



Appeal Decision

Site visit made on 27 July 2023

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2023

Appeal Ref: APP/T2215/W/22/3308693

Garage Rear of 105 Burnham Road, Dartford, Kent DA1 5AZ

- 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 Mr Baljit Gill against the decision of Dartford Borough Council.
 - The application Ref DA/22/00861/COU, dated 18 July 2022, was refused by notice dated 21 September 2022.
 - The development proposed is continued use as a vehicle repair workshop following lapse of planning permission DA/13/01030/COU allowed under appeal reference APP/T2215/A/14/2214664. Installation of additional shutter door on the front elevation which would remain closed when garage is in operation. Removal of shutter on side elevation facing towards 105 Burnham Road and bricking up of the door opening. Introduction of administrative office to include door and window on front elevation. Installation of exhaust extraction systems and new air compressor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form which differs from that on the Council's decision notice. In Part E of the appeal form it is stated that the description of development has not changed and neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
3. Planning permission for the use of the site as a workshop was granted on appeal for a temporary 18 month period on 19 June 2014. This permission has lapsed and there have subsequently been a number of appeals relating to this use at this site which have been dismissed. The application which is the subject of the appeal before me has been submitted retrospectively to continue the use of the site as a vehicle repair workshop, and I observed that the property was in use for that purpose on my site visit. I have determined this appeal on that basis.

Application for Costs

4. An application for costs was made by Mr Baljit Gill against Dartford Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are the effect of the proposal on:

- The living conditions of nearby residents in respect of noise and disturbance; and
- Car parking.

Reasons

Noise and Disturbance

6. The appeal site is located to the rear of a short terrace facing the main highway of Burnham Road, and which includes commercial premises on the ground floor. However, the garage is accessed from Chatsworth Road which is of a residential suburban character.
7. As well as intermittent noise from passing vehicles on Burnham Road, noise from a tyre fitting business was also apparent at the time of my visit. Despite that, the noise environment on Chatsworth Road was of a quieter residential character, notwithstanding noise from existing activities associated with the appeal site.
8. The temporary planning permission granted on appeal in 2014 was to enable proposed mitigation measures to be implemented and to ascertain if a permanent change of use would cause unacceptable harm to the living conditions of neighbouring occupiers.
9. Based on the evidence before me, a range of mitigation measures required by the temporary permission have not been implemented, and there is a history of complaints from residents in relation to operations at the site. Indeed, one of the conditions was that doors and windows shall be closed when the building is in use, and a vehicle was being repaired with the main door open at the time of my visit. However, this appeared to be to enable access to the inspection pit, and the amended layout would enable access whilst a car is parked within the confines of the building.
10. Previous appeal decisions have referred to concerns about the enforceability of conditions and a lack of evidence as to whether mitigation measures would be adequate. Particular reference has been made to workable fume extraction from the building and the effect on working conditions at the garage when doors and windows are closed.
11. As part of the proposal before me, the appellant has specified a range of measures to address noise and disturbance, including an exhaust fume extraction system and the blocking up of one roller shutter opening. A Noise Impact Assessment¹ (NIA) has been undertaken with reference to BS4142:2014 *Methods for rating and assessing industrial and commercial sound*. The NIA concludes that sound impact at nearby residences is expected to be low, and that the appeal proposal would address a condition on the temporary permission in respect of acoustic protection.

¹ Venta Acoustics 6 July 2022

12. The Council refers to a lack of accurate noise output levels from the exhaust extraction equipment. However, the exhaust extract fan has been assessed in the NIA² and there is no evidence before me that this assessment is inaccurate.
13. But notwithstanding the conclusions of the NIA, given the proximity of residential properties I am not persuaded that the impulsive characteristic of hammering at the site would not be great enough to attract the appropriate correction. The introduction of the fume extraction point could also lead to potential noise breakout from the site even when doors and windows are closed.
14. The Council's Environmental Health consultee's concerns stem from the detailed design of the roller shutter door as a noise barrier. The appellant's evidence on this matter is inconsistent. The NIA states that the proposal includes the provision of new roller shutter doors to the southern exterior. However, the Grounds of Appeal set out that the existing roller shutter would be retained and kept open during use, with a new transparent roller shutter, including vents, to be kept closed when operating. The NIA does not therefore reflect the development as proposed. Furthermore, the roller shutter door is an acoustically weaker element of the façade, and the design of the shutter can therefore have a major effect on noise mitigation. The design of the roller shutter is therefore more than a matter of detail, and I consider it would be inappropriate to address this by a planning condition as suggested by the appellant.
15. However, even if I was to conclude that the NIA provides sufficient evidence in respect of noise generated within the building, concerns have been expressed about noise from vehicle movements associated with the proposal. This would include noise from customers dropping off vehicles, the manoeuvring of vehicles to and from the garage, and deliveries. As well as noise from engines, this would also include the banging of doors and general disturbance. The number and nature of vehicle movements arising from the proposed use would be of a greater impact than those associated with a residential double garage or ancillary commercial storage.
16. In respect of traffic movements, the appellant has proposed measures including a booking system and dedicated customer phone line in support of an appointment system. However, this would be difficult to monitor and in any event would not prevent the parking and manoeuvring of vehicles on the public highway as this would not be within the control of the appellant. This would also be the case in respect of recovery trucks dropping off vehicles. A planning condition in respect of the booking system cannot therefore be relied upon to prevent undue noise and disturbance arising from vehicle movements associated with the business.
17. The NIA's assessment of background noise reflects the method of BS4142. However, although traffic on Burnham Road may affect the background noise measurement, I observed that background highway noise was not constant and largely consisted of individual vehicle passes with gaps in between. Vehicle movements along Chatsworth Road were even less frequent. There is a significant possibility that activity from the appeal proposal would therefore be intrusive during the periods of relative silence between passing vehicles.

² Table 5.4 and associated paragraphs.

18. At the time of my visit, noise from activities associated with a tyre fitting business on Burnham Road was apparent. However, the appeal proposal draws noise generating commercial activity further into the residential area of Chatsworth Road, with subsequent increased potential for noise and disturbance to residents.
19. I consider that the background noise in the area would neither justify nor mitigate for the noise arising from the appeal proposal, and I note that the NIA also concludes that sound emissions will occasionally be audible at nearby properties. Even allowing for the noise mitigation measures proposed, the history of complaints relating to the use of the appeal site indicates that the audibility of operations at the site will continue to lead to undue disturbance to nearby residents.
20. I conclude that it has not been demonstrated that the proposal would not lead to significant harm to the living conditions of nearby residents in respect of noise and disturbance. The proposal would therefore be contrary to Policy DP5 of the Dartford Development Policies Plan 2017 (DDPP) with regards to the protection of the amenity of neighbouring uses.
21. The proposal would also be contrary to the amenity requirements of Policy M2 of the Emerging Local Plan³ (ELP), although given the stage of preparation of the ELP I give this very limited weight.

Car Parking

22. The appeal proposal would not meet the Council's Parking Standards⁴ for vehicle servicing and repair uses which require 1 space per 2 staff and 4 spaces per service bay. Even allowing for the principle that the proposal only includes a single service bay, vehicles generated by the garage could not be contained within the site and would spill onto the public highway as well as a forecourt serving other garages. The proposal also removes 2 parking spaces from the area adding to the pressure for on-street parking.
23. At the time of my visit, I saw that there was a high demand for parking in the area and that available on-street spaces in the vicinity of the appeal site were limited. This included vehicles parked partially on the footway.
24. The Inspector in the 2014 decision considered that parking in the area would not be a problem. However, the Inspector also referred to the potential to monitor the effects of car parking provision over the 18 month period of the permission. The history of complaints indicates that problems associated with parking generated by the use of the appeal site have persisted.
25. Moreover, subsequent appeal decisions have referred to an increase in parking demand in the area. Even given the scale of the appeal proposal, due to the turnover of vehicles associated with a repair garage I consider that the form and number of vehicle movements would be greater than those associated with a domestic garage or ancillary commercial storage. Based on the evidence before me and my observations on site, I agree with the concerns expressed in the more recent appeal decisions with regard to vehicle parking. The proposal would contribute to the inconsiderate parking that I observed, with subsequent

³ Dartford Local Plan Pre-Submission (publication) Document 2021

⁴ Parking Standards Supplementary Planning Document 2012

harm to the flow of traffic and pedestrians and associated harm to highway safety.

26. As referred to in the previous main issue, the appellant has proposed measures including a booking system and a phone line in support of an appointment system. However, I have concluded previously that this would be difficult to monitor. This would also not prevent the parking and manoeuvring of vehicles on the public highway as this would not be within the control of the appellant. The booking system cannot therefore be relied upon to prevent unacceptable pressure to on-street parking in the area.
27. The appellant refers to the circumstances of the mechanic and manager and that they do not use vehicles to access the business. However, these personal circumstances could change over time. I am also mindful that planning permission is not being sought on a personal basis, even if this were appropriate for a business use of the form proposed. The circumstances of the staff at the site do not therefore lead me to a different conclusion in respect of inadequate parking provision.
28. I conclude that the proposal would not make suitable provision for the parking of vehicles and would lead to an unacceptable increase in parking congestion, with subsequent harm to the convenience of highway users, access to adjacent properties and highway safety. The proposal would therefore be contrary to the transport and on-street parking considerations of Policies CS15 of the Core Strategy 2011 and DP3, DP4 and DP5 of the DDPP. The proposal would also not comply with the advice of the Parking Standards in respect of the number of spaces required.
29. The proposal would also conflict with the transport impact and parking considerations of Policies M16 and M17 of the ELP, although given the stage of preparation of the ELP I give this very limited weight.

Other Matters

30. Comments raised locally have referred to fumes generated by the proposal, and I am mindful that it is proposed to include a fume extraction system discharging from the building. Had I been minded to allow this appeal this is an issue I would have considered further.
31. The appellant has confirmed that they are registered disabled, and that the business supports their day to day expenditure. In considering this appeal I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out relevant protected characteristics, including disability. However, planning permission is not being sought on a personal basis. Given the nature of the proposal and the appellant's interest it would not be appropriate to address this by condition as the ownership of the business could change over time. It has also not been demonstrated that the proposal is specific to the appellant's needs or that they cannot be met by a scheme in a more appropriate location. The PSED considerations do not therefore outweigh the significant harm that I have identified in respect of the main issues. Following careful consideration of these particular matters I am satisfied that the impact of dismissing this appeal is proportionate and justified.
32. The appellant refers to garages operated in residential areas across the Borough. However, the characteristics of each site are different, and the

appellant has not demonstrated that these other sites are a direct parallel to the appeal proposal in respect of matters including planning history, proximity to dwellings and car parking provision. In any event, I have considered this appeal on its own merits.

Conclusion

33. I conclude that the appeal should be dismissed.

David Cross

INSPECTOR