
Appeal Decision

Site visit made on 11 June 2014

by Sandra Prail MBA, LLB (Hons), Solicitor (non practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 June 2014

Appeal Ref: APP/Q1445/C/13/2208695

Land at Unit B, Westerman Complex, School Road, Hove, East Sussex BN3 5HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Osman Shala against an enforcement notice issued by Brighton and Hove City Council.
- The notice was issued on 3rd October 2013.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the land from B1 light industrial to a hand carwash (sui generis).
- The requirements of the notice are to (1) cease the use of the land as a hand carwash and (2) remove all signage and equipment related to the use as a hand carwash.
- The period for compliance with the requirements is 28 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.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with correction and variation.

Preliminary Matter

1. The land described in the notice and edged red on the plan attached to the notice is Unit B Westerman Complex. But it is clear from the submissions and my site visit that the unauthorised use attacked by the notice takes place on part of the ground floor of Unit B only. The door to the northern aspect of the ground floor provides entrance to a church. The description of the land is therefore not entirely accurate. It is clear that the parties understand that the notice seeks to attack the carwash use only and therefore the notice can be corrected without injustice to either party. I will therefore use my powers to correct the description of the land accordingly as set out in the Formal Decision.

Ground (a) appeal and deemed application

Main Issues

2. The main issues in this appeal are (1) whether the loss of the site for industrial and business use would undermine the aims of the employment strategy for the area and (2) the effect of the development on the living conditions of occupiers of residential and business properties in the surrounding area with particular regard to noise and disturbance.

Land use allocation

3. Westerman Complex comprises a series of commercial units located in the School Road Industrial Area. The development plan for the area includes the Brighton and Hove Local Plan (the Local Plan). Policy EM1 of the Local Plan identifies the School Road Industrial Area primarily for industrial and business use (under Use Class B1(b)(c) and B2 but not excluding B1a). Policy EM3 says that land in industrial use (B1, B2 or B8) or allocated for industrial purposes will not be released for other uses unless the site has been assessed and found to be unsuitable for modern employment needs.
4. The Council argue that as the use of land as a carwash falls outside any of the specified industrial and business use classes set out in policy EM1 it fails to accord with the development plan. But the policy does not place a blanket restriction on land use as it refers to the specific sites as 'primarily' for industrial and business use. This accords with the National Planning Policy Framework (the Framework) which encourages flexibility to accommodate needs not anticipated in the development plan and changes in economic circumstances.
5. The stated objective of policy EM1 is to help meet the Council's strategic priority of getting people into work and making best use of land available. The Appellant provides employment data that suggests that a light industrial use of similar floorspace would generate 9 jobs and a storage use 5-6 jobs. I am told that the carwash currently employs 7 full time staff and is therefore within the range of employment generation estimates for the allocated use. These figures are not challenged by the Council.
6. I therefore find that the use of the site as a hand carwash use accords with the employment generating aim of policy EM1 and therefore the development does not undermine the aims of the Council's land use strategy and is not in conflict with policies EM1 and EM3 of the development plan or the Framework.

Living conditions

7. The appeal site forms part of a complex of commercial buildings which is subdivided into smaller units. These units accommodate a range of uses including a children's indoor play centre and tyre sales (including MOT testing). The surrounding area has a mixed character with nearby commercial properties, a school and a significant number of residential properties including dwellings at the front and rear of the appeal site. I am informed that a noise abatement notice was served by the Council on the site on 9 July 2013 but I am not provided with any noise measurements relating to the site.
8. The National Planning Policy Framework (the Framework) seeks to protect residential amenity from undue noise and disturbance and this is mirrored in the Local Plan. Policy QD27 of the Local Plan says that planning permission will not be granted for development which would cause material nuisance and loss of amenity to proposed, existing and /or adjacent user, residents, occupiers or where it is liable to be detrimental to human health. Policy SU10 of the Local Plan provides that development generating significant levels of noise will be permitted only where appropriate noise attenuation

measures are incorporated to reduce the impact of the development on surrounding land uses.

9. Five local residents and two neighbouring businesses object to the development. Whilst I accept that residents living nearby and adjoining businesses can reasonably expect noisier living and working conditions than would be reasonable in a wholly residential area the representations demonstrate that their amenities have been unduly harmed by noise and disturbance. They describe noise from a variety of sources including jet washers, vacuuming equipment and cars. They describe a 7 day a week operation with hours that vary and extend into the evening during good weather. They describe noise that causes a material change in their day to day behaviour such as closing windows and avoiding use of gardens during periods when the noise persists. I found on my site visit that vacuuming and jet washers were noticeably audible in School Road and nearby residential streets but not at the rear of the premises with the rear roller door shut. The noise emitted from the premises unacceptably harms the living conditions of neighbours during normal working hours. Furthermore, the site gives rise to noise at times when other businesses are closed thus prolonging the period during which residents may be disturbed and including on Sundays when car washing is likely to be in demand and background noise levels lower than during the working week.
10. I conclude that continued use of the carwash would give rise to significant concerns about the living conditions of occupiers of adjoining premises and nearby residential properties with particular regard to noise and disturbance. It is contrary to the Framework and policy QD27 of the Local Plan. I have taken into account the employment generated by the unauthorised use but this does not outweigh the harm to the living conditions of occupiers of nearby properties by reason of noise and disturbance.

Conditions

11. I have considered whether the identified harm by reason of noise and disturbance could be overcome by conditions. I have taken into account the recently published Planning Practice Guidance (the Guidance).
12. The Council has put forward conditions to be imposed on any grant of planning permission. I agree that it is necessary and reasonable to limit the opening hours (preventing opening on Saturday afternoons, Sundays, Bank and Public holidays), to require rear shutter doors to be closed at all times and to prevent car washing equipment being used outside the premises in order to protect the living conditions of occupiers of adjoining and nearby residential properties. But it is also necessary and reasonable to put in place noise attenuation measures that satisfy maximum noise thresholds at specific locations. The Council proposes two soundproofing conditions covering the building and plant/machinery. They propose that within 2 months of any permission being granted a soundproofing scheme be submitted to and approved in writing by the Council and that agreed measures be implemented within 2 months of agreement and retained thereafter. Although the Appellant says that he has no objection to such conditions I have nevertheless considered whether they satisfy the Guidance. There is no evidence before me to suggest that practical

measures exist which could adequately soundproof the building and/or its plant and machinery so that specific noise thresholds are not exceeded at specific locations. In the absence of this detail I find the proposed conditions unreasonable.

13. In the absence of any evidence before me to demonstrate that practical noise attenuation measures are possible I cannot be satisfied that conditions could overcome the identified harm to the living conditions of occupiers of adjoining and nearby residential properties by reason of noise and disturbance.

Other matters

14. Neighbours raise other issues including highway safety issues, use of private land for parking and alleged intimidation by the Appellant. I have taken into account all of these matters, including comments about traffic, but none of them leads me to alter my conclusions on the main issues.

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed on ground (a) and planning permission should not be granted.

Ground (g) appeal

16. This ground of appeal is that the time to comply with the requirements falls short of what should reasonably be allowed. The time period for compliance in the notice is 28 days. The Appellant says that this would cause hardship to workers who would be likely to lose their jobs and need adequate time to arrange their financial and housing affairs. He suggests that three months would be reasonable.
17. I have balanced competing interests – the private interest of the business to find alternative premises and its workers to potentially secure alternative employment and the public interest of bringing the harm to the living conditions of occupiers of nearby properties to an end without unnecessary delay. I consider that 3 months would strike an appropriate balance and I am varying the period for compliance accordingly, prior to upholding the notice. The appeal on ground (g) succeeds to that extent.

Formal Decision

18. The enforcement notice is corrected by adding the words 'part of ground floor' after the words 'land at' in paragraph 2 of the notice and varied by substitution of three months as the period for compliance. Subject to that correction and variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector