

Appeal Decision

Site visit made on 29 July 2024

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/C2741/C/24/3337644

Land known as Alx1 Ltd, 1 Avenue Road, York YO30 6AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Ross Alexander (Alx1 Ltd) against an enforcement notice issued by City of York Council.
- The notice was issued on 20 December 2023.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use from use class E(g) – Uses which can be carried out in a residential area without detriment to its amenity to use class B2 General Industrial Use for industrial process other than one falling within class E(g) (previously class B1) (excluding incineration purposes, chemical treatment or landfill or hazardous waste).
- The requirements of the notice are to:
 - i) Cease the use of the Land for the repair and servicing of motor vehicles.
 - ii) Remove from the Land all vehicle hoists, equipment and fittings associated with the use of the Land for the repair and servicing of motor vehicles.
- The period for compliance with the requirements is:
3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Formal Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the use for the repair and servicing of motor vehicles at land known as Alx1 Ltd, 1 Avenue Road, York YO30 6AY as shown on the plan attached to the notice and subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

2. The appeal site has a lengthy planning history. Of relevance to the matter before me are applications for planning permission from 1995 and 2017; the

former¹ for a change of use from storage (use class B8) to business (class B1) which was approved, and the latter² a change of use to vehicle repair workshop (use class B2 – retrospective), which was refused. Other than the application reference numbers I have not been provided with the details of those applications or any accompanying plans.

3. The Town and Country Planning (Use Classes) Order 1987 (UCO) was significantly amended in 2020. Amongst other things, the effect of this was to bring uses previously within certain other use classes into a new 'Commercial, business and service uses' class (Class E). Of particular relevance to the matter before me, uses that previously fell within Use Class B1 (Business) were subsumed into Use Class E, along with those that previously fell within use classes A1 (some), A2 and A3.
4. Previously, uses falling within Class B1 included offices, or land and buildings used for research and development purposes, or for light industrial uses. Collectively, they were for uses that could be carried out in a residential area without detriment to its amenity. The result of the amendments to the UCO is that Class E is a fairly broad class that contains a wide range of uses, the subparagraphs to which ((a) to (g)) qualify and define the limitations on those uses. In relation to Class E(g), this covers offices, research and development and any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of, amongst other factors, noise, smell, fumes or smoke.
5. The City of York Local Plan – Public Draft (Regulation 19 Consultation) (DLP) was submitted for examination in 2018. I have not been advised that the DLP has been formally adopted and note instead that the notice and the submissions of both parties continue to refer to the DLP as the emerging local plan. As a consequence, I cannot yet give it full weight but it is a material consideration that I have had regard to in reaching my decision.
6. The notice was issued after the publication of both the September and December 2023 revisions to the Framework, and the local planning authority's statement refers to the paragraph numbers from September 2023 version of the Framework. I am satisfied that the content of the paragraphs referred to by the Council is not materially different to that of the paragraph numbers of the December 2023 Framework, other than changes to the paragraph numbers such that paragraph 92 becomes paragraphs 110-112 become 114-116, 130 becomes 135 and 185 becomes 191. For the avoidance of doubt, references to the Framework hereafter refer to the December 2023 Framework and I have determined the appeal accordingly.
7. There were minor discrepancies in the naming of the appeal site premises and the appellant's company name in the submissions of both main parties, for which clarification has been provided. I have used the confirmed details in the banner and decision above and have determined the appeal accordingly.

¹ LPA Ref No: 7/002/08585/FUL

² LPA Ref No: 17/02010/FUL

Main Issues

8. The main issues are the effects of the use of the building for the repair and servicing of motor vehicles upon:
- the living conditions of occupants of nearby properties, with particular regard to noise and disturbance; and
 - highway and pedestrian safety.

Reasons

Living conditions

9. The appeal building is a modest single storey commercial building, constructed of blockwork / brick walls with corrugated sheeting roof, surrounded by a mix of predominantly residential properties. The building has no external space associated with it; instead, it fronts directly on to Avenue Road from where vehicle and pedestrian access / egress is taken, and its external side and rear elevations effectively mark the extent of the appeal site. Other than the rear escape door and the front access door, external openings in the building were limited to windows within the office / storerooms along the internal eastern side of the building.
10. At the time of my visit to the site, the building's interior was laid out in a manner not dissimilar to that shown on the existing layout plan³ submitted as an appendix to the appellant's Statement of Case. There were, however, four vehicle hoists located adjacent to the building's internal western side instead of the three shown on that plan and as stated in the appellant's Statement of Case⁴. As a consequence, the vehicle parking layout within the building, although not marked on the ground internally, also differed from that shown on the plan. There were no cars parked internally but there were vehicles on the vehicle hoists during my time at the site.
11. The Council's concerns appear to relate to noise arising from, and due to, the nature of the vehicle repairs carried out within the appeal building, and to noise and disturbance from the manoeuvring of vehicles into and out of the building. However, the concerns regarding noise arising from and due to the nature of the vehicle servicing and repairs are largely unsubstantiated, other than anecdotally via local residents. And from the evidence submitted the comments from residents do not appear to demonstrate continued disruption over an extended period. Indeed, the evidence submitted as exhibits appended to the Council's Statement of Case shows screenshots referring to complaints from 2018 that appear to have been closed at that time, or photographs of vehicles in the workshop on a specific, more recent, date. I have no further evidence of continuing disruption over a longer period of time, or documented evidence of specific events that have caused disruption.
12. The appellant's Noise Impact Assessment⁵ (NIA) demonstrates that, with the access door closed, noise transmission from working inside the building would be below recorded existing background noise levels at three noise sensitive

³ Drwg Ref No: A153.01.01 – dated March 2024

⁴ Paragraph 4.2.2

⁵ Noise Impact Assessment by Environmental Noise Solutions Limited (ENS): 3rd May 2024

receptors (NSRs). With suitable mitigation measures in place in terms of working practices, which could be secured by planning condition, I am satisfied that the operation of the premises as a place for the repair and servicing of motor vehicles would not cause significant adverse effects on the amenities of surrounding residents through noise.

13. Whilst an extract fan unit was present within the building's rear wall, I have no further details of that system or its suitability (or otherwise) for the treatment of fumes from the use of the building. It has been suggested by the Council and neighbours that the building's vehicle access doors would have to be left open to counter any fumes generated from vehicle engines running within the building, thereby exacerbating perceived noise disturbance. A suitably worded planning condition would be appropriate however to ensure the submission of details, and subsequent implementation, of an appropriate extraction system for the level of repair and servicing activities undertaken within the building.
14. I am also unpersuaded that the doors would be required to be left open to allow manoeuvring of vehicles onto the ramps. Clearly to facilitate access from Avenue Road into the building there would be a need for the doors to be open, but the process of moving vehicles within the building and on / off the hoists would not necessarily require the doors to be open. Although I appreciate that my visit to the site merely captures a particular snapshot in time of operations, the building's limited size presents a natural limit in terms of the vehicles that can be worked on at any one time.
15. For the reasons set out therefore, and subject to the conditions set out below, I am satisfied that the appeal scheme would not result in nearby residents being unduly affected by noise and disturbance arising from the operation of the appeal premises in the manner set out. There would be no breach of policy GP1(i) of the York Development Control Local Plan (2005) or policies ENV1, ENV2, D1, DP2 or EC3 of the DLP, or with the aims and provisions of the Framework.

Highway and pedestrian safety

16. Avenue Road is a two-way street with on-street parking spaces on one side and continuous parking restrictions (double yellow lines) on the other. Those parking spaces that are provided are marked as being for permit holders only, or for a limited period of 10 minutes to non-permit holders. At the time of my visit to the site, which I accept only provided me with a snapshot in time, the parking spaces were lightly trafficked with significant capacity as a consequence. I accept too however that this is likely to vary over time and across differing days of the week.
17. I am satisfied that there is sufficient space within the building, given the number of inspection hoists within it, for the parking and manoeuvring of vehicles between the internal parking spaces and those hoists. There may be instances where Avenue Road is also used for the manoeuvring of vehicles between hoists and internal parking spaces. However, as the local permit parking restrictions appear to allow limited non-permit parking, and the suggested condition regarding hours of operation would restrict evening and partly restrict weekend working, the conditions at the time of my visit suggest that parking pressure would be limited.

18. No direct evidence of customer's vehicles being road-tested along Avenue Road has been provided, whilst it is also stated that Avenue Road is used as a cut-through between Clifton and Burton Stone Lane at peak times. It is not clear exactly what is meant by road testing but, provided the vehicles are appropriately taxed, insured and have valid MOT certificates the use of the road network by vehicles is not a matter to which I give any significant weight. In any event, any assessment of the impact of such movements of customer's vehicles would be difficult to differentiate from those road users otherwise making use of the local road network.
19. For the reasons set out above, I am not persuaded that the use of the appeal site in the manner set out within the notice and the ground (a) appeal would cause significant harm to highway or pedestrian safety. There is, therefore, no conflict with policy T1 of the York Development Control Local Plan (2005) or DLP policy DP2 or the aims and provisions of the Framework in this respect.

Conditions

20. Neither of the main parties provided a list of suggested conditions. Having given consideration to the provisions and guidance set out in the Framework and the Planning Practice Guidance regarding the use of the conditions, the views of both main parties have been sought regarding the imposition of conditions and the suggested wording thereof in the event that the appeal should succeed and the deemed application for planning permission be granted.
21. I have imposed a plans condition to ensure that the building's interior is laid out, and retained as such, in a manner that reflects the existing ground floor plan as submitted with the appeal. A working hours / hours of operation condition, together with conditions regarding the submission of details of an extraction system, and accordance with the findings of, and mitigation measures set out in, the NIA, are reasonable and necessary in the interests of the living conditions of occupiers of nearby residential properties.
22. However, with regard to the suggested working hours / hours of operation condition, the Council has suggested a slight amendment to the hours to reflect the appeal site's location within a residential area. I agree that the Saturday working hours should be amended in line with the Council's suggestion to ensure a slightly later start to on-site operations but I am satisfied that the hours set out in the condition for weekday operations reflects both the appeal site's location in a predominantly residential setting and the reasonable operation of the appeal business.

Conclusion

23. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the repair and servicing of motor vehicles as described in the notice. The enforcement notice will be quashed.

G Robbie

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing no: A153.01.01 (Plan as Existing).
- 2) Within 2 months of the date of this decision, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme which shall first have been submitted to and approved in writing by the local planning authority. All equipment installed shall thereafter be operated and maintained in accordance with the approved scheme and retained for so long as the use continues.
- 3) Prior to the bringing into use of any equipment for the control of emission of fumes and smell from the premises agreed under condition 2 (above), it shall be enclosed with sound-insulating material and operated in accordance with a noise mitigation scheme that shall first have been submitted to and approved in writing by the local planning authority. The measures implemented as approved shall be retained thereafter.
- 4) The building shall be adapted and operated in accordance with the details and conclusions set out in the ENS Ltd 'Noise Impact Assessment' dated 3 May 2024, with windows and doors (including the vehicle access door) shut and other means of ventilation provided. The sound insulation works and mitigation measures set out in the ENS Ltd 'Noise Impact Assessment' dated 3 May 2024 shall be completed and implemented within 2 months of the date of this decision, and shall be maintained and retained thereafter.
- 5) Machinery shall be operated, processes shall be carried out, deliveries shall be taken at or despatched from the site, and the business operate only between 08:00 and 18:00 on Mondays to Fridays, 08:30 to 13:30 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.