



Appeal Decision

Site visit made on 16 January 2025

by **Laura Renaudon LLM LARTPI Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2025

Appeal Ref: APP/Z4718/C/24/3341883

Land and property to rear of 4-16 Purlwell Lane, Batley, WF17 5BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Aliyaz Gulmawaz against an enforcement notice issued by Kirklees Metropolitan Council.
- The notice was issued on 1 March 2024.
- The breach of planning control as alleged in the notice is *Without the benefit of planning permission, the material change of use to the storage of vehicles*.
- The requirements of the notice are to (1) cease the use of the site for storage of vehicles; and (2) remove all the vehicles from the site.
- The period for compliance with the requirements is 30 days.
- The appeal is proceeding 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.

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.

Main Issues

1. The notice itself states that the use of the site for the storage of vehicles is not in keeping with the residential character of the area, and has resulted in an unacceptable impact on residential and visual amenity, bringing a commercial use into what was previously said to have been open land with no planning use. The notice does not specify what if any impacts arise to residential amenity save for the visual impacts, and the sole policy cited as relevant is 'Design' policy LP24 of the Kirklees Local Plan.
2. The Council's statement of case goes somewhat further, identifying adverse privacy impacts on the occupiers of the dwellings at 4–16 Purlwell Lane as well as adverse noise impacts to surrounding neighbours arising from the movement of cars within the site. It is also suggested that risks to highway (including pedestrian) safety arise from the development, although no relevant policies or representations from the local highway authority are cited in support of this contention. Local residents making representations have suggested that the development will add to local traffic congestion.
3. Local residents also assert that the previous use of the land was as a 'communal use' for what I understand to be for the benefit of the residents of 4-16 Purlwell Lane. It is also suggested that the gas and electricity connections that have been made to the site may be unsafe.
4. Having regard to those representations, the main issues in the case concern the effects of the development on the character and appearance of the area, and its effects on the living conditions of adjoining neighbours by reason of privacy, noise

and the visual effects of the development. A further issue for consideration, although not introduced until after the notice was served, is the effects of the development on highway safety and on the free flow of traffic in the area.

5. The safety of utility connections is a matter that may be taken up elsewhere and is not within the scope of the planning considerations raised by the appeal. As to the removal of any prior 'communal use' of the land, as a question of private interests I cannot see that this raises planning considerations. Any private rights that the adjoining neighbours may have acquired over the land cannot be determined through the planning process. I will however consider the question of the residual lawful land use in order to assess the acceptability of the development in relation to the main issues raised.

Reasons

The residual use

6. There are conflicting accounts before me as to the prior land use, although it appears that there is no record of any planning permission or other document to establish any lawful use of it. The default position in the 1990 Act is that any land may be used for agricultural or forestry purposes without requiring planning permission but any of the previous uses referred to here, such as a waste disposal site or as a communal garden, would in principle require planning permission. A number of residents refer to the land having been put to communal uses such as hanging laundry for some four decades, and say that a public grant was given some 30 years ago to assist in such a use.
7. No ownership interest in the land is said to be held by adjoining owners or by the Council. The current owner (the appellant) appears to have acquired the land free of any knowledge or notice of such matters in or around May 2023. It is said that there was then no evidence of any communal use of the land, which appeared to the appellant to have been used for unlawful waste disposal purposes by unknown third parties. It is also said that the land had been used in the past for the storage of vehicles and for the parking of taxi cabs from time to time.
8. Any enforcement notice is not required to identify any previous lawful use of the land, but here the Council have identified that the land previously had a 'nil' use. At the time of issuing their statement of case, the Council appeared to adopt the assertions made by local residents as to the previous land use and have provided an undated photograph of some laundry hanging from a washing line within the site. That photograph appears to have been taken from outside the present entrance gates so it is unclear whether or not it pre-dated the appellant's acquisition of the site. Another undated photograph shows the site to be clear of any vehicles (or washing) but to consist of a tarmacked surface overgrown by moss and other vegetation.
9. Notwithstanding the assertions made by local residents and the single photograph of a laden washing line, I have insufficient information on which to conclude otherwise than that the Council's original description of the pre-existing land use was correct. In the absence of any relevant planning history or of any detailed description of the evolving land use by those with first-hand knowledge of it over the requisite period, it appears that no lawful use of the land has ever been established.

10. Therefore the residual, or 'fallback', use of the land appears to me neither as a flytipping site nor as a communal garden or other facility, but as land with no lawful use save for those agricultural or forestry uses that might be instituted without any requirement for planning permission. I am not informed as to the likelihood of any such use taking place in the absence of the planning permission sought by this appeal.

Effects on the character and appearance of the area

11. In addition to the use with which the notice is concerned, I saw that an array of fencing had been erected to the eastern side of the site where it abuts the properties on Purlwell Lane. I am not informed whether that fencing is in anyway integral or ancillary to the use that is being made of the land, or whether it benefits from any permission, and the notice is not concerned with it. I give it limited consideration here.
12. The appellant draws my attention to policies in the Kirklees Local Plan, particularly policy LP7, that encourage and support the sustainable re-use of previously developed or vacant land. Subject to obtaining the protections afforded by other policies there can be no principled objection to bringing urban land into a positive use.
13. Although the wider context of the site is of a mixed commercial and residential character, its immediate surroundings are residential. Although largely flat, it is set within a hillside site whereby the properties on Purlwell Lane are set below it, those at Brown's Place look down onto it, and those on Hamza Street look across to it, albeit through two sets of high metal fencing. Although the proposal consists of a car storage rather than car sales facility, the number of cars kept at the site and parked nose-to-tail is not visually what would be expected of the use and parking of cars in a typical residential area.
14. I acknowledge that the appellant has taken steps to considerably improve the appearance of the site and to put it to a beneficial use. As explained above, however, I do not accept that a flytipped site is the underlying lawful use or to which return is inevitable if permission is refused. The lawful fallback position is of a vacant (or agricultural) site and the car storage use, with some 15 or so cars stored at a high density, is not commensurate in appearance with the immediate residential environment. I accept however that without any permission for any use of the site, there is a likelihood of it becoming untended or neglected. Whilst the Council has powers to deal with land adversely affecting the amenity of an area, the land is unlikely to be positively cared for without the benefit of a planning permission of some kind.
15. The wider environment does however contain a number of commercial uses, including a nearby car sales forecourt, storage units and a coach hire company. Immediately to the north of the site, on lower-lying land, land to the rear of a takeaway restaurant has been opened up to provide car parking. Thus the presence of vehicles in reasonably high concentrations is not an alien feature of the area.
16. Whilst policies, particularly LP7, encourage the reuse of vacant land, policy LP24 pulls in the other direction in some cases. It requires proposals to require good design by ensuring that the details of development enhance the character of the townscape. Whilst the car storage use is somewhat at odds with its immediate

residential surroundings, it is of a piece with the mixed commercial and residential uses of the wider area. On balance, and because of the obvious benefit in putting the land to some use rather than no use, I find that the development is consistent with the development plan for the area in this respect.

Effects on the living conditions of adjoining residents

17. The fence has undoubtedly damaged the outlook of the adjoining residents on Purlwell Lane, because together with the pre-existing retaining wall to their rear courtyards they now look onto a boundary treatment some 3m high. However, the fence itself is not before me for consideration. The appellant acknowledges that it has the effect of screening the site and prevents impacts on residential privacy. Without it, those residents would observe the commercial activity immediately adjoining them (as they currently may from their first floor).
18. It is explained to me that no car sales take place from the site, and the cars are stored on site pending sale with limited comings-and-goings. Although this is likely to produce more activity than a site in no use at all, the development has no tangible effect on the privacy of any adjoining neighbours. There is no built development giving rise to any overlooking concerns, for example. The privacy of neighbours is no more affected than if the site were used in any other way.
19. Noise from the operations is not generally expressed to be a concern of neighbours and I accept that with appropriate planning conditions the hours of operations and activity at the site, which does not include car sales or repairs, can be limited so as to avoid adverse noise impacts.
20. As to visual impacts, as a question of neighbouring amenities I do not consider that the outlook of adjoining residents onto a number of cars stored on the land can be particularly offensive. It is not overbearing and does not produce any overshadowing. A positive use of the land is likely to result in more careful maintenance of it and I find that it would not produce deleterious effects on the amenity of neighbours.
21. Accordingly I find the development to be consistent with the provisions of the development plan for the area in this respect

Effects on the highway

22. The appellant explains that a planning condition to limit the number of cars on the site to ensure manoeuvrability within it would be acceptable. The working method is also explained which avoids the need to remove cars from the site except when they are being removed for sale. I am satisfied that with appropriate conditions any vehicle could be removed from the site in a forward gear thus avoiding any adverse impacts on highway safety. As to the question of congestion raised by local residents, the apparent scale of the operation here would have a negligible impact on traffic counts in the area and would not be a reason to refuse planning permission.

Conditions

23. The appellant has indicated his willingness to accept a condition allowing fewer than 15-20 vehicles to be stored on the site. Given the need to ensure manoeuvrability within the site and for cars to be able to leave the site in a forward gear, a maximum of 15 vehicles appears to me appropriate.

24. It also appears to me appropriate to prohibit car sales or repairs, the use of machinery, and the running of vehicle engines at unsocial hours. Additionally I shall require that no external lighting be installed except with the prior written agreement of the Council. All these matters appear to me necessary in order to safeguard the amenity of adjoining residents.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

Formal Decision

26. 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 of the land to the rear of 4-16 Purlwell Lane, Batley WF17 5BH for the storage of vehicles subject to the following conditions:
- (i) No more than 15 vehicles may be kept or stored on the land at any time.
 - (ii) No sales of vehicles shall take place from the land and no vehicle repairs shall take place on the land.
 - (iii) No power tools shall be used on the land.
 - (iv) No vehicle engines shall be running between the hours of 1900 and 0700 nightly, or after 1300 on Saturdays, Sundays and Bank Holidays.
 - (v) No external lighting shall be installed on the land except with the prior written agreement of the Local Planning Authority.

Laura Renaudon

INSPECTOR