



Appeal Decision

Site visit made on 4 April 2023

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2023

Appeal Ref: APP/A5270/C/22/3291125

Premises known as 23 Aintree Road, Perivale, Middlesex, UB6 7LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by JNT Property Ltd against an enforcement notice issued by London Borough of Ealing.
- The notice was issued on 7 December 2021.
- The breach of planning control as alleged in the notice is:
Without planning permission: The material change of use of the land by the creation of separate self-contained planning units numbered B - J used for various automotive uses.
- The requirements of the notice are:
 1. Cease the use of the land as separate self-contained planning units;
 2. Remove kerb ramps along Walmgate Road;
 3. Remove all business signage associated with the unauthorised uses of units B-J;
 4. Remove the timber/pvc canopy extension from the front of Unit E; and
 5. Reinstate the palisade fencing along Walmgate Road.
- The periods for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the 1990 Act. 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 1990 Act.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. The name of the appellant on the appeal form is cited as JNT Property Ltd but it is clear that this is a typographical error, and it should be JNT Property Ltd. As such, this is the name utilised in the banner heading above.

The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
3. Based on my observations at the site visit, it is apparent that the plan attached to the enforcement notice does not accurately reflect the area affected by that notice. The plan includes parts of the building that were vacant at the time the notice was issued and it includes a unit to the north that is not leased by the appellant and does not form part of the alleged breach of planning control. As the correction to the plan would reduce the area affected by the notice it would not cause any injustice to either main party. I therefore intend to substitute the plan attached to the notice with the amended plan annexed to this decision.

4. The description of the alleged breach should precisely describe the alleged breach as it is the basis for the deemed planning application through the ground (a) appeal. Based on the evidence before me, at the time the notice was issued, the warehouse part of the building had been subdivided into individual units that are physically and functionally separate. The reference to separate planning units is superfluous and to ensure that the description is precise the use that each unit was in at the date the notice was issued should be included within that description. The unit numbers are taken from the signage above each unit I observed on the site visit. Both parties were given the chance to comment on the suggested corrections. The corrections reflect the evidence provided by both parties as to the use of each unit at the time the notice was issued and they would not materially alter the effect of the notice. As a result, the corrections can be carried out without injustice to the parties. I intend to delete all the wording after the words *'by the'* within section 3 of the notice with *'subdivision into individual units in the following uses: Unit 23 A - Car Repair Garage; Unit 23 B - Car Sales/Showroom; Unit 23 C - Car Repair Garage; Unit 23 D - Car Repair Garage; Unit 23 E - Alloy Wheels and Tyre Refurbishment and Fitting; Unit 23 F - Car Sales/Showroom.'*
5. Furthermore, the requirements would need to be corrected to reflect the corrections to the description of the alleged breach and given my findings above the corrections can be carried out without injustice to the parties. I therefore intend to delete the wording of requirement 1 and substitute it with *'1. Cease the use of the land as individual units in the following uses - Unit 23 A - Car Repair Garage; Unit 23 B - Car Sales/Showroom; Unit 23 C - Car Repair Garage; Unit 23 D - Car Repair Garage; Unit 23 E - Alloy Wheels and Tyre Refurbishment and Fitting; Unit 23 F - Car Sales/Showroom.'* I also intend to delete the wording *'B-J'* and replace it with *'23 A - F'* within requirement 3 and add the wording *'23'* between the words *'unit'* and *'E'* in requirement 4. There is a typographical error in requirement 5 therefore I intend to delete the additional *'s'* in the word *'palissade'*.

The ground (c) appeal

6. This ground of appeal is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the onus is on the appellant to show, on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. For example, the appellant needs to show that development has not occurred for the purposes of section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute *'permitted development'*. The planning merits of the development are not relevant as my decision on this ground of appeal rests on the facts of the case, on relevant planning law and judicial authority.
7. The appellant has stated that the Council invited them to submit full planning applications for each individual unit and that *'two mechanical shops have been operating since 2019 or 2018 as full planning applications are still pending since 2019 or 2018'*. Even though, the Council invited planning applications for the individual units I have no evidence before me to indicate that planning permission has been granted for any of the uses/units affected by the enforcement notice.

8. The appeal building is within an area that is generally characterised by industrial/commercial uses. The evidence before me indicates that prior to the alleged breach of planning control taking place the last known use of the appeal building was as a warehouse. That use would have fallen within Class B8 (storage or distribution centre) of the Schedule to The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). The Council have stated that it is assumed that the warehouse use was lawful as that use appears to have been undertaken between 2008 and 2019 and photographs of the building show it to be relatively unaltered during that time. I have no reason to dispute those findings.
9. The concept of the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of a change of use. As a rule and starting point the planning unit is the area in the same occupation or ownership because that is normally the unit in which a set of functionally and physically interdependent activities are carried out. The assessment is a matter of fact and degree.
10. In this case, the appellant has a lease for all the appeal building. However, at the time the notice was issued the appeal building was subdivided into individual units, Units 23 A through to F and those units were in use as car repair garages, car sales/showrooms and for alloy wheels and tyre refurbishment and fitting. Each unit was therefore occupied separately for different and unrelated purposes and physically and functionally separate to the other units with fencing between some of the forecourt areas. Therefore, the appeal building had been subdivided into six separate planning units when the notice was issued.
11. The external effects – visual, noise and traffic impacts- of the subdivision into separate units have been registered by third parties and the Council. Their evidence including the photographs indicate that there has been a profound change in the character of the activities operating from the appeal building with regards to the number of trips generated, the number of parked vehicles on the highway and the use of the highway and forecourt areas for car repairs. Based on my observations at the site visit I have no reason to dispute it and that evidence has not been challenged by the appellant.
12. Consequently, it is reasonable to consider that at the time the notice was issued that the level and character of activities associated with the six separate planning units were materially different from those associated with the use of the appeal building as a warehouse within Class B8 of the UCO. As a matter of fact and degree I consider that, based on the evidence before me, the alleged breach of planning control has significantly changed the character of the use of the appeal site. As such, on the balance of probabilities, express planning permission is required for the making of a material change in the use of the property by the subdivision into individual units in the following uses: Unit 23 A - Car Repair Garage; Unit 23 B - Car Sales/Showroom; Unit 23 C - Car Repair Garage; Unit 23 D - Car Repair Garage; Unit 23 E - Alloy Wheels and Tyre Refurbishment and Fitting; Unit 23 F - Car Sales/Showroom. It has not been obtained. I find that the matters alleged constitute a breach of planning control. Therefore, ground (c) fails.

The ground (a) appeal and deemed planning application

Main Issue

13. Having regard to the Council's reasons for issuing the notice, set out at Section 4 of the notice, the main issue is the effect of the development on highway safety and the functionality and operability of this part of a Strategic Industrial Location (SIL).

Reasons

14. The appeal site (as corrected) consists of a relatively large single storey building and its hardsurfaced yard/forecourt areas fronting onto Walmgate Road. The adjoining part of the building is largely 2 storey, fronts onto Aintree Road and is currently in use as a food retail unit and a café. That part of the building and the part to the north do not now form part of the appeal site. The single storey building has been subdivided into several individual units all fronting onto Walmgate Road. As stated previously, the appeal building is within an area that is generally characterised by industrial/commercial uses.
15. Policy 1.1(c) of Ealing's Core Strategy (CS) states, amongst other things, that the Council will promote business and enterprise by securing the stock of employment land, encouraging regeneration and renewal and being responsive to market demands. Policy E4 of the London Plan 2021 (LP) states, amongst other things that *'a sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions should be provided and maintained'* and that *'London's land and premises for industry, logistics and services falls into three categories: 1) Strategic Industrial Locations (SIL) – see Policy E5 Strategic Industrial Locations (SIL).'* It goes on to state that it should make provision for various categories of uses.
16. Northolt, Greenford, Perivale is identified as a SIL in Table 6.3 of the LP. LP Policy E5 states, amongst other things, that *SILs identified in Table 6.3 should be managed proactively through a plan-led process to sustain them as London's largest concentrations of industrial, logistics and related capacity for uses that support the functioning of London's economy.* That policy also states that *'development proposals within or adjacent to SILs should not compromise the integrity or effectiveness of these locations in accommodating industrial type activities.* LP Policy T4 states, amongst other things, that *'development proposals should not increase road danger'.*
17. The Council argues that the use of the appeal site for car sales is not consistent with the purpose of the SIL as a site for industry as a car sales use is not one of the categories of use set out in LP Policy E4. It goes onto states that the car sales uses represent a significant loss of industrial floorspace and that the vehicle repair uses could, individually, be considered appropriate uses for the SIL. However, it also argues that the subdivision of the land and the use of individual units for vehicle repairs is not acceptable because the very existence of the individual units makes it more difficult to find appropriate uses for the remainder of the site.
18. Furthermore, it contends that the number of vehicles on the site has increased significantly partly due to the nature of the businesses, but it is also driven by the number of similar businesses on the site because of the subdivision. It also maintains that; vehicles from these businesses now occupy the entirety of the

site and spill out onto the pavement, blocking it to pedestrian traffic; cars are illegally parked on the road, on the pavement and on premises belonging to surrounding business making vehicle access to those businesses difficult; businesses have reported needing to ask the occupiers of the units to move the vehicles in order to allow delivery vehicles access to their sites; the need for unlawful pavement crossovers creates a significant barrier to pedestrian access to local businesses.

19. At my visit to the appeal site, I did not observe anything that conflicted with the Council's evidence in relation to highway matters. Moreover, several third parties, including owners and operators of businesses in the immediate vicinity, have also highlighted similar highway issues. The appellant has not contradicted the Council's evidence, but it is stated that new crossovers would be installed and paid for by operators of some of the units and that there is no loss of parking in the public highway during the traffic order that is in place. It is also maintained that the flow of pedestrians is very low as only clients and workers use the pavements.
20. The UCO, at Article 3(6), expressly states that a use for the "*sale or display for sale of motor vehicles*" is not included in any specified class in Schedule 1 or 2 of the UCO. Therefore, the car sales/showroom uses do not fall within Class E, Commercial, Business and Service, of the UCO. In any case, a car sales/showroom use is not covered by the various categories of uses that are to be provided for within LP Policy E4. As such, the car sales/showroom uses on the appeal site result in the loss of industrial capacity within the SIL and prevent those parts of the site from being used for industrial purposes.
21. I note that the appellant considers that the Covid-19 pandemic created severe economic strain for them, and that the subdivision has meant that the building has remained in use. Nevertheless, there is no substantive evidence to demonstrate that the last use as a warehouse is not viable or that the subdivision into individual units generates any significant increase in employment or other economic benefits.
22. Walmgate Road is a relatively narrow no-through road that, the evidence before me indicates, is frequently used by large vehicles serving industrial premises and recovery vehicles serving the police vehicle pound. Whilst on-street parking is available, I observed on-street parking opportunities should be limited by on-street parking restrictions Monday through to Friday between the hours of 8.00 to 18.30. However, at the time of my visit, 11.30, several vehicles were parked within the restricted areas and some of them had parking tickets affixed to them
23. Moreover, as stated previously I did not observe anything that conflicted with the Council's evidence in relation to highway matters. The evidence provided by the Council and the third parties indicates that the development has significantly increased the demand for on-street parking in Walmgate Road and that vehicles are worked on whilst they are partially or fully on the pavement. I consider that this is due to the restricted size of each unit and the size of each unit's forecourt area. Consequently, the ability of vehicles to access premises on and travel along Walmgate Road is restricted by inappropriate parking or by vehicles seeking parking spaces. This is likely to necessitate vehicles to undertake complex turning manoeuvres or reverse for lengthy distances increasing the risk of collisions and harming both road user and

pedestrian safety. Furthermore, it means that vehicles waiting to access Walmgate Road are highly likely to impair and stop other vehicles travelling along Aintree Road.

24. Whilst the number of pedestrians using the pavements on Walmgate Road does not appear to be high the numerous accesses to the individual units and the parking/working on vehicles on the pavement mean that pedestrians would be likely to walk within the road itself to travel past the units. This would harm pedestrian safety as it increases the risk of collisions with vehicles. No contrary evidence has been submitted in relation to these matters. In the absence of contrary evidence to demonstrate otherwise I find these factors result in an increase in road danger. As a result, the development does not comply with LP Policy T4.
25. In the light of all the conflicts identified above, and the harm that arises from them, I find that the development compromises the effectiveness of this location in accommodating industrial type activities. Consequently, the development conflicts with LP Policies E4 and E5 and CS Policy 1.1(c).
26. I have considered whether the imposition of planning conditions would overcome the harm I have identified, but none have been suggested by either main party and I cannot think of any that would overcome the harm. The appellant has cited that some of the occupiers would be prepared to enter into a section 106, of the 1990 Act, legal obligation. However, no such obligations are before me and there is no detail as to what the legal obligations would be used for. As such, this matter does not weigh in support of the appeal.

Conclusion on ground (a) and the deemed planning application

27. I have found that the development conflicts with LP Policies E4, E5 and T4 and CS Policy 1.1(c). Consequently, it is contrary to the development plan when read as a whole. In this case, there are no material considerations to indicate that the appeal should be determined other than in accordance with the development plan. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should not succeed.

Overall Conclusion

28. For the reasons given above, I conclude that the ground (a) and (c) appeals 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.

Formal Decision

29. It is directed that the enforcement notice is corrected by:
- Substituting the plan attached to the notice with the amended plan annexed to this decision.
 - Deleting all the wording after the words '*by the*' within section 3 of the notice with '*subdivision into individual units in the following uses: Unit 23 A - Car Repair Garage; Unit 23 B - Car Sales/Showroom; Unit 23 C - Car Repair Garage; Unit 23 D - Car Repair Garage; Unit 23 E - Alloy Wheels and Tyre Refurbishment and Fitting; Unit 23 F - Car Sales/Showroom.*'

- Deleting the wording of requirement 1 and substitute it with '*1. Cease the use of the land as individual units in the following uses - Unit 23 A - Car Repair Garage; Unit 23 B - Car Sales/Showroom; Unit 23 C - Car Repair Garage; Unit 23 D - Car Repair Garage; Unit 23 E - Alloy Wheels and Tyre Refurbishment and Fitting; Unit 23 F - Car Sales/Showroom.*'
- Deleting the wording '*B-J*' and replace it with '*23 A - F*' within requirement 3.
- Adding the wording '*23*' between the words '*unit*' and '*E*' in requirement 4.
- Deleting the additional '*s*' in the word '*palissade*' in requirement 5.

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.

D Boffin

INSPECTOR



Amended Plan

This is the plan referred to in my decision dated:

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land at: Premises known as 23 Aintree Road, Perivale, Middlesex, UB6 7LA

Reference: APP/A5270/C/22/3291125

Scale: Not to Scale

20EN0517(1) 23 Aintree Road, Perivale, Middlesex, UB6 7LA

MAP / PLAN for Enforcement Notice

