - Business Rates
- ID05 Details of Rule 6 party’s video evidence
- ID06 Details of highlights of Rule 6 party’s video evidence
- ID07 Conditions list