The Planning Inspectorate

# Appeal Decision

Site visit made on 7 December 2022

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 January 2023**

**Appeal Ref: APP/W5780/C/21/3282648**
**Land at 56-58 Chigwell Road, South Woodford, London E18 1NN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Prime Motorz Limited against an enforcement notice issued by London Borough of Redbridge.
- The notice, numbered E0169/21, was issued on 11 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use of the premises to car wash (Sui generis) and for the sale of fruit and vegetables.
- The requirements of the notice are to: i. Cease the use of the site as a car wash. ii. Remove all fittings and fixtures associated with the car wash. iii. Cease the use of the site for the sale of fruit and vegetables. iv. Remove all fittings and fixtures associated with the sale of fruit and vegetables. v. Remove from the land all building materials and rubble arising from compliance with the steps i, ii, iii and iv above.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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. It is directed that the enforcement notice is corrected by: deleting the matters which appear to constitute the breach of planning control at part 3 of the notice and substituting it with '*Without planning permission, the material change of use of the premises from a tyre shop (sui generis) to a mixed use as a tyre shop, car wash and for the sale of fruit and vegetables'*; and deleting the requirements at part 5 of the notice and substituting them with *'i. Cease the mixed use of the site as a tyre shop, car wash and for the sale of fruit and vegetables. ii. Remove from the land all building materials and rubble arising from compliance with step i.'*

2. Subject to these 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 as amended.

## Preliminary Matters

3. At the time of my site visit, the operations as alleged by the notice appeared to have ceased and the site was boarded up along Albert Street and gates were locked on Chigwell Road. There was no car washing equipment visible, but advertisements for the car wash remained in place. There was no indication of fruit and vegetable sales at the site.

4. Section 181(1) of the Act provides that compliance with any of the requirements contained in an enforcement notice shall not discharge the notice. Under s181(2), any requirement of an enforcement notice that a use is discontinued shall operate as a requirement that it be discontinued permanently, and so the resumption of the use at any time after discontinuance shall be in contravention of the enforcement notice. The requirements of an enforcement notice thus have an enduring effect. If it is complied with but there is a later breach of the requirements, s181(1) and (2) mean that remains enforceable under s179. Accordingly, it remains necessary to determine the appeal.

5. The submissions provide that planning permission was granted in March 2019 for the redevelopment of the site to provide offices, a day nursery, two dwellinghouses and seven flats. It is also understood that the site is subject to further redevelopment proposals which are purported to be advanced in the future. I note the appellant's statement suggests that planning permission is sought for a 'meanwhile use' in advance of the redevelopment of the site. The statement of case suggests a temporary consent until September 2022 by which time it is anticipated that the site redevelopment proposals would be advanced. In these circumstances, although that date has passed, I shall consider both a temporary and permanent mixed use of the site in my decision.

6. Planning application 1246/21 for part change of use from tyre shop to tyre shop/car wash and an area for the sale of fruit and vegetables with associated development and access was refused by notice dated 16 July 2021.

**Matters concerning the notice**

7. It is clear from the evidence that the notice does not describe all the components of the mixed use that were taking place at the time of the notice. In mixed use cases, the allegation should refer to all the components of the mixed use, that is the tyre shop, car wash and sale of fruit and vegetables. Where there is a mixed use, it is not open to the LPA to decouple elements of it[1]. The use is a single mixed use with all its component activities.

8. Accordingly, the alleged breach of planning control should be corrected to include all the elements of the mixed use and the requirements should be corrected to reflect the breach. Where some lawful activity is referred to in the allegation, as part of a mixed use and in this case the tyre shop[2], the EN cannot require it to cease. In these circumstances, I am satisfied that correcting the notice under my powers pursuant to s176(1) of the Act would not cause any injustice to either party.

9. An enforcement notice issued under s172 of the Act shall specify all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice[3]. While no relevant development plan policies are referred to in the LPA's reasons for issuing the notice, policies are referenced in the submissions from the LPA and in the appellant's statement. Therefore, I am satisfied that the recipient of the notice had sufficient information on which to base their appeal.

[1] R (oao) East Sussex CC v SSCLG [2009] EWHC 3841
[2] Planning permission 2543/16 for 'Change of use from B2 to tyre shop (Sui Generis) granted February 2017
[3] The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR4b)

## Main Issues

10. The main issues are the effects of the development on i.) the living conditions of occupiers of neighbouring properties regarding noise and disturbance due to the business activities and pedestrian and vehicular traffic and ii.) the environment in terms of air pollution and surface water pollution.

## Reasons

11. The appeal site is situated on a corner plot where Albert Road meets Chigwell Road. The surrounding area is predominately residential. There are a few commercial properties and a parade of retail/commercial units with residential flats above, further along Chigwell Road on the opposite side. Adjoining the site is a children's day nursery and two pairs of semi-detached houses which face Chigwell Road. Directly opposite are units of flatted accommodation and there are residential properties which adjoin the site on Albert Road and rear gardens of properties which adjoin the site on Granville Road. The site lies within the designation of a 'Key Retail Parade'.

*Living conditions – noise and disturbance*

12. The appeal on ground (a) seeks planning permission for the mixed use of the site with the retention of a car hand wash facility for customers that may visit the site for tyres and for those simply requiring their vehicles to be washed. It also seeks to retain the use of the site for the sale of fruit and vegetables.

13. The submissions indicate that the car wash could accommodate around 5 cars at any one time undergoing different stages of cleaning. This would be in addition to cars within the site using the tyre shop facilities. Cars would enter the site from Albert Road and exit onto Chigwell Road. This one way system is suggested to aid the free flow of traffic through the site and to prevent queuing on the public highway. There is no information provided to show where the car wash or sale of fruit and vegetables would operate from or any indication of the level of sales.

14. Nevertheless, it is anticipated by the appellant, through experience of historic trading levels, that the set up would enable all vehicles using or delivering to the site to be able to park within the site and therefore not adversely impact the public highway. They consider that the mixed use of the site would have limited additional impact on the noise levels already experienced by those who live and work near the appeal site. Furthermore, they consider that customers visiting to buy fruit and vegetables would mostly do so on foot.

15. The mixed use of the site would undoubtably further increase noise levels generated at the appeal site, particularly due to car washing taking place outside and the nature of the use. The car wash would give rise to additional noise from the sound of pressure hoses associated with the jet wash facilities and its impact on car body work, together with car movements and other associated activities such as engines running, car audio equipment, doors being opened and closed, and conversations. At busy times jet washing could be in almost continuous use to ensure a swift turnover of vehicles and there are no reasonable means to limit those operations.

16. Further to the car wash facility, the sale of fruit and vegetables from the site is likely to generate additional pedestrian and vehicular movements. Passing customers in vehicles may use the site solely for food purchases or combining

their trip with the other services taking place within site or nearby. While there is no information to indicate the extent of the use would be limited, it is patent that the mixed use of the site will generate further noise and disturbance than previously experienced. Although it is suggested that cars that could not be accommodated within the site would be turned away to prevent vehicles queuing at the site and generating more noise from engines idling, this would not be enforceable and in practice difficult to manage.

17. The surrounding residential properties and their outdoor areas, together with the children's day nursery, are in a location where background noise levels are already relatively high, particularly along the Chigwell Road. In such circumstances, the extent of an increase in noise levels arising from the mixed use of the site would likely have an adverse effect that would be noticeable and disruptive. This would likely result in a material change in behaviour for occupiers of the properties, such as avoiding the use of rear gardens and having to keep windows closed most of the time during the hours of operation of the car wash.

18. The resultant change to the acoustic character of the immediate surroundings of the site during the daytime would likely have a harmful effect upon the living conditions and the quality of life of occupiers of neighbouring properties due to the noise and disturbance that would be experienced. This would be further exacerbated during the weekends and bank holidays when it is expected that many residents would be at home enjoying the time carrying out household and leisure activities in their homes and gardens.

19. I accept that the occupiers of the neighbouring properties would be used to a certain level of noise and disturbance associated with the tyre shop and the traffic movements along the busy Chigwell Road to the front of the site. Furthermore, I acknowledge that the site is within a key retail parade which suggests a level of retail commercial activity. However, the fact remains that the mixed use of the site is sui generis being mainly of an industrial nature in a predominantly residential area. The previous use as a tyre shop does not justify making matters materially worse by extending the uses carried out within the site.

20. In the absence of a noise assessment or any other quantitative evidence to demonstrate to the contrary, I consider that given the opening hours over 7 days a week[4], anticipated level of activity and various potential noise sources, the mixed use of the site as alleged, even for a temporary period, would generate further noise disturbance that would likely adversely impact on the occupants of neighbouring properties and compromise their quality of life.

21. Overall, the evidence before me fails to demonstrate that noticeable disturbance to occupiers of nearby properties would not occur. Therefore, I find that the mixed use of the site conflicts with Policies 24 and 26 of the Redbridge Local Plan 2015-2030 (the LP) which seek, among other things, to protect the quality of life of neighbouring occupiers in relation to noise. These policies are consistent with the National Planning Policy Framework core principle of requiring a good standard of amenity for all existing and future occupants of land and buildings.

[4] Monday to Saturday 0800 to 1800 and Sundays 1000 to 1600

*Environmental effects in terms of air pollution and surface water pollution.*

22. The evidence before me from both sides regarding air pollution and surface water pollution is very limited. The council considered that due to inadequate supporting details, it was unable to satisfactorily conclude that the use would not have a detrimental effect on the environment regarding air and surface water pollution. The appellant says that the car wash facility operates using a handheld jet wash and sponges and a drainage channel which connects to the existing surface water drainage system via a silt trap and interceptor. While I have no clear evidence to show that the car wash causes harm in respect of surface water pollution, to ensure that appropriate drainage measures were provided, this could be controlled by means of an appropriately worded condition.

23. However, I do consider that the mixed use of the site would likely generate additional traffic that could potentially increase the levels of air pollution which would have a detrimental impact on the local environment. To reduce the level of potential air pollution from an increase in traffic movements around the site, the appellant states that the car wash would turn away customers who could not be accommodated on the site to reduce pollution from idling engines. However, as stated above, such a practice would not be enforceable and would likely be impractical.

24. Overall, the mixed use of the site for either a temporary or permanent use would conflict with Policy 24 of the LP which requires all new development to ensure that the health of residents is not jeopardised through exposure to pollutants or other hazardous substances, or their quality of life is not degraded.

**Conclusion on ground (a)**

25. For the reasons given above, and taking all other matters into consideration, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission for either a temporary or permanent consent on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*S A Hanson*

INSPECTOR