



Appeal Decision

Site visit made on 13 June 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/A5270/C/22/3299943

Ground Floor Shop, 263 Horn Lane, Acton, London W3 9EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Aulus Guimaraes, Goblin Motorcycles Limited, against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice, numbered 21 EN0061(1), was issued on 27 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission the material change of use of the premises to a mixed use of motorcycle MOT, servicing, repairs and sales.
- The requirements of the notice are 1. Cease the motorcycle MOT, servicing and repairs element of the mixed use; and 2. Remove all equipment associated with the motorcycle MOT, servicing and repairs element of the mixed use.
- The period for compliance with the requirements is two months.
- The appeal is made on the grounds set out in section 174(2)(a) and (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.

Formal Decision

1. It is directed that the enforcement notice be corrected by the deletion of the wording within paragraph 1 of Schedule 5 of the notice, and its substitution with the following wording instead:

"Cease the use as a mixed use of motorcycle MOT, servicing, repairs and sales."
2. Subject to the correction, 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.

Application for costs

3. An application for costs was made by Council of the London Borough of Ealing against Mr Aulus Guimaraes. This application is the subject of a separate Decision.

Preliminary Matters

4. From my visit, it appeared that the business subject to this notice was not operational. The appellant failed to attend the scheduled accompanied site visit, without providing any subsequent explanation. Nor has the appellant

confirmed whether the business remains operational or whether they intend to proceed with the appeal.

5. I therefore propose to determine the appeal on the basis of the information before me, including an unaccompanied visit, but without having had the opportunity to inspect the interior of the premises.
6. The appellant states that MOTs are not undertaken at the appeal premises, but are contracted out to an alternative site. I have dealt with this issue below as a 'hidden' appeal on ground (b). This is regarded as a 'legal ground' of appeal and in such cases the onus rests with the appellant to demonstrate their case on the balance of probability.
7. The requirements of the notice should align with and follow logically from the allegation. The enforcement notice alleges a single mixed use comprising motorcycle MOTs, serving, repairs and sales. As such the requirements, in omitting reference to motorcycle sales, do not squarely align with ceasing the alleged mixed use. The Council does not seek to enforce against motorcycle sales in the form that was previously granted planning permission subject to conditions. However that permission is independent of this enforcement case, and excluding a requirement to cease motorcycle sales as part of the mixed use risks granting a separate unfettered planning permission for such use. The Council now therefore seeks to amend the requirements to include ceasing the motorcycle sales element of the alleged mixed use. In so doing this would not prejudice the appellant being able to implement and comply with the terms of planning permission 201658FUL, granted 18 June 2020, providing it can be demonstrated the permission remains extant.
8. I note from their statement that the Council communicated to the appellant its intention to amend the scope of the notice requirements; also that the appellant has therefore had the opportunity to raise any comments or concerns specifically about this within their own representations, but has not done so. I am therefore satisfied the requirements can be corrected accordingly without resulting in injustice to any of the parties. For the avoidance of doubt the motorcycle sales use could still be undertaken at the premises in accordance with the aforementioned permission, providing that permission remains extant.

The appeal on ground (b)

9. The appeal is that the MOT element of the alleged development has not occurred as a matter of fact, for the reason set out in the paragraph above. The key date for this assessment is the time the notice was issued.
10. The appellant has not provided evidence of contracts with companies elsewhere, alleged to undertake this work. On the other hand the Council refers to the appellant's company's signage at the premises, and social media account, as including reference to MOTs being offered by the appellant's company; also to the fact, undisputed by the appellant, that the client's relationship, regarding the provision of this service, including any billing, is with the appellant.
11. Therefore, even if the MOT testing itself does not actually take place at the appeal site, from the information before me, on the balance of probability, the alleged change of use occurred as a matter of fact. The ground (b) appeal fails.

The appeal on ground (a)

Main Issues

12. The appeal on ground (a) is that planning permission should be granted for the alleged development. The main issues are the effect of the development on the living conditions of nearby residents having regard to noise disturbance and air quality.

Reasons

13. The appeal site is situated within a busy commercial area where there are a number of shops and businesses at ground floor level and fairly continuous streams of traffic on the adjacent road. There are residential units situated, in close proximity, on the upper floors of the building subject to this appeal.
14. The planning history of the appeal site is a key material consideration. Planning permission was granted in June 2020 for change of use of the ground floor and basement to a motorcycle sales shop. Subsequently planning permission was refused, and unsuccessfully appealed¹, for undertaking motorcycle repairs, in addition to sales, at the site.
15. The Inspector, in relation to that appeal, cited by way of reasons an absence of a noise assessment giving evidence of background noise levels compared with noise levels and characteristics associated with the proposed repair activities; that there had already been noise related complaints to the Council and that there would be additional noise emissions compared to those already associated with motorcycle sales. In this context it was not possible to quantify the degree of impact on occupiers of the residential units above, whether any mitigation measures would be required in terms of sound proofing, and whether the living conditions of residents could be secured.
16. In the wake of that appeal decision, I have not been provided with technical information to address the shortcomings identified by the previous Inspector. The appellant states that repairs and servicing would typically involve oil, tyre, brakes, gear box and engine component replacement, puncture repairs and accessory fittings; that these are not excessively noisy activities and would not exceed background noise levels; also that no work is undertaken outside the building, with working hours restricted to between 9am and 6pm during the week, and until 3pm on Saturdays.
17. However, the appellant confirms that such activities necessitate some use of power or compressed air driven tools and equipment, and does not dispute the Council's point that it was evident from a site visit that several bikes may be worked on simultaneously. Despite vague reference to the duration of use of a screwdriver and tyre machine at any one time, this does not address the absence of information on noise levels and frequency of use. It also seems to me that engine repair and maintenance activities would probably result in the test running and revving of component parts. The resulting noise levels have not been quantified. Furthermore I note from the appellant's statement that repairs account for a significant proportion of the overall business.
18. Drawing these considerations together I consider motorcycle repairs and servicing to have the potential to cause noise disturbance to nearby residential

¹ Appeal Ref APP/A5270/W/21/3281213

occupiers over and above that associated with sales activity. The appellant makes the point that if noise levels were excessive it would have hindered use of the business' office located within the same premises. However the appellant's tolerance of noise arising from his own business does not equate to no harm to residential amenity.

19. Furthermore it also seems to me that motorcycle repairs and servicing, because of fume emissions, would have the potential to harm the standard of air quality over and above that associated with sales activity. Thus, as a result there would be additional harm to the living conditions of nearby residents.
20. The appellant claims to have a good relationship with his neighbours and I would accept that some occupiers are likely to be more tolerant than others of such disturbance. I also acknowledge that immediate neighbours have stated they have not experienced noise or pollution from the business. However, I must have regard to the residential use of the building over time and that occupiers are likely to change. It is also suggested by the appellant that those residents who have complained may be experiencing noise sources which are not actually attributable to the appeal premises. This however is unproven.
21. Consequently, and consistent with the findings of the previous Inspector, I am unable to conclude, in the absence of a noise assessment, that the development subject to the deemed application would not result in noise disturbance related harm to the living conditions of nearby residents. Furthermore, in the absence of evidence to the contrary, additional harm resulting from poor air quality cannot be ruled out. Accordingly the development would conflict with Policies D3, D13, D14 and SI 1 of the London Plan 2021 and Policies 7A and 7B of the Ealing Development Management Development Plan Document 2013 insofar as they seek to protect the living conditions of nearby residential occupiers including from noise and air quality impacts.

Other Matters

22. The appellant refers to the business employing four staff, claims that it has brought additional footfall to the area, and has utilised a previously vacant building, thus supporting the local economy. Whilst I recognise the positive economic effect of a new business, it does not justify it being in this specific location, when there is no evidence it could not be more suitably located or that a more suitable business would not be able to occupy the appeal site instead. The appellant has referred to the premises previously being vacant for long periods. The Council confirms the premises appear to have been empty throughout 2019, although there were two withdrawn planning applications in this period. I am not persuaded this was indicative of an ongoing long term problem marketing and re-using the property.
23. The appellant also refers to other similar businesses elsewhere in the locality that are close to residential occupiers. Whilst I have no reason to doubt this point, I note that the Council has referred to some of the cited cases as being longstanding uses, that have operated without complaint, and may now be immune from enforcement due to the passage of time. In any event each development must be considered on its merits and it does not justify the harm I have identified in this case.

24. The appellant indicates they originally understood they would not need a further planning permission to undertake repairs and servicing. Whilst I have some sympathy with the appellant if they inadvertently followed erroneous advice, it does not justify the unauthorised development.

The appeal on ground (g)

25. The appeal on ground (g) is that the time given to comply with the notice is too short. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, whilst maintaining public confidence in the planning system.
26. The appellant has requested that the compliance period be extended up to 12 months, taking into account the financial impact of the enforcement action and to enable alternative premises to be found, whilst also avoiding the need to finance the temporary storage of repair tools. However, as set out above, latterly the appellant has without explanation failed to attend a scheduled accompanied site visit. Furthermore, the appellant has had the opportunity to clarify whether the business remains operational at all, or whether it has relocated, but has failed to do so.
27. This significantly moderates the weight I consider is merited by the ground (g) appeal. In this context, the two-month compliance period, given by the Council, does not stand out as being patently unreasonable within which to cease the unauthorised use and undertake the various requisite physical works. I have no reason to doubt that this would be a proportionate measure, whilst also having regard to human rights considerations. The ground (g) appeal therefore fails.

Conclusion

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

R. Merrett

INSPECTOR