



Appeal Decision

Site visit made on 8 March 2023

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Appeal Ref: APP/J4423/W/22/3306606

Land adjacent and to the rear of 270 Handsworth Road, Sheffield S13 9BX

- 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 Ravent Limited against the decision of Sheffield City Council.
 - The application Ref 22/01397/FUL, dated 3 April 2022, was refused by notice dated 16 June 2022.
 - The development is described as: 'use of land as car sales forecourt and vehicle storage area (sui generis), including retention of portable building and container, resurfacing works and the erection of an acoustic barrier'.
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Decision

1. The appeal is allowed and planning permission is granted for use of land as car sales forecourt and vehicle storage area (sui generis), including retention of portable building and container, resurfacing works and the erection of an acoustic barrier at land adjacent and to the rear of 270 Handsworth Road, Sheffield S13 9BX in accordance with the terms of the application, Ref 22/01397/FUL, dated 3 April 2022, subject to the conditions set out in the attached schedule.

Applications for costs

2. A costs application has been submitted by Ravent Limited against Sheffield City Council.

Preliminary Matters

3. I have taken the description of development from the application form. In doing so I have removed words that are not acts of development.
4. The appellant has supplied two additional plans showing sections through the site and the proposed fence as part of the appeal. I am mindful that an appeal should not be used to evolve a proposal and it is important that my assessment of a scheme is on the basis of essentially what was considered by the local planning authority. However, the proposed site sections do not amend the proposal and instead aid help to clarify the position of the proposed fence with regard to neighbouring properties. The Council has been able to comment on the plans as part of the appeal and it has done so. Interested parties have also commented on the appeal. I am therefore satisfied that no party's interest would be prejudiced were I to take these plans into account. Therefore, I have determined the appeal on the basis of these additional plans as well as the other plans on which the Council made its decision.

Background

5. The appeal site has been subject to several previous applications and grants of temporary planning permission. Temporary planning permission for twelve months was granted in 2018¹. The appellant appealed² against conditions 4, 5 and 8 with the Inspector varying condition 4 in relation to customer parking bays. Conditions 5 and 8 were retained as part of that decision.
6. The most recent planning permission was granted in February 2020³. This was a temporary permission for two years that expired on 18 February 2022. This granted permission to use the northern part of the site (referred to as Plot 1 in the evidence) as a car sales forecourt and, for the first time, to use the southern part (referred to as Plot 2 in the evidence) as a vehicle storage area. This included the siting of a portable building and container. The approval was subject to conditions requiring details to be submitted and approved for matters including landscaping and drainage.
7. Since the expiry of the 2020 permission, an enforcement notice requiring the appellant to cease the use of the land and to remove all the motor vehicles and associated buildings and materials has been served. An appeal⁴ against the notice was made solely on ground (g) on the basis that the period for compliance was too short. This was dismissed by the Inspector and the enforcement notice was upheld.
8. In refusing the appeal application for a permanent permission at the site, the Council did so on the basis of the lack of separation leading to an unacceptable invasion of privacy to the first-floor windows of neighbouring properties.

Main Issue

9. The main issue is, therefore, the effect of the development on the living conditions of the occupiers of the neighbouring residential properties, with particular regard for privacy of first floor windows.

Reasons

10. Handsworth Road in the vicinity of the appeal site is a wide and busy thoroughfare comprising of predominantly commercial uses to both sides of the road with residential properties beyond. The appeal site lies within a 'Business Area' as defined by the Sheffield Unitary Development Plan (1998) (the UDP). Policy IB9 of the UDP sets out that in such areas, changes of use will be permitted provided that they do not cause local residents to suffer unacceptable living conditions.
11. The appeal site includes Plot 1, a hardsurfaced area lying adjacent to a carpet store. This is the area being used for car sales and includes a portable building and container. Plot 1 fronts Handsworth Road with direct access from it. It adjoins Plot 2 which has no road frontage and is located to the rear of a large hand car wash site. On the site visit I saw that this was in use as a vehicle storage area with vehicles tightly packed together in rows.

¹ Ref 18/00266/FUL.

² Ref APP/J4423/W/18/3216340.

³ Ref 19/00674/FUL.

⁴ APP/J44423/C/22/3298932.

12. Both Plot 1 and Plot 2 back onto the rear gardens of residential properties along Parsley Hay Gardens. These gardens are relatively short and, along with the dwellings themselves, are set at a significantly lower level than that of the appeal site, the edge of which includes a clay bund and a relatively steep bank which falls away towards those properties.
13. On the site visit I saw that the rear boundaries of these properties were typically formed by high close boarded fencing. The boundaries are supplemented by vegetation growing on or close to the bank on the appeal site as well as within the boundaries of existing properties.
14. 14 and 16 Parsley Hay Gardens are single storey dwellings backing onto the southernmost part of Plot 2. Further north, 18 and 20 Parsley Hay Gardens are two storey houses with first floor windows facing Plot 2. 22 Parsley Hay Gardens is orientated differently, such that its gable faces the appeal site and first floor windows do not face directly onto it.
15. Permission is sought to use Plot 1 as a car sales forecourt and Plot 2 as a vehicle storage area permanently. This includes retrospective permission for the aforementioned buildings currently present on the site. It is also proposed to construct a new 2.1 metres high acoustic fence along the length of the boundary with the properties along Parsley Hay Gardens.
16. Local residents have stated that they cannot use their bedrooms without keeping their curtains closed, due to overlooking by employees moving around the site and customers viewing cars. These comments have been supported by correspondence from local councillors and a Member of Parliament.
17. On the site visit I was able to view the appeal site from the rear garden and first floor window of No 20. The rear boundary fence is tall here and limits views into the garden of No 20 from the appeal site. Nonetheless, owing to the aforementioned change in levels, I was able to view No 20's first floor windows and those of its neighbour, No 18, from parts of the appeal site. I also viewed the appeal site from the rear garden of the bungalow at No 16. Furthermore, when stood on the appeal site, I was able to look down towards the rear garden of that property.
18. I saw that vehicles were parked right up to the edge of the bund, meaning that walking around the vehicles necessitated stepping onto the bund. Due to the increased height, I saw that standing on the bund increased the visibility of the rear of properties along Parsley Hay Gardens with a corresponding negative effect on the privacy of their occupiers. This is likely to be partly responsible for some of the overlooking that has occurred since its construction.
19. The proposed 2.1 metres high fence would be set back from the boundary with the residential properties and positioned beyond the bank, vegetation and the bund. This would prevent those on the appeal site standing on the bund which, alongside the bank, would become a buffer between the appeal site and the garden fences. As a result, vehicles would likely be parked marginally further away from properties than they are at present.
20. Owing to its height, solid nature and position, the proposed fence would markedly limit views of the Parsley Hay Gardens properties from the appeal site, including the first-floor windows of No 18 and No 20, particularly towards the site edge. Although fleeting views of first floor windows may be possible

further into the site, the resulting effect on privacy would be limited by the increased distance. Views of the rear gardens of the bungalows, No 14 and No 16 would be severely limited by the proposed fence.

21. My views in this regard are reinforced by the site sections drawing provided by the appellant. Although there has been dispute between the appellant and the Council as to what constitutes average height, I am satisfied that the fence would still limit views significantly even for those of above average height.
22. Reference has been made to privacy distances. I have not been provided with specific evidence with regard to which privacy distances are being referred to, however, these are typically guidelines for distances between opposing residential buildings rather than between an open site and a residential property as is the case here.
23. Whilst the proposed fence would be very tall, it would be set away from the boundaries of the existing residential properties which would lessen its impact, with only part of it likely to be visible. Given this distance, I am satisfied that it would not significantly reduce outlook from the rear of the Parsley Hay Gardens properties. For the same reasons, it would not result in any significant loss of light.
24. As such, subject to the construction of the fence, I am satisfied that the proposal would not be significantly harmful to the living conditions of the occupiers of neighbouring properties with particular regard to privacy from first floor windows. The proposal would therefore comply with Policy IB9 of the UDP in this regard, described above.

Other Matters

25. Although not forming part of the Council's reasons for refusal, local residents have raised a number of other concerns including noise from customers, staff and vehicle movements; highway safety; lighting; drainage; and concern over compliance with previous permissions.
26. In terms of noise, local residents have argued that the use generates noise from conversations between customers and staff as well as car doors closing and vehicle movements. Concerns have also been expressed with regard to an alarm being triggered at the site.
27. Background noise levels at the Parsley Hay Gardens properties are consistent with the location adjacent to a main urban road and commercial area. On the site visit I witnessed that traffic noise from Handsworth Road and noise from the hand car wash was clearly audible in the rear gardens of the dwellings here. Nonetheless, there is some distance between these noise sources and the gardens and occupiers are likely to reasonably expect any future development to not significantly increase noise levels.
28. The application was supported by a Noise Assessment⁵ which included a measurement of baseline ambient noise levels taken from the rear gardens of two of the properties at Parsley Hay Gardens (45 dB) when the site was not operating. This has been compared with calculations of the combined noise levels from vehicle movements, vehicle doors and voices as they would be experienced in the rear gardens of the Parsley Hay Gardens properties (43 dB).

⁵ By NoiseAssess Ltd, dated March 2022.

The log sum of this noise in combination with the ambient noise level (47 dB), when compared with the measured ambient noise levels, amounts to an increase of 2 dB. As is argued in the Noise Assessment, such an increase is generally accepted to have little noticeable effect. The noise assessment therefore concludes that the use of the site has not led to a significant increase in noise levels at the Parsley Hay Gardens properties.

29. This conclusion however does not correspond with the experiences of local residents as set out in their representations. In this regard, the Planning Practice Guidance⁶ guides that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation.
30. Nonetheless, in this instance, a screen fence is proposed which would, if installed correctly, reduce the calculated noise from the site by 15 dB(A) (from 43 dBLAeq to 28 dBLAeq), a significant reduction. As such, occupiers of properties in Parsley Hay Gardens are likely to experience a significant decrease in noise arising from the site. Moreover, noise from the appeal site, would be unlikely to exceed expected background noise levels for this location. Subject to a condition requiring the installation and maintenance of the fence in accordance with the supplied details, and having regard to the proposed opening hours, I am satisfied that the change of use and associated development would not be harmful to living conditions, in terms of noise. This is supported by the conclusion of the Council's Environmental Health Officer and the Council's Committee Report, as well as the decision of the Council Members.
31. Five customer parking spaces are provided on site. I am satisfied that this would provide adequate customer parking for the site, given its scale. This would limit any parking on the highway by customers. Indeed, whilst I do not doubt that customers have parked on the highway, this is likely to be the case for those visiting other businesses along Handsworth Road also. There is adequate visibility from the site access and therefore I am satisfied that the proposal would not be harmful to highway safety.
32. Concerns have been expressed over the carrying out of works without planning permission in the past, historic conduct of staff, removal of trees, issues relating to other sites (including the hand car wash), sale of vehicles on the highway and elsewhere, and over compliance with previous conditions relating to hours of operation. However, my role is to assess the scheme at the appeal site that is before me, on its own merits. Whilst I sympathise with local residents over the highlighted problem of an alarm sounding at the site, I note from the Committee Report it appears to have been resolved.

Conditions

33. I have had regard to the conditions suggested by the Council and considered them against the tests in the Framework and the advice in the PPG, making such amendments as necessary to comply with those documents. Having regard to the retrospective nature of the appeal, I have not imposed a time limit for commencement.

⁶ Paragraph: 006 Reference ID: 30-006-20190722

34. A condition relating to compliance with approved plans is necessary in the interests of certainty. A condition requiring the installation of the fence in accordance with the Noise Assessment, within a suitable timeframe, is highly important in the interests of preserving the living conditions of nearby occupiers. As with subsequent conditions, there is a strict timetable for compliance because permission for the change of use is being granted retrospectively, and therefore it is not possible to use a negatively worded condition to secure the implementation of the fence before it takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
35. A condition requiring a painted 'running lane' to be marked out on the surface of the forecourt and kept clear of vehicles is necessary in order to ensure adequate space is provided for manoeuvring and customer parking on the site at all times, having regard to the constrained nature of the site and the proximity of a busy dual carriageway. A condition to this effect is therefore in the interests of highway safety. In coming to this decision, I have had regard to the Inspector's decision in the aforementioned appeal against conditions. I have merged this condition with the Council's suggested condition in relation to customer parking which is required for the same reasons.
36. In the interests of clarity and in order to minimise the risk of surface water flooding, it is important to require the implementation of hardsurfacing and drainage within a reasonable timeframe and their maintenance thereafter. The Council's suggested condition refers to details previously approved as part of the 2020 permission. However, in the interests of enforceability it is important that such details are secured as part of this permission.
37. In order to protect the living conditions of the occupiers of the neighbouring properties, it is important to ensure that any heating, cooling or ventilation equipment is installed in accordance with agreed details, including acoustic emissions data. Similarly, in order to prevent any harm to living conditions from lighting, it is important that any new lighting installed is in accordance with agreed details.
38. The Council has suggested a condition limiting the operation of the use to between 0800 and 1800 hours Mondays to Saturdays and between 1000 and 1600 hours on Bank Holidays and Sundays, as sought. Taking into account the noise reduction and privacy provided by the proposed fence, I consider this reasonable and necessary in the interests of living conditions. Similarly, given the associated disturbance that is likely to occur from such activities, I agree that it is appropriate to limit delivery and collection of vehicles to solely between 1000 and 1800 hours Monday to Saturday.
39. A condition preventing amplified music and valeting is consistent with previous permissions at the site and remains necessary in the interests of preserving the living conditions of the occupiers of neighbouring properties.
40. The Council has suggested a condition that no vehicle engines are left running other than for moving a vehicle. However, notwithstanding that it would not be in the site operator's commercial interest to leave engines running for prolonged periods, any adverse effect, in terms of noise, is mitigated by the proposed fence and the opening hours. I have therefore not imposed the suggested condition.

41. I have also not imposed the Council's suggested condition preventing the sale of commercial vehicles as this is not precise. Furthermore, it is not necessary as the description of development is sufficiently clear, in that what is sought is a car sales forecourt rather than a forecourt for the sale of any other vehicles.

Conclusion

42. For the reasons given above, having considered the approach in the Framework and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Paul Martinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 001 Rev B (Site Location Plan); Drawing no. 003 Rev E (Proposed Site Layout Plan); Details of 12K Envirofence (with images); Drawing No 005 (Proposed Site Sections); Drawing No 006 (Proposed Site Sections).
- 2) Within one month of the date of this decision a 2.1 metres high acoustic fence shall have been erected in the location as shown on the approved plans in accordance with the approved details: 12KEnvirofence, (Ref JSW 01 Issue 02) by Jacksons Fencing; How to Install Jakoustic Reflective Fencing Using Tuning Fork Posts (Ref JFW 35 Issue n6, dated 17.02.2022) by Jacksons Fencing; and in line with the recommendations of the Noise Assessment (Ref: 13438.01 v5, dated 03/2022) by NoiseAssess. The fence shall be maintained in accordance with the approved details thereafter.
- 3) The development shall not be used unless the running lane, customer parking bays and turning head are marked out, as shown on Drawing No 003 Rev E (Proposed Site Layout Plan). The running lane and turning head shall be kept permanently clear of parked vehicles. The customer parking bays shall be used solely for the parking of customer's vehicles and shall not be used for parking stock vehicles.
- 4) Within three months of the date of this decision the proposed drainage and hard landscaping at the site shall have been carried out in accordance with details that have first been submitted to and approved in writing by the local planning authority. The approved drainage and landscaping shall be retained as such thereafter.
- 5) No externally mounted plant or equipment for heating, cooling or ventilation purposes, grilles, ducts, vents, or similar internal equipment, shall be fitted to the building unless full details thereof, including acoustic emissions data, have first been submitted to and approved in writing by the local planning authority. Once installed, the plant or equipment shall be maintained in accordance with the approved details.

- 6) No external lighting shall be installed at the site unless in accordance with details that have first been submitted to and approved in writing by the local planning authority. The installed lighting shall be maintained in accordance with the approved details thereafter.
- 7) The use hereby approved shall only operate between the following hours: 0800 - 1800 Mondays to Saturdays; and 1000 - 1600 Sundays and Public Holidays.
- 8) Notwithstanding condition 7, deliveries and collection of vehicles shall only take place between the following hours: 1000 - 1800 Mondays to Saturdays. No delivery or collection of vehicles shall take place on Sundays or Public Holidays.
- 9) No amplified music shall be played on the site and no loudspeaker system shall be used on the site at any time.
- 10) No valeting of vehicles or use of powered equipment shall be carried out on the site at any time.