



Appeal Decision

Site visit made on 6 December 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2023

Appeal Ref: APP/P4605/W/22/3301089

9 Morcom Road, Birmingham B11 2JE

- 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 Zakia against the decision of Birmingham City Council.
- The application Ref 2021/09274/PA, dated 25 October 2021, was refused by notice dated 2 February 2022.
- The development proposed is the change of use to MOT centre in addition to car repairs.

Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of my site visit there did not appear to be any activities taking place within the appeal site. Nevertheless, I note that both the Council and appellant have stated that the site is already being used for a car repairs business. I have therefore dealt with the appeal on that basis.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of occupiers of neighbouring residential properties, with particular regard to noise and disturbance; and
 - highway safety, with particular regard to parking and the manoeuvrability of vehicles.

Reasons

4. It is common ground between the parties that whilst there are no previous planning permissions on the land, the appeal site was previously occupied for several years by a company which Companies House records categorised the business as the 'Manufacture of other fabricated metal product not elsewhere classified'. Following the cessation of this use the site was vacant for a period before more recently being used as a boxing gym. The appellant claims that the current use of the site for car repairs is lawful as it falls within Use Class B2 of the Town and Country Planning (Use Classes Order) 1987 (as amended) (UCO), which the appellant contends is the established lawful use of the site. As a result, the appellant is of the view that only the proposed MOT centre requires planning permission.
5. The Council however dispute this view and instead consider that the lawful use of the site falls within Use Class E(g)(iii) (formerly B1(c)) of the UCO and

therefore the car repairs business currently operating from the site is unlawful and requires planning permission.

6. Whether or not the current use of the site is lawful is not a matter for me to determine in the context of an appeal made under Section 78 of the Town and Country Planning Act 1990 (the Act). It is open to the appellant to seek a determination under Section 191 or 192 of the Act in relation to this matter. My decision on this appeal under Section 78 of the Act does not affect the issuing of a determination under either of these sections of the same Act.
7. Furthermore, I have been provided with little evidence that demonstrates with any certainty the type and level of activities that have historically taken place on the appeal site, and the dates on which those activities took place. Consequently, in the absence of an extant planning permission or certificate of lawfulness, I am not persuaded that there is a legitimate fallback position. I have therefore dealt with the appeal on the basis that planning permission is required for the whole development, including both the existing car repair business and the proposed MOT centre.

Living Conditions

8. The appeal site comprises two interlinked buildings, with a small, hard surfaced forecourt area to the front which is enclosed by palisade fencing and gates. Despite its previous employment use, the site is located within a predominantly residential area and is bordered on three sides by residential properties.
9. The appeal proposal seeks to retain the car repair business currently operating from the site, along with the addition of an MOT centre. The proposal would see the front part of the buildings being converted to an MOT testing centre, which would include a service counter and customer waiting area. The car repair business would operate from the rear of the building, whilst an office would be situated at first floor level.
10. Due to the nature of the activities involved, car repair businesses and MOT testing centres are not typically found in residential areas. Such uses inevitably generate noise from sources including car engines, doors opening and closing, and various tools and machinery, which have the potential to adversely affect the living conditions of occupiers of nearby residential properties. I observed during my site visit that the appeal site is located within a residential area of high-density and in very close proximity to residential properties, with the nearest dwelling, 11 Morcom Road, approximately 2.3 metres away from the appeal site.
11. The Council's Environmental Pollution Control Team has objected to the proposal on the basis that it is not considered that the use could appropriately operate in this location without having a significant adverse impact on the amenity of occupiers of neighbouring residential properties. It was also confirmed that complaints have previously been received from neighbours regarding vehicle parking and noise. Although there is no evidence before me to suggest that any formal action has yet been taken under the relevant legislation in respect of these complaints, it is nevertheless an indication that the existing car repair use is having an adverse impact upon residents' living conditions.

12. The appellant contends that the use of planning conditions would overcome the existing concerns as well as ensuring satisfactory living conditions for neighbouring occupiers. These proposed conditions include restricting the operating hours and delivery times and ensuring that all activities take place within the buildings with the doors closed. Whilst such conditions would ensure any activities were contained within the buildings and limited in duration, I am not persuaded that they would sufficiently control noise and disturbance and ensure satisfactory living conditions for neighbouring occupiers.
13. In the absence of a noise assessment, it has not been demonstrated that the existing buildings would sufficiently contain, or are capable of being adapted to sufficiently contain, the noise generated from the car repair and MOT centre uses. Furthermore, given the limited internal space within the buildings, the proximity of neighbouring residential properties, and the likely increase in vehicle movements to and from the site, I cannot be certain that the proposal would not have a significant adverse impact on the living conditions of occupiers of nearby residential properties by way of noise and disturbance.
14. The appellant also argues that the proposed MOT testing facility would result in a less intense use of the site in comparison to the site being occupied by solely a car repair business, primarily because the dedicated MOT bay would be booked in advance and occupied by a single vehicle for up to an hour at a time. Even if I were to be persuaded by the appellant's fallback argument, whilst the MOT testing facility may assist in reducing the overall number of vehicles capable of attending the site each day, given that the car repairs use would be retained at the site and as the MOT testing facility would involve similar activities being undertaken, I find that any reduction would be negligible and have no noticeable impact.
15. I therefore conclude that the proposed development would result in unacceptable living conditions for occupiers of neighbouring residential properties, with particular regard to noise and disturbance. The development would therefore be contrary to Policy PG3 of the Birmingham Development Plan (adopted January 2017) (BDP), and Policies DM2 and DM6 of the Development Management in Birmingham Development Plan Document (adopted December 2021) (DMB). These policies, amongst other matters, seek to ensure that developments are compatible with adjacent uses and do not result in unacceptable adverse impacts on the amenity of neighbours.

Highway Safety

16. The appeal site would utilise the existing vehicular access from Morcom Road, an unclassified road which provides access to several predominately residential properties. Given the lack of external space to the front of the appeal buildings, the site does not possess sufficient external space for vehicle manoeuvring or off-street parking here.
17. Policy DM15 of the DMB requires that development proposals for parking and servicing shall avoid highway safety problems and protect local amenity. Furthermore, parking and servicing should be designed to be secure and accessible to users and adhere to the principles of the relevant Supplementary Planning Documents. The Council's current car parking standards are detailed within the Birmingham Parking Supplementary Planning Document (November 2021) (BPSPD). The BPSPD states that for uses involving the storage of vehicles that are being serviced or repaired, including a garage or MOT centre,

adequate on-site provision for vehicles is required including a minimum of 4 spaces per working bay.

18. The proposed development however would only provide a total of 7 car parking spaces all contained within the building itself, with 3 spaces allocated for the MOT centre and 4 for the car repairs operations. Although the provision of parking spaces within a building may not be unusual and whilst it may not be beyond the capabilities of a typical driver to find the allocated spaces, given the low number of available spaces and the limited internal space which would likely hinder manoeuvrability, I find it highly probable that vehicles would park on the highway.
19. Whilst un-restricted on-street parking is available in the vicinity of the appeal site, the Council has received complaints in relation to parking associated with the site. At the time of my early afternoon site visit I noted that there were a limited number of on-street parking spaces available in the immediate vicinity of the appeal site, with vehicles parked along both sides of the majority of Morcom Road. Although my site visit was only a snapshot in time, it is an indication that demand for on-street parking in the area is relatively high particularly given that my site visit was undertaken at a time when I would expect several residents to be away from home at work.
20. I acknowledge that this lack of external space for vehicle manoeuvring or parking would equally apply to any use of the property, however I find that the nature of the proposed use would likely give rise to a high level of vehicle movements to and from the site on a daily basis. This would significantly increase the likelihood that all vehicles would be unable to be contained within the site itself and would therefore overspill onto the highway, adding to the demand for on-street parking.
21. Although the existing carriageway width on Morcom Road means that on-street parking can be accommodated along both sides whilst still affording sufficient room for vehicles to drive down the centre of the road, the on-street parking of vehicles will nevertheless make manoeuvrability on the highway more difficult. Although the Council raises no concerns in respect of the visibility splays available at the property, I observed that as well as making parking more onerous the number of vehicles parked along the highway often restricted visibility when exiting properties along Morcom Road.
22. Given the limited space within the buildings and the lack of any useable external space at the appeal site, I find it highly likely that, particularly during busy periods, vehicles would be unable to exit the site in a forward gear resulting in them having to reverse onto the highway. I accept that vehicles reversing onto the highway may occur at other properties along Morcom Road, however these properties are predominantly residential and vehicle movements would therefore be relatively infrequent. Accordingly, I find that the proposal would increase both the likelihood and frequency of vehicles reversing onto the highway which, when combined with the reduced visibility and manoeuvrability caused by on-street parking, would be detrimental to the safety of highway users.
23. The appellant has highlighted that the appeal site and surrounding roads are not particular accident hotspots, with only one incident in 2019 identified in the vicinity of the site. Whilst that may be the case, I do not consider that this

demonstrates that the appeal proposal would not give rise to highway safety concerns as identified above.

24. As a result, I conclude that the proposed development would not provide sufficient space on-site for vehicle manoeuvring or parking, to the detriment of highway safety. The proposal would therefore be contrary to Policies PG3 and TP44 of the BDP, Policies DM14 and DM15 of the DMB, and guidance contained within the BPSPD. These policies, amongst other matters, seek to ensure that developments do not have an unacceptable adverse impact on highway safety.

Other Matters

25. I recognise that there would be benefits arising from the proposal, including the use of an existing building and the creation of six full time jobs and one part time job. However, I find that the scale of these benefits would be modest and do not outweigh the harm that would be caused by the proposed development.

Conclusion

26. The proposal would conflict with the development plan when taken as a whole, and there are no material considerations which would outweigh this finding. For the reasons given above the appeal is therefore dismissed.

David Jones

INSPECTOR