



Appeal Decision

Site visit made on 19 February 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th March 2024

Appeal Ref: APP/W4325/W/23/3327443

Land adjacent to Seamus O'Donnells, Exmouth Street, Birkenhead, Wirral CH41 4NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Crebbin on behalf of JSM Company Group against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/22/00722, dated 14 April 2022, was refused by notice dated 26 June 2023.
 - The development proposed is to create a car washing facility on vacant land with a single container store and vehicular access from Exmouth Street.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The amendments to the Framework do not affect the matters that are in dispute in the determination of this appeal. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance; and
 - the vitality and viability of a Primarily Commercial Area and Birkenhead Key Town Centre.

Reasons

4. The appeal relates to a parcel of green incidental space on the northwestern side of Exmouth Street (A5029). The southern section of the site is located on land which is allocated within the policies proposals map that accompanies the Wirral Unitary Development Plan (2000) (UDP) as a Primarily Commercial Area. The northern section of the site is designated within the proposals map as a Primarily Residential Area. Directly to the east of the appeal site is the boundary of the Birkenhead Key Town Centre.

5. Given that the open appeal site straddles the boundary of both commercial and residential designations, it somewhat acts as a gap, and transition, between the commercial uses to the south, which includes a public house, fire station, youth zone and Asda supermarket, and the residential properties to the north.

Living conditions

6. The appeal site has an open frontage facing onto Exmouth Street and is located relatively close to the traffic light junction with Claughton Road. I observed on my site visit that this is a relatively busy highway and when stood on this open site intermittent noise from passing vehicles can clearly be heard, particularly when the nearby traffic lights controlling vehicles on Exmouth Street are green, allowing vehicles to travel past the site at increased speed.
7. The site is adjoined to the north and west by residential properties on Exmouth Close and Exmouth Gardens, with the outdoor amenity areas of these properties separated from the appeal site by a mixture of brick walls and timber fencing measuring approximately 1.8m – 2m in height.
8. Whilst these neighbouring properties are set back further from the highway than the appeal site, and the existing boundary treatment may screen some noise from the highway, it is considered likely that vehicles using this road will be audible from these properties, particularly within their outdoor amenity areas.
9. Nevertheless, the Noise chapter of the Planning Practice Guidance (March 2014, updated July 2019) states that in areas which already experience high noise levels even a small increase in noise can result in a significant adverse effect. As such, an increase in noise from the appeal scheme above the existing background noise level could have a harmful impact upon the occupiers of these properties.
10. Furthermore, UDP Policy HS15 is relevant to sites within Primarily Residential Areas and permits changes to non-residential uses only where they meet a number of criteria. The proposal would conflict with HS15 and in particular clause iii) which seeks to prevent neighbouring residential occupiers from experiencing harmful noise and disturbance.
11. With reference to Paragraph 225 of the Framework, Policy HS15 is not fully consistent with the Framework, including with regard to the Primarily Residential Area boundary. However, whilst I accordingly give the policy reduced weight, I still find the conflict with the policy to be significant.
12. I am also satisfied that Policy PO3, which concerns noise, is largely consistent with the Framework and I give substantial weight to the conflict the proposal would have with Policy PO3.
13. Whilst not referred to in the reasons for refusal, the Council's submission makes reference to Policy WD 14 of the emerging draft Wirral Local Plan (emerging LP). The emerging LP has been through Public Examination, however the Inspector's findings on the plan have yet to be published.
14. I am satisfied that appeal scheme would also conflict with Policy WD 14 of the emerging LP. This policy states, amongst other things, that new development proposals with the potential to give rise to noise pollution will not normally be permitted unless it can be clearly demonstrated that it will not cause

unacceptable harm to the general amenity of neighbouring uses and the character of the area.

15. With reference to paragraph 48 of the Framework, given the LP Inspector's findings on the plan have not yet been published and there are no details of any outstanding objections to the policy, I give Policy WD 14 only limited weight. Nevertheless, the proposal would conflict with the emerging policy and I give this conflict weight in my decision.
16. The appellant has provided no noise survey to demonstrate the existing noise levels at the boundaries of the appeal site with these neighbouring residential properties. Nor has the appellant provided details of the activities that will take place at the proposed car wash, or details of any noise mitigation measures that will be put in place to protect the living conditions of the occupiers of the adjacent dwellings.
17. In the absence of any such detail it is reasonable to assume that likely noise arising from the proposed use would include, but not be limited to, the movement of vehicles; stopping / starting of engines; opening and closing of car doors; use of equipment for the car cleaning process; and discussions between staff and customers. Furthermore, additional disturbance would likely arise from car fumes and water spray.
18. In the absence of any mitigation measures to reduce these identified likely sources of noise and disturbance, I have no reason to otherwise conclude that the proposed use as a car wash would have a harmful impact upon the living conditions of neighbouring occupiers by way of noise and disturbance, given the proximity of the proposed use to nearby dwellings.
19. For the reasons set out above, the proposed use would adversely affect the living conditions of the occupiers of neighbouring residential properties, with regard to noise and disturbance. It would, therefore conflict with Policies HS15 and PO3 of the UDP, emerging LP Policy WD 14 and with the Framework, in this regard.

Vitality and viability

20. UDP Policy SH6 is relevant to sites within the Primarily Commercial Area and permits A1, A2, A3, B1 and D1 uses, as defined within the Town and Country Planning (Use Classes) Order 1987 (use class order), subject to a number of criteria. However, since this policy was adopted the use class order has been amended and the aforementioned uses permitted within the Primarily Commercial Area now fall within either Class E or Class F of the amended use class order.
21. The proposed car wash use would be sui generis, and thus would not meet the permitted uses within the Primarily Commercial Area as outlined in UDP Policy SH6. Furthermore, clause v) of Policy SH6 concerns avoiding nuisance to neighbouring uses including with regard to noise and disturbance.
22. With reference to Paragraph 225 of the Framework, Policy SH6 is not fully consistent with the Framework, including with regard to the primarily commercial area boundary, the town centre boundary, and the guidance in Chapters 6 and 7 of the Framework concerning edge of centre sites and meeting needs not anticipated in the plan. However, as set out above, I have found there would be adverse effects on the living conditions of neighbouring occupiers with regard to noise and disturbance, and so there is conflict with Policy SH6. Whilst I

accordingly give the Policy reduced weight, I still find the conflict with the policy to be significant.

23. The appellant has made no case to justify why a departure from the policy should be allowed in this case, and very limited information has been provided to demonstrate how the proposed car wash use would contribute to the vitality and viability of the Primarily Commercial Area and the adjoining Birkenhead Key Town Centre, or would not adversely affect neighbouring uses in terms of noise and disturbance.
24. For the reasons set out above, the proposed use would adversely affect the vitality and viability of a Primarily Commercial Area and Birkenhead Key Town Centre. It would, therefore conflict with Policy SH6 of the UDP and with the Framework, in this regard.

Other Matters

25. The appellant has commented that during the application process amendments were made to the access arrangements in line with comments received from the Planning and Highway Departments. In response to this comment, amendments during the consideration of a planning application are a common occurrence, and in any case, I note that the Council's reasons for refusal raise no objection to this application on highway safety grounds as a result of these amendments.
26. The appellant has also commented on perceived differing opinions of officers at the Council as to the acceptability of the appeal proposal. However, the decision of the Council was to refuse planning permission and my consideration of the subsequent appeal is based upon the submitted evidence and my observations on site, with appropriate regard to the development plan and material considerations.

Conclusion

27. The proposed use, and associated activities, would have a harmful impact upon the living conditions of neighbouring occupiers by way of noise and disturbance. Furthermore, it has not been demonstrated that the appeal proposal would contribute to the vitality and viability of the Primarily Commercial Area and the adjoining Birkenhead Key Town Centre. The proposal therefore conflicts with the development plan taken as a whole and there are no material considerations to justify a decision otherwise than in accordance with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR