



Appeal Decision

Site visit made on 13 November 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2024

Appeal Ref: APP/P4605/W/24/3344311

6 North Warwick Street, Birmingham B9 5AD

- 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 S Uddin against the decision of Birmingham City Council.
 - The application Ref is 2023/00503/PA.
 - The development proposed is the change of use from used car dealership and garage (sui-generis) to salvage yard (sui-generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It is not for me to consider whether the present use of the appeal site is lawful under this appeal process, or to determine whether it falls within a particular use class of the Town and Country Planning (Use Classes Order) 1987 (as amended) (UCO). However, it is important to establish the basis on which I am considering the proposal.
3. The parties simultaneously suggest that the historical use of the appeal site would fall within Class B2 (industrial) and Class B8 (storage and distribution) of the UCO. The appellant suggests that due to the time that that previous uses have operated from the appeal site, there is an established lawful use. It is not clear from the evidence presented what activities the previous uses involved, nor what period of time they took place. Moreover, there is no planning history for the appeal site, nor have I been presented with a lawful development certificate for an existing use.
4. Irrespective, the appellant has advised that the salvage yard is in operation now¹ and it was evident from the storage of vehicles, parts and the stripped condition of some cars that I observed during my visit, that this was the case. For these reasons, I consider the proposal to be retrospective.
5. The description of development as set out in the banner heading above is taken from the appellant's planning application form. It suggests that the proposal represents a change of use from a sui generis used car dealership and garage, to another sui generis use, that being a salvage yard. Whilst the Council made a minor alteration to the wording as set out on its decision notice, it did not seek to amend the description in respect of the change of use from one sui generis use to another. In the absence of any compelling evidence to the contrary, I have determined the appeal on the basis of the description set out on the planning application form.

¹ Paragraph 2.9 of the appellant's statement of case.

6. During my visit I observed that a building has been added to the appeal site alongside that marked as 'garage' on the submitted block plan. In reaching my decision I have assessed the proposal as shown on the submitted plans.

Main Issue

7. The main issue in this appeal is the effect of the proposed development upon the living conditions of neighbouring occupiers, with regard to noise and disturbance.

Reasons

Noise

8. The appeal site comprises an enclosed and gated yard in a 'T' shaped configuration, with frontages onto both North Warwick Street and Prince Albert Street. Only the former frontage appeared to enable pedestrian and vehicular access into the site at present. It is enclosed by brick walls to an approximate minimum height of 2m. It abuts neighbouring dwellings with little space in-between to the east, south-east, south-west and north-west.
9. The surrounding area is predominantly residential in character although there are sporadic commercial and industrial buildings within the wider area. Victoria Street although well frequented with traffic, nonetheless is a single car carriageway with a 30mph speed restriction, such that the level of background noise is not particularly excessive.
10. The Environmental Noise Report (ENR) suggests that the proposed development would result in a negligible change in noise levels that would be difficult to perceive above the existing background noise. It advises that dominant noise sources in the area are road traffic noise from Victoria Street and Bordesley Green and a continuous fan/air conditioning sound from a factory on Prince Albert Street. At the time of my visit any sound generated from these sources was not particularly intrusive and faded into the background as a continuous sound. They are therefore different in nature to those sounds that might be generated by the proposed use.
11. Indeed, I have had regard to the representations of interested parties that refer to banging sounds being audible from the appeal site. Such noises may not be problematic in and of themselves, depending on their severity and duration. Nevertheless, they are more likely to be startling and distracting to neighbouring residents such that they are more difficult to filter out than low level background noise. This could prevent the ability of neighbouring occupants to relax or concentrate in their homes even during the day if they are to be prolonged. As the proposed use would operate 6 hours per day, 5 days a week, it could have an adverse effect on the living conditions of neighbouring occupants. It is therefore reasonable to follow a precautionary approach.
12. The ENR indicates that a dismantling demonstration took place to facilitate the assessment. Whilst there is brief reference to 'the use of hand tools to loosen bolts etc,' the ENR does not clearly explain what dismantling activities took place and what tools were used. Neither is there any information before me to explain whether some dismantling activities would be noisier than others. In this regard, I cannot be certain that the dismantling demonstration was representative of typical day-to-day activities.

13. Importantly the ENR does not appear to consider other noise generating activity such as noise from use of the lifting equipment, the loading/unloading/moving of vehicles, car doors shutting, engines running and reversing beepers. Whilst these might not generate significant levels of noise in and of themselves, they would contribute to the noise generating effect of the proposal. Some of these noises are likely to be intermittent and impulsive such that their impact is not clearly understood.
14. In light of the proximity of the appeal site to neighbouring dwellings, it is unclear why the ENR did not measure noise at the nearest noise sensitive receptors including from their habitable rooms and gardens/yards. These include the flats on the corner of North Warwick and Prince Albert Street, No 72 and 75 Victoria Street and No 77 Prince Albert Street which has a window on the flank elevation, immediately above the suggested storage area. No further information or an updated ENR appears to have been provided to address the concerns of interested parties.
15. I note that the environmental pollution control officer did not raise any objection to the proposed development subject to conditions. Given the uncertainty around the precise noise impact from the totality of operations arising from the proposed development, as well as the specific impact at noise sensitive receptors I cannot be certain that the suggested conditions including limiting the hours of operation and use of power tools, would wholly mitigate the noise impact. In this regard, I share the concerns set out in the Council's officer report that the suggested conditions would not be reasonable or enforceable.
16. I note that the ENR recommends as an advisory that the roller shutter door remain shut while dismantling works take place. It is not clear how realistic this would be, particularly on a warm summer day when ventilation for staff may be required. In any event, this would not address the other sources of noise that are likely to occur as a result of the proposed use, outside of the building but within the yard.
17. Moreover, the level of activity occurring at the appeal site appeared to be greater than that suggested in the submissions, given the amount of vehicles stationed within and outside of the appeal site. No conditions are proposed regarding an upper limit on vehicle storage or deliveries to and from the site. Furthermore, the description of development refers to a general salvage yard rather than a vehicle breakers yard such that in the absence of any specific conditions, other salvage activities could take place in the appeal site that could give rise to other noise occurrences.
18. I find that given the close relationship of the appeal site to nearby dwellings, the nature of the noise generated by the proposal and the weaknesses identified in the ENR, I cannot be certain that the proposal would not give rise to noise generating activity that would be harmful to the living conditions of neighbouring residents.
19. I acknowledge that noise may have been generated from the former use of the appeal site as a garage. However, notwithstanding the aerial photographs supplied, the specific nature of the former garage is unknown, as well as how its activities compare or contrast with those proposed. The appellant advises that the previous uses on the site were more intensive and did generate some

complaints². The nature of these complaints is unknown and I am not convinced that the proposed use would realistically be less intense.

20. Following a precautionary approach, I find that it has not been robustly shown that the proposed development would not be harmful to the living conditions of nearby residential occupiers with regard to noise.

Disturbance

21. It is suggested that vehicles would be brought to site once a week on a single recovery truck that is kept and stored on site and that stripped vehicles would be transported weekly to a scrap yard. With 2 members of staff present, this description suggests a potentially low-key use. The appellant advises that a maximum of 2 cars would be on site to be dismantled at any one time and that 2-3 vehicles would be on the site per week³. This is not entirely clear and could suggest that no other cars would be on the appeal site apart from those to be dismantled, staff and customer vehicles.
22. Nevertheless, there would be comings and goings of staff, deliveries of parts to customers or the post office, the collection of waste and courier items and the removal of stripped cars. It would also appear that there would be some customer sales of parts direct from the site by prior arrangement⁴.
23. I observed that the western section of the appeal site was sectioned off behind a tarpaulin covered fence with at least 14 parked vehicles stored cheek by jowl alongside stored stripped parts. It was not clear what the circumstances of those vehicles were, including whether they were waiting to be stripped or to be transported to the scrap yard. Either way, they were blocking the area identified on the plans for the parking of the recovery vehicle and there were significantly more than 2-3 vehicles on the site.
24. I observed a recovery truck parked on the highway at the head of North Warwick Street with a stripped vehicle on the back. It also seemed apparent from the number and condition of vehicles parked on the street, that the current use is spilling onto the adjacent highway, a concern I note was raised by the transportation section of the Council and corroborated by interested parties. I observed that parking is at saturation point and vehicles are parked within the turning heads, as well as on pavements and verges. It seems to me that any overspill of vehicles from the appeal site into neighbouring roads would reduce the amount of car parking available to local residents, such that this would cause nuisance and disturbance to neighbours. This chimes with the representations from interested parties.
25. As discussed above, I accept that the previous use may have generated comings and goings. However, there is no evidence before me of the exact nature of this use, hours of operation or degree of activity to enable a comparison with the proposal before me.
26. No condition has been suggested to limit the number of vehicles including any recovery trucks that can be accommodated on the appeal site at any one time. Furthermore, the appellant has declined to accept the Council's suggested condition of a temporary 12-month permission in order for the impact of the proposed use to be monitored. I am not satisfied that the suggested conditions alone would control the proposed use sufficient to prevent disturbance.

² As explained at paragraph 4.15 of the appellant's statement of case.

³ Paragraph 2.10 of the appellant's statement of case.

⁴ As referenced in the appellant's further supporting information dated May 2023.

Conclusion – Living Conditions

27. It is for the agent of change i.e. the appellant to address and mitigate any potential adverse effects that are identified⁵. Whilst some of the suggested conditions would be capable of controlling aspects of the proposed development, I cannot be certain that the proposed noise limit would be appropriate or that the proposed use would not spill out onto the surrounding highway network. I find that the Council's suggested conditions would not wholly mitigate the impact of the development. Thus, they could not be considered to meet the test of reasonableness⁶. Moreover, based on my observations of what was taking place on site, I cannot be certain that the appellant would be capable of complying with the suggested conditions.
28. Taking all of the above into account, I cannot be certain that the proposal would not have an adverse effect on the living conditions of neighbouring occupants, with particular reference to noise and disturbance. As such, the proposal conflicts with Policy DM2 of the Development Management in Birmingham; Development Plan Document (DPD) 2021 which seeks to prevent unacceptable adverse impacts arising from noise amongst, other things, on the amenity of neighbours.
29. I have not applied Policy PG3 as it relates to the design quality of new development such that in the absence of proposed building operations, it is not relevant.
30. The Council is not obliged to follow the advice of its consultees and it is able to have regard to the representations of interested parties.

Other Matters

31. Reference is made to the support in the National Planning Policy Framework for small businesses and economic growth. Be that as it may, such support is not unqualified and does not override the need to consider the impact of proposals on the living conditions of neighbouring residents.
32. The appeal site is not located within the setting of a listed building or non-designated heritage asset and there are no ecological constraints. These are neutral factors along with the acceptability of the proposal in terms of flooding and drainage that weigh neither for, nor against, the proposal.
33. Concerns regarding the handling of the application are a matter for the parties.

Conclusion

34. For the reasons given, the proposal would conflict with the development plan and there are no other considerations that outweigh this finding. The appeal is dismissed.

M Clowes

INSPECTOR

⁵ Planning Practice Guidance Paragraph: 009 Reference ID: 30-009-20190722.

⁶ As set out in paragraph 55 of the Framework and PPG Paragraph: 003 Reference ID: 21a-003-20190723.