



Appeal Decision

Site visit made on 6 February 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/R5510/C/21/3285650

Land formally known as The Willow Tree Public House, Willow Tree Lane, Yeading, Hayes UB4 9BG and Land on east side of Jollys Lane, Hayes UB4 9BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Inderpal Johal on behalf of Imperial Coaches Ltd against an enforcement notice issued by London Borough of Hillingdon.
- The notice, numbered HS/ENF/019294, was issued on 13 October 2021.
- The breach of planning control as alleged in the notice is the use of land for mixed usage as car sales and open air car and vehicle storage.
- The requirements of the notice are:
 - (i) Cease the use of the land for car sales;
 - (ii) Cease the use of the land for car and vehicle storage;
 - (iii) Remove from the land all motor vehicles associated with the unauthorised mixed-use of the land for car sales and open air car and vehicle storage;
 - (iv) Remove from the land the portable building(s), lighting columns, CCTV columns, and all other materials, equipment, machinery, tools and paraphernalia that facilitate the unauthorised mixed use of the land;
 - (v) Remove from the land all fixtures and fittings, waste and building material together with all plant, equipment and machinery used in compliance with requirements (i) to (iv) above as appropriate.
- The period for compliance with the requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Enforcement Notice

1. The enforcement notice (the notice) alleges the use of land for mixed usage as car sales and open air car and vehicle storage.
2. Paragraph 1 of the notice states that there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'.
3. Whilst the notice refers to 'the use of land' it does not allege that a material change in the use of the land has occurred. It therefore follows that the

allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.

4. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
5. However, having regard to the appellant's case and their appeal under grounds (a), (f) and (g), they have clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the notice to include reference to a material change of use would not cause injustice in this case.
6. The allegation in paragraph 3 of the notice refers to '...open air car and vehicle storage...' However, requirement (ii) in paragraph 5 of the notice does not make reference to 'open air' and therefore does not align directly with the allegation in paragraph 3. As there are no buildings on the appeal site, there is no need to differentiate 'open air' storage from any other storage, such as indoor storage. As such, I am satisfied a correction of the notice to omit reference to 'open air' from the allegation would not cause injustice in this case.
7. Furthermore, none of the requirements in paragraph 5 of the notice refer to the cessation of the 'mixed usage' of the land, which is the alleged breach of planning control. In the interests of clarity, I am satisfied that a correction of the notice to include reference to cessation of the mixed use would not cause injustice in this case.

The appeal on ground (a)

Main issues

8. The main issues are:
 - The effect of the development on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance; and
 - The effect of the development on the Hillingdon Air Quality Management Area (AQMA).

Reasons

Living Conditions

9. The appeal site comprises a large, open yard bound by timber fencing. Access to the site is via a gated entrance directly off Jollys Lane. At the time of my site visit, there was a large number of cars that were advertised for sale stored on one side of the yard and lorries, lorry trailers and a coach stored on the other side.
10. Within proximity of one side of the yard is Clayton Terrace - a row of two-storey terraced dwellings. On the opposite side of Jollys Lane, and the entrance to the site, are more dwellings. Vehicles entering and exiting the site and manoeuvring within the site would likely generate noise, as a result of, for

example, engines running and reverse warning alarms from the lorries and coaches. Furthermore, staff and customers arriving at and departing from the site and cars being delivered on a car transporter would also contribute to the overall level of noise and disturbance emanating from the site and its use.

11. Due to the proximity of neighbouring dwellings to the appeal site, this noise and disturbance would likely be clearly discernible to the occupants of these properties, to the extent that it would have a detrimental effect on their enjoyment of their homes.
12. The appellant contends that a noise report would be carried out to assess the effect on neighbouring residents. However, no such report has been presented before me.
13. I find therefore the development has an unacceptable harmful effect on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance. As such, the development is contrary to Policy EM8 of the Hillingdon Local Plan: Part 1 – Strategic Policies 2012 (the LP1), Policy DMHB 11 of the Hillingdon Local Plan: Part 2 – Development Management Policies 2020 (the LP2) and Policy D14 of the London Plan, which, amongst other things, seek to ensure development does not adversely impact on neighbouring occupants.

Air Quality

14. The appeal site lies within the Hillingdon AQMA. The appellant contends that a highway report would confirm that the use of the site would not adversely impact vehicle emissions in the area. However, no such report is before me.
15. Taking a precautionary approach, it is reasonable to conclude that vehicles associated with the alleged use of the site moving within and around the appeal site would invariably produce emissions. In the absence of any evidence to the contrary, these vehicle emissions would likely have a negative effect on the air quality within the area.
16. Consequently, it has not been sufficiently demonstrated that the development does not have a harmful effect on the AQMA. As such, it is contrary to Policy DMEI 14 of the LP2, which seeks to ensure that development demonstrates appropriate reductions in emissions. It would also be contrary to Policy SI 1 of the London Plan, which, amongst other things, seeks to ensure development does not lead to further deterioration of existing poor air quality.

Other Matters

17. The appellant states that, historically, the site has been used as a coach yard. However, there is no substantive evidence that such a use of the site is lawful. The Council confirm that planning permission was granted on appeal¹ in 2010 for the 'change of use for parking of two commercial vehicles, temporary cabin for use as storage and retention of fencing, to include new trellis and landscaping' subject to a condition that it was only to be used as such for three years. The temporary period of three years for the permitted use has since expired and the Council confirm that the existing coach/HGV (parking and training) is unauthorised.

¹ Appeal reference APP/R5510/A/10/2131203

18. The appellant argues that the alleged use is not detrimental to the highway network. However, this is not disputed by the Council and does not form a reason for issuing the notice. In any event the lack of harm to highway safety is a neutral matter and does not outweigh the harm to the living conditions of the occupants of neighbouring residential properties or the Hillingdon AQMA.

Conclusion on the ground (a) appeal and the deemed planning application

19. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude the ground (a) appeal should fail and the deemed planning application should be refused.

The appeal on ground (f)

20. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
21. The appellant's case under ground (f) is that 3 months to comply with the requirements of the notice is not reasonable. However, this is a ground (g) argument.
22. The appellant also contends that as the site has a historical use for the parking of coaches the use of the word 'vehicle' in the requirements of the notice should be omitted. However, as there is no substantive evidence the site benefits from a lawful use for the parking of coaches, the cessation of the use of the site for the storage of vehicles, including coaches, is not excessive in order to remedy the breach of planning control.
23. Ground (f) cannot therefore succeed.

The appeal on ground (g)

24. This ground of appeal is that the period for compliance is unreasonably short.
25. The period for compliance with the requirements of the notice is three months. The appellant contends that additional time is required to secure a site with a lawful use for car sales in the immediate vicinity and relocate the vehicles. Consequently, they request a period of six months to comply with the requirements of the notice.
26. However, given the works required to complete the requirements of the notice are relatively minor, three months seems a reasonable period of time, even accounting for finding a premises that could accommodate the relocation of the business.
27. In summary, from the available evidence I consider that the three month period specified in the notice is reasonable, and I do not find justification for extending it.
28. I therefore conclude that the ground (g) appeal must fail.

Formal Decision

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

- a) The deletion of the word “use” under paragraph 3 and substituting “material change of use”.
 - b) The deletion of the words “open air” under paragraph 3.
 - c) The deletion of requirements (i) and (ii) under paragraph 5 and substituting “Cease the mixed use of the land for mixed usage as car sales and car and vehicle storage by:
 - a. ceasing the use of the land for car sales; and,
 - b. ceasing the use of the land for car and vehicle storage.”
30. 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 as amended.

Alexander Walker

INSPECTOR