



Appeal Decision

Site visit made on 26 May 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/C4235/C/22/3310761

Former Nicholson's Arms, Lancashire Hill, Heaton Norris, Stockport SK5 7RP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Darya Hand Car Wash (Mr Omid Solaymanpanah) against an enforcement notice issued by Stockport Metropolitan Borough Council.
- The notice was issued on 14 October 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission the material change in the use of the land from a shop with associated car parking to a use as a hand car wash including the construction of metal and plastic buildings.

The requirements of the notice are:

1. Cease the use of the land for the washing and valeting of motor vehicles.
 2. Remove all equipment including but not limited to jet washes, vacuum cleaners & washing chemical storage containers from the land.
 3. Dismantle and remove the two metal framed buildings from the land, including all sheeting used to clad the exterior of them.
 4. Repair any damage caused to the fabric of the car park caused by either the erection or demolition of the buildings.
 5. Remove all adverts for the car wash.
- The periods for compliance with the requirements are:
Step 1: 3 days.
Steps 2 to 5: 1 month.
 - The appeal is proceeding on the ground set out in section 174(2)(a) and (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
 - the addition of the words 'connected with the car wash use' after the word 'equipment' in requirement 2 at section 5 of the notice.
2. Subject to these changes, 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.

The enforcement notice

3. The plan attached to the notice outlines in red a site that includes both the car park and the former Nicholson's Arms building. It is clear that the use primarily takes place in the car park rather than the building. Consequently, I wrote to the parties querying whether it was right for the notice to be directed at the building as well as the car park.
4. In its response, the Council raised no objection to my revising the site plan to exclude the building. However, it advised that containers for storing detergent and chemicals in connection with the car wash use had been placed on the flat roof of the building, and provided a photograph showing this. The appellant confirmed this as well. The appellant advised that only a small part of the building is used in this way. This is consistent with the information provided by the Council and with what I saw during my site visit, when I saw similar containers on the roof of the same part of the building.
5. The appellant says that the small part of the building where the containers are located is the only part of the building let to the appellant. This part of the building is single storey only and relates closely to the car park. There is nothing to suggest that any other part of the building is used in connection with the car wash use. Both parties have provided revised plans showing a reduced site area. The plan provided by the Council excludes the former Nicholson's Arms building in its entirety. The plan provided by the appellant excludes most of the building but retains the small part used in connection with the car wash use. This appears to me to accurately reflect the area of land where the unauthorised use is taking place.
6. I have the power to correct any defect, error or misdescription in the enforcement notice, provided doing so does not cause injustice to the appellant or the local planning authority¹. In this case there does not seem to be any misunderstanding as to what the Council intended to target with the notice. Correcting the notice to make clear that it is the car park and a small part of the building that is targeted would not cause injustice to the appellant, since it would be limiting the notice in its scope. Nor would there be injustice to the Council, given the clarification regarding the part of the building affected. Accordingly, I will correct the notice by substituting a revised plan relating to just the car park and the small part of the building that has been used in connection with the car wash. There is no need to change the reference to the change of use of the shop in the allegation, since the revised plan makes clear that only a small part of the building is affected.

Ground (a)

Main Issues

7. The main issues are:
 - The effect of the development on the character and appearance of the area;
 - The effect of the development on the living conditions of nearby residents;
 - The effect of the development on parking and road safety; and
 - Whether there is adequate drainage provision for the car wash.

¹ Section 176(1) of the Act

Character and appearance

8. The appeal site is the car park serving a small group of shops, which are currently not in use. The car wash was not in use either when I visited the site, but the use of the site was obvious from its appearance. A 'car port' building has been constructed on the site - an open-fronted building constructed of metal sheeting on a metal frame. It currently has a grey finish, but the appellant says that it could be painted, something which could be required by a planning condition. A canopy structure has been added on the opposite side of the site. The car wash use is also signified by advertising banners and signage. A drainage channel has been added to the site entrance. In use, cleaning equipment such as a jet wash would be in view on the site.
9. The area is largely residential in character. It features some large blocks of flats, including the neighbouring Hanover Towers. There is also a lot of open space and greenery in the area. The appeal site must have had a commercial character, even before the car wash use. However, shops and associated car parking are commonly found in residential areas. The car wash, by comparison, has introduced a new, intensive use with an industrial character to the area. That use is incongruous within this largely residential setting and harms the character and appearance of the locality.
10. Moreover, the new buildings are basic, utilitarian structures of an industrial character and, again, appear out of place in this setting. Furthermore, the car port building is particularly prominent, being well away from the former pub building and located close up to the boundary to Lancashire Hill, a busy main road. The appeal site is on lower land than the main road, but the building is highly prominent nonetheless.
11. There is some existing greenery on the site and a landscaping condition could require further planting, but that would not disguise the overall character of the site.
12. For these reasons I conclude that the development has harmed the character and appearance of the area. Consequently, there is conflict with Policy SIE-1 of the Council's Local Development Framework Core Strategy Development Plan Document (the Core Strategy), which seeks to secure quality places. There is also conflict with the National Planning Policy Framework (The Framework), which has similar aims.

Living conditions

13. The site is next to a car park serving a large block of flats, beyond which is the block of flats itself. I have no technical evidence from either party to show precisely how the flats will be affected by noise from the development. However, there are windows on the elevation of the flats facing the appeal site, and the Council states that these serve habitable rooms. Thus, the Council's concern that noise arising from the car wash use would harm the living conditions of the occupiers is understandable.
14. Some factors would serve to limit the effect of the car wash and valeting on the nearby flats, including the distance between the appeal site and the flats (the appellant suggests that the distance is around 40m, which is not challenged), the elevation of the flats in relation to the appeal site and the existing background noise arising from the road and the car park serving the flats.

Additionally, the building on the western site boundary will have at least some effect as an acoustic barrier. The appellant also suggests that a booking system can ensure that the number of cars on the site at any one time would be strictly controlled.

15. However, both the new buildings on the site are open-fronted and of lightweight construction, and so their acoustic benefits are likely to be limited. Although the appellant suggests that sound insulation could be improved, there is no scheme before me to demonstrate that. Car wash/valeting businesses can create significant levels of noise from machinery such as vacuum cleaners and jet washes. Furthermore, the nature of the noise, including the sound of the jet wash motors and water being sprayed onto cars at high pressure, would be distinctive and intermittent, and so would stand out from the more general drone of the background traffic noise. The lack of an objection from the Council's Environmental Health Officer does not show that the relationship to the flats is acceptable in planning terms.
16. Some operational matters, including the hours of operation, could be controlled with planning conditions, and I accept that this would limit the worst effects of the development in terms of noise. Nevertheless, even during normal working hours, the nature of the noise generated would stand out from the background noise environment and be of a nature and intensity that would harm the living conditions of the residents of the flats. This gives rise to conflict with policies SIE-1 and SIE-3 of the Core Strategy, which between them seek to protect amenity and control noise pollution. The Council also suggests that traffic generation could harm the living conditions of local residents, but the evidence before me does not demonstrate that or add to my concerns on this issue.

Parking and road safety

17. The site has frontages to Lancashire Hill and Penny Lane, but just one access from Penny Lane. Penny Lane is a no through road and provides access to blocks of flats. There are double yellow lines prohibiting parking outside the appeal site. The Council says that car parking in the area is limited and that Penny Lane is used extensively for parking. I do not have any survey evidence to support this, but it is consistent with what I saw during my site visit when, even without the car wash in operation, there were a lot of parked vehicles on Penny Lane.
18. The Council is concerned that vehicles waiting to be washed could queue out of the site and onto Penny Lane. Additionally, it is argued that the car wash use means that the car park is not available to serve the former Nicholson's Arms building, should it be put back into use as shops.
19. Penny Lane curves as it leaves the junction with Lancashire Hill, so that forward visibility is restricted. Thus, I can appreciate the Council's concern that vehicles queueing on Penny Lane could present a hazard for approaching vehicles.
20. However, I do not see anything about the site to suggest that it would be unusually prone to vehicles queueing onto the highway. It does not strike me as unusually small for a car wash site. While the site is not marked out, the buildings give a 'structure' to the layout, so that it must be fairly clear where the cars need to go to be washed or valeted. There is space for parking a

number of vehicles next to the car port building, which itself can accommodate a number of cars.

21. While I cannot be sure that vehicles would never queue onto the road at busy times, I have no firm evidence that this has actually occurred on a regular basis. It also strikes me as a risk inherent in any use involving cars, including the lawful use of the land as a car park serving a group of shops. While I appreciate that the car wash use means that the car park would not be available to serve the shops, I understand that they have been closed for some years and have no evidence to show that they are likely to reopen in the near future. The possibility of their reopening at some undefined point in the future is not sufficient reason to prevent the car park being put to another use in the meantime.
22. For these reasons, I am not persuaded, on the evidence before me, that the use is unsatisfactory in terms of parking provision or has compromised highway safety due to its layout and parking arrangements. Accordingly, this issue does not give rise to conflict with the Core Strategy policies cited by the Council.

Drainage

23. The site is on a slope and, consequently, the Council is concerned that the water used for washing the cars runs off the site, across the footway and onto the road. Photographs submitted by the Council, said to have been taken on a dry day when the car wash was in operation, show water on the footway. A drainage channel has been introduced at the site entrance in an attempt to address this concern. However, I have no details as to where this discharges and no technical evidence to show that it is an appropriate solution to the issue. Accordingly, it has not been shown that it adequately addresses the drainage requirements arising from the car wash use.
24. The appellant suggests that a planning condition requiring improved drainage provision could be imposed. However, in the absence of any more specific proposal, it is not clear that an appropriate scheme would be viable. Run-off from the site could make the road and footway slippery, especially in icy weather, and untreated, dirty water may be discharged to the public drainage system. Thus, significant harm arises from the lack of adequate drainage. It leads to conflict with policies SIE-1, SIE-3 and T3 of the Core Strategy. Together, these policies seek to protect the environment and ensure road safety is not compromised, amongst other things.

Other Matters

25. The car wash provides a service for local people, as evidenced by letters of support, and creates employment. In this respect there is support in the Framework, which seeks to encourage economic growth. Additionally, the scheme makes use of a previously disused site and, the appellant says, provides supervision to prevent anti-social behaviour. All of these matters weigh in favour of the development, but do not outweigh the significant harm I have found.

Conclusion – ground (a)

26. Notwithstanding my conclusion in relation to parking and highway safety, my findings above lead me to conclude that there is conflict with the development

plan as a whole. The matters raised in support of the development do not outweigh the harm I have found. Accordingly, the appeal on ground (a) fails.

Ground (f)

27. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this instance the notice seeks the cessation of the use and the removal of all items associated with it. That is consistent with remedying the breach of planning control in accordance with s173(4)(a). Accordingly, I do not consider the requirements to be excessive.
28. In any event, the appellant has not put forward any lesser steps that could secure the purpose of the notice or address my concerns. While it is argued that the development is beneficial rather than harmful, those are matters I have considered under ground (a). The appellant does not consider that the Council was justified in issuing a Stop Notice, but that has no bearing on the merits of the Enforcement Notice.
29. Notwithstanding the above, it is necessary to make one change to the second requirement of the notice, which requires the removal of 'all equipment' from the land. Although it then goes on to identify specific items to be removed, the overarching reference to 'all equipment' is excessive. Rather, it seems to me that it is equipment associated with the unauthorised car wash use that should be required to be removed. I can correct the wording to make this clear. There can be no injustice to the appellant in doing so, since the change limits the scope of the notice. There is no injustice to the Council either, since the change simply brings the notice into line with what the Council is evidently trying to achieve in relation to the car wash use.
30. For these reasons, the appeal brought on ground (f) cannot succeed. I shall vary the second requirement of the notice for the reasons given above, but otherwise the requirements remain unchanged.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as amended and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter Willows

INSPECTOR



Plan

This is the plan referred to in my decision dated:

by P H Willows BA MRTPI

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Scale:NTS

