



Appeal Decision

Site visit made on 19 March 2026

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 April 2026

Appeal Ref: APP/U5930/C/24/3347896

79 Rosebank Road (Unit 79), London E17 8NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended.
- The appeal is made by Mr. Kaiyum Bhari on behalf of Best MOT against an enforcement notice issued by Waltham Forest London Borough Council.
- The notice was issued on 7 June 2024.
- The breach of planning control as alleged in the notice is *without planning permission, change of use of the Land from car sales (Use class Sui Generis) to MOT test centre, car repair centre, car servicing, MOT repairs, Engine repairs and rebuilds, car body repairs, dent removal, breakdown recovery, car valeting, cambelt repairs, tow bar fitting, wheel alignment, power cleaning of cars and other associated works and repairs (Use class Sui Generis).*
- The requirements of the notice are:
 1. *Cease using the Land as a MOT test centre, car repair centre, car servicing, MOT repairs, Engine repairs and rebuilds, car body repairs, dent removal, breakdown recovery, car valeting, cambelt repairs, tow bar fitting, wheel alignment, power cleaning of cars and other associated vehicle related works and repairs (Use class Sui generis) (as shown edged in Red in Appendix A).*
 2. *Remove from the Land all associated equipment related to the use of the land as a MOT test centre and car repair unit.*
 3. *Remove from the Land all associated car accessories including unaffixed to a vehicles, tyres from the Land.*
- The period for compliance with the requirements is: *within three (3) months after this notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (d) of the 1990 Act (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 1990 Act.

Formal Decision

1. It is directed that the enforcement notice is corrected by:
 - The substitution of Step 3 in Section 5 of the notice with the following: *“Remove from the Land all associated car accessories including those unaffixed to vehicles and any tyres.”*
2. Subject to the correction the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The appeal site known as Arch 79 is located on the eastern side of Rosebank Road. The site consists of a single railway arch, with a forecourt that is combined with Arch 80 and front Rosebank Road, enclosed by steel fencing and roller shutters. The appeal site is operated in conjunction with Arch 80.
4. During the site investigation it was apparent that the business use conducted by “Best MOT” has ceased. Both archways at units 79 and 80 contained locked shutters, with an additional set of shutters fronting Rosebank Road preventing

access to the public. At the time of my visit there were no vehicles on display or awaiting repair on the forecourt.

5. Section 181(1) of the 1990 Act (as amended) makes it clear that compliance with a notice does not discharge it. This appeal still needs to be determined in the absence of either its withdrawal by the appellant or by the notice being withdrawn by the Council. The appellant has confirmed that the business has now ceased, however they would like the appeal determined. Therefore, I have based my decision on the alleged development that existed at the time the enforcement notice was issued.
6. The appellant has exercised their right of appeal under grounds (a), (b) and (d). However, a significant proportion of the appellants representations are based on the argument that the use of unit 79 does not amount to a material change of use. The appellant alleges the use as an MOT test centre was granted permission in June 2012, which related to both units 79 and 80, thus a breach of planning control has not occurred. This issue should be correctly addressed under a ground (c) appeal, and I have referred to both parties of my intension to consider the appeal under this ground. Consequently, neither party has been prejudiced by this approach.
7. For ease of reference, within this decision, the sui generis use of the site for car sales will be referred to as “car sales”. Whilst the sui generis use of the site for an MOT test centre, car repair centre, car servicing, MOT repairs, Engine repairs and rebuilds, car body repairs, dent removal, breakdown recovery, car valeting, cambelt repairs, tow bar fitting, wheel alignment, power cleaning of cars and other associated works and repairs, shall simply be referred to as the “new vehicle service and repair use”.

Appeal under ground (b)

8. An appeal on this ground is that the matters alleged in the enforcement notice, have not occurred. In order to succeed on this ground, the appellant must demonstrate that, on the balance of probability¹, the matters stated in the notice have not occurred as a matter of fact.
9. The Council has supplied dated photos taken from Google Maps in their statement of case. The earliest photo dated July 2008 shows units 79 and 80 under separate ownership and occupation. The photograph shows unit 79 occupied by “Supreme Glazing (Euro) Ltd” who were undertaking various glazing works and repairs. Unit 80 was being operated under the banner of “Best Motors” whose use was for “car sales”. Each archway operation were separate planning units and were physically delineated by means of a blockwork wall.
10. The photo dated September 2011 shows the blockwork wall had been removed and vehicles were now arranged on the forecourt of both units. The photograph shows prices and details displayed behind the front window of all the cars on the forecourt. There are also cars within both archways. The signage has also changed with “Best Motors” displayed between arches 79 and 80 which highlights that “car sales” were now being undertaken at both sites.

¹ *Thrasivoulou v SSE & Hackney LBC (No 1)* [1984] JPL 732

11. The photos dated July 2014 show a similar arrangement of vehicles, also being advertised for sale. The photos highlight that the company name and signage have again changed. The signage is larger and more strident with the company named as “Best MOT”. They offered various MOT services, diagnostics, wheel alignment and other repair works. These photos also show vehicles in various states of repair at the rear of the forecourt closer to the archways.
12. It is evident from the July 2014 photos that a “new vehicle service and repair use” was being undertaken at unit 80, given the presence of a mechanical lift and equipment for servicing vehicles. However, there is no indication of such lifting and servicing equipment at unit 79. Nevertheless, these photos highlight its use as a single planning unit operating under one banner as “Best MOT”, undertaking a combination of “car sales” and “new vehicle service and repair use”.
13. The photos dated May 2015 show a further evolution of the site. There are no vehicles for sale on the forecourt, with vehicles awaiting mechanical servicing and repair. Unit 79 also has new lifting equipment within the archway, with a blue car on the lift. The addition of this equipment would be associated with the servicing and repair of vehicles; a use not previously being undertaken within this part of the site.
14. The photo dated March 2018 also highlights that vehicle repair works were being undertaken at both units 79 and 80, adding weight to its use as a single planning unit. However, it appears from this photo that the intensity of the operation has meant that works to vehicles had spilled outside the site and were being undertaken on the public highway. Overall, on the balance of probability the matters alleged in the notice, namely the “new vehicle service and repair use” has occurred as a matter of fact.
15. Accordingly, the appeal on ground (b) fails.

Appeal under ground (c)

16. An appeal on this ground is made on the basis that the matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control. As with ground (b) above, the burden of proof is again firmly on the appellant to make their case, on the balance of probabilities.
17. The use at unit 79 was a separate planning unit originally for glazing works and repairs under Supreme Glazing (Euro) Ltd. Given that Supreme Glazing did not involve activities associated with vehicle sales and/or repairs, a material change of use has occurred, as there is a significant difference in the character of the activities from the previous use.
18. Both parties refer to planning permission² being granted in June 2012, for the change of use to an MOT test centre. However, there is discrepancy between the parties regarding the planning unit to which the permission relates. The appellant alleges that the change of use application was made for both units 79 and 80. However, it is clear from the application form, decision notice and approved plans that the permission relates specifically to unit 80.
19. Subsequently, I find that a material change of use to an “new vehicle service and repair use” has taken place, for which planning permission is required and has not

² London Borough of Waltham Forest Planning Ref: 2012/0613

been granted in relation to unit 79. Therefore, the matters stated in the notice have occurred, and I conclude that the appellant has not shown, on the balance of probabilities, that they do not constitute a breach of planning control.

20. The appeal on ground (c) therefore fails.

Appeal under ground (d)

21. An appeal on ground (d) is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. Again, the test of the evidence is the balance of probability, and the onus of proof is on the appellants. If the Council has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
22. The enforcement notice was issued on 7 June 2024, therefore the appellant needs to demonstrate that the material change of use to "new vehicle service and repair use" at unit 79 began not later than 7 June 2014 and continued without material interruption for a ten year period. The appellant states that the land has been used for mechanical works since 2006/2007 when they took over the lease. However, I have been supplied with little information, in the form of business rate invoices, utility bills or indeed dated and addressed invoices from the business at the premises.
23. The appellant has submitted an Assured Shorthold Tenancy (AST) and also a signed agreement both dated 1 July 2007 as evidence. The AST and the other agreement are between Mrs. Butt of Supreme Glazing (Euro) Ltd at unit 79 and the appellant at unit 80. However, these documents state that the signatories agree to each pay half of the local authority rates, electricity charges and Network Rail rents. Whilst this highlights that amenities were shared, this evidence shows units 79 and 80 were independent of one another and occupied as separate planning units.
24. Further evidence has been supplied in the form of five proformas dated 10 July 2024 signed by Halima Iqbal, Aisac Iqbal, Mohammed Ghani, Uzwan Ghani and Shrapat Ali. These proformas have not been made under the provisions of the Statutory Declarations Act 1835, nor witnessed by or signed in the presence of a solicitor, commissioner for oaths or notary public. These proformas allege that the appellant started a car sales and repairs business, named "Best repairs and sales" in unit 80 in August 2007, then progressed to unit 79 in December 2009. Given these are unsworn written statements which have not been tested by questioning, I apportion these statements limited weight only.
25. Conversely, the Council have supplied verifiable and dated photographs from Google Maps. These show the units at 79 and 80 operating as separate planning units in July 2008. A photograph taken in September 2011 shows the removal of a blockwork wall on the forecourt between units 79 and 80, and it being occupied by several cars available for sale. There are also vehicles within the archways themselves. It is not until July 2014 that MOT testing and vehicle repairs are shown in the photos. These photos highlight that the whole site operated both "car sales" and "new vehicle service and repair use", albeit that repair and servicing works did not appear to have commenced at unit 79 until May 2015.

26. The parties refer to a planning permission granted in June 2012, for a change of use from “car sales” to the use as an MOT test centre. However, I have already found that this permission related to unit 80 only. Thus, any use of unit 79 outside of its previous use as Supreme Glazing (Euro) Ltd, would be considered unauthorised.
27. There is little detail before me in respect of any utility bills, invoices, business rates or other correspondence at the appeal site to provide precise and unambiguous evidence that the use has occurred on an uninterrupted basis. This type of information would have provided significant assistance in verifying that unit 79 had been used for “new vehicle service and repair use”. This information should be readily available given the purported use, particularly in light of the appellants claimed occupation since 2006. Consequently, I am unclear why these records would be unavailable for the submission of this appeal.
28. Overall, the submitted evidence is inconsistent, lacks detail, and is not sufficiently precise and unambiguous for me to conclude, on the balance of probability, that a material change of use to a “new vehicle service and repair use” at unit 79, began prior to 7 June 2014 and has continued uninterrupted for ten years. Although the use at the site appears to have been there for a significant period, based on the evidence submitted it has not been demonstrated the use was immune from enforcement action through the passage of time.
29. The appeal on ground (d) therefore fails.

Appeal under ground (a), the deemed planning application

30. An appeal on this ground is that planning permission should be granted for the matters alleged in the enforcement notice. Consequently, the deemed planning application is for the change of use to a “new vehicle service and repair use” at Unit 79 Rosebank Road, London E17 8NH.

Main issues

31. The main issues are the effects of the proposed development on; a) living conditions of local residents with specific regard to noise and disturbance; and b) parking and highway safety.

Reasons

Living conditions – Noise and disturbance

32. The appeal property comprises of commercial units located within the existing archways at the ground floor level on the east side of Rosebank Road, with the west side of the road being occupied by a traditional terrace of two storey residential dwellinghouses. Despite the proximity of the commercial premises in the arches, the surrounding area has a suburban residential feel.
33. Whilst the “new vehicle service and repair use” has now ceased trading, there would have been a degree of comings and goings to the site, particularly with patrons dropping off and collecting cars for servicing at the premises. Given the presence of similar vehicle repair facilities within other arches nearby, activities and noise would be prevalent within the vicinity. Nevertheless, the introduction of a further vehicle repair use in the area would have the potential to increase visitor numbers and consequently noise and disturbance experienced from the site.

34. The appellant claims to have advised customers to be mindful and respect neighbours in regard to noise and disturbance, which highlights that the appellant is aware of local concerns and have tried to mitigate these issues for the existing residents. However, it is unclear how noise and disturbance associated with the new use could be identified. I have been supplied with no information pertaining to the existing background noise levels at the site. Nor are there details regarding any noise level testing conducted at the premises to safeguard against any potential noise break-out from the proposed use at unit 79. Nor have I been furnished with details pertaining to any proposed measures that could potentially suppress noise and disturbance.
35. It is acknowledged that a similar use was approved at unit 80 subject to conditions. These included the restriction of operational hours from 0830-1830 Monday to Friday; between 0830-1300 on Saturdays; and no work permitted on Sundays or Bank Holidays. There were further restrictions in respect to the use for MOT testing only; works within the archway only; regular maintenance of machinery and equipment to reduce noise and vibration; and the storage of vehicles within the planning unit only.
36. Concerns have been raised by the Council and third parties in respect to many of these conditions being consistently breached. Third parties have provided photographic evidence of vehicles being repaired outside the planning unit on the public highway; damaged vehicles being delivered to the site outside of working hours and other works being undertaken outside the hours of operation as conditioned. Given the nature of the employment and the works themselves it is likely that there would be an increase in the noise and disturbance associated with these activities.
37. Consequently, I have given careful consideration with regard to mitigating conditions. Given that I have little evidence before me to clarify what the existing noise levels are, nor whether any potential sound insulation measures would be adequate, there are no quantifiable calculations on how the noise level criteria would be achieved. As such, a condition cannot be attached, at this stage, requiring measures to be incorporated to reduce or mitigate impacts from noise.
38. Whilst I acknowledge that the use itself and hours of operation have been restricted by way of conditions previously, from the evidence before me I am not convinced that these conditions were effective, given the numerous breaches recorded by third parties. Therefore, imposing similar conditions would not be any more effective in mitigating harm, and the use of more restrictive conditions could impact on the viability of the business. These would be unreasonable and unlikely to be enforceable, thus would not meet the relevant tests for conditions³. As such, I must adopt a precautionary approach.
39. Overall, it is unclear whether the addition of the further “new vehicle service and repair use” at unit 79 would lead to potential conflict between users and existing residents, and noise complaints which may necessitate enforcement action. Any noise nuisance reported could thus lead to pressure for further restrictions to be placed on unit 79, such that unreasonable burdens might be placed on these users’ contrary to the advice contained in the Planning Practice Guidance (PPG)⁴; paragraph 198 of the National Planning Policy Framework (the Framework);

³ Paragraph 57 of the Framework and Paragraph: 003 Reference ID: 21a-003-20190723 of the PPG

⁴ Paragraph: 009 Reference ID: 30-009-20190722

policies D13 and D14 of the London Plan (LP), adopted March 2021 and policies 50 and 57 of the Waltham Forest Local Plan Part 1 (WFLP).

Parking and highway safety

40. There is limited on-street parking space available at Rosebank Road and the surrounding residential area, as it is subject to parking restrictions. Parking bays are available to residents only, between 0800-1230 and 1430-1830 Monday to Friday, and between 0800-1830 on Saturdays. Furthermore, there are double yellow lines which also restrict on-street parking. Given the nature of the business, it is likely that vehicles could occupy areas where parking is restricted.
41. Furthermore, third parties have highlighted that illegal parking and servicing had been undertaken on the public highway prior to the business ceasing at unit 80. The addition of a further unit providing vehicle servicing and repairs would therefore only increase the demand for parking on the street, where opportunities for on-street parking appear limited.
42. I have not been provided with any parking stress surveys, nor have I been presented with any details of a Traffic Assessment, Delivery and Servicing Plan or alike, highlighting how parking and servicing would be managed. Nor have I been presented with evidence or indeed a mechanism, such as a legal agreement, that could limit the numbers of vehicles at the site, which would be necessary to make the development acceptable in respect to parking and highway safety.
43. Given there is little evidence before me to clarify that there is availability of sufficient car parking spaces, nor that there are no pressures caused by existing uses or developments in the area, the proposal fails to demonstrate that it would not result in adverse effects on the highway network. Therefore, the proposal would be contrary to WFLP policies 63 and 66 which seek to effectively assess the impacts of development on traffic and parking, and encourage and promote active and sustainable transport amongst other things.

Conclusion on ground (a), the deemed planning application

44. The lack of clarity on the effects of the proposal on parking impacts and highway safety, coupled with the likely harm resulting to the living conditions of existing residents in respect to potential noise and disturbance, weigh against the proposal. Consequently, the proposed development conflicts with the development plan when taken as a whole, and the Framework, and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
45. For these reasons I conclude that the appeal should be dismissed.

Overall conclusions

46. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR