

TITLE OF REPORT: Planning Appeals

REPORT OF: Paul Dowling, Strategic Director, Communities and Environment

Purpose of the Report

1. To advise the Committee of new appeals received and to report the decisions of the Secretary of State received during the report period.

New Appeals

2. There have been **no** new appeals lodged since the last committee.

Appeal Decisions

3. There has been **one** new appeal decision received since the last Committee:

DC/16/01319/FUL - Former Bling Bling Car Wash, Durham Road, Birtley
Erection of building to provide a shop and car valeting area on ground floor with storage above; Use of forecourt for parking and as a car wash.
This was a committee decision refused on 31 March 2017.
Appeal dismissed on 23 January 2018.

Details of the decisions can be found in **Appendix 2**

Appeal Costs

4. There has been **one** appeal cost decision:

DC/16/01319/FUL - Former Bling Bling Car Wash, Durham Road, Birtley
Erection of building to provide a shop and car valeting area on ground floor with storage above; Use of forecourt for parking and as a car wash.

The costs have been dismissed.

Details of the decision can be found in **Appendix 2**

Outstanding Appeals

5. Details of outstanding appeals can be found in **Appendix 3**.

Recommendation

6. It is recommended that the Committee note the report

Contact: Emma Lucas Ext: 3747

FINANCIAL IMPLICATIONS

Nil

RISK MANAGEMENT IMPLICATIONS

Nil

HUMAN RESOURCES IMPLICATIONS

Nil

EQUALITY AND DIVERSITY IMPLICATIONS

Nil

CRIME AND DISORDER IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

HUMAN RIGHTS IMPLICATIONS

The subject matter of the report touches upon two human rights issues:

The right of an individual to a fair trial; and
The right to peaceful enjoyment of property

As far as the first issue is concerned the planning appeal regime is outside of the Council's control being administered by the First Secretary of State. The Committee will have addressed the second issue as part of the development control process.

WARD IMPLICATIONS

Various wards have decisions affecting them in Appendix 3

BACKGROUND INFORMATION

Start letters and decision letters from the Planning Inspectorate

Appeal Decision

Site visit made on 8 January 2018

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 23RD January 2018

Appeal Ref: APP/H4505/W/17/3182085

Former Bling Bling Car Wash, Durham Road, Birtley DH3 1LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Hakim against the decision of Gateshead Council.
 - The application Ref DC/16/01319/FUL, dated 12 December 2016, was refused by notice dated 2 August 2017.
 - The development proposed is erection of building to provide a shop and car valeting area on ground floor with storage above. Use of forecourt for parking and as a car wash.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Gateshead Council against Mr S Hakim. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on the living conditions of existing occupiers, in particular occupiers at 1 Esk Terrace and 2 Mitchell Street, with specific reference to noise and disturbance; and
 - The effect of the proposal on the character and appearance of the area.

Reasons

Noise and disturbance

4. The appeal site is a piece of land fronting onto Durham Road which is now vacant following the demolition of the former garage. The rear of the site backs onto the gable side elevation of number 2 Mitchell Street. The site is situated within a mixed use residential and commercial area.
5. It is proposed to erect a building towards the rear of the site to house a car valeting area with ancillary retail and customer waiting area on the ground floor and storage at first floor level. The forecourt would be used as a car wash and for the parking of vehicles.
6. The appeal site is situated adjacent to a busy road which generates a significant amount of background noise. I also noted the presence of a public house which would generate noise in the evening. The proposal has the potential to generate

additional noise associated with comings and goings to the site. Furthermore, the jet washers and vacuum cleaners have the potential to create an additional layer of intermittent and invasive noise over and above the general level of background noise from the road. It is, therefore, necessary to assess the potential effect of any such noise on the surrounding occupiers.

7. The appellant has submitted a Noise Impact Assessment¹ (NIA) which utilises the methodology contained in BS 4142:2014 'Methods for Rating and Assessing Industrial and Commercial Sound' (BS 4142) in order to assess the noise level of the proposed car wash against the existing background noise levels.
8. Noise measurements were undertaken in two monitoring positions in the vicinity of No 1 Esk Terrace (NSR1) and No 2 Mitchell Street (NSR2) which are identified as the nearest noise sensitive receptors (NSR) in the NIA. 2 Mitchell Avenue has a gable elevation facing onto the appeal site, within 2m of the rear wall of the proposed building. This elevation does not contain any windows; however, there is a small yard to the rear and there are windows in the rear elevation and also in the side of the rear projection at ground and first floor level. No 1 Esk Terrace presents a flank wall towards the appeal site and has a rear yard and amenity area opposite the appeal site.
9. Measurements were undertaken on a Sunday as this represents a quiet daytime period. The background noise climate was noted to be due to road traffic on Durham Road and distant road traffic. The NIA identifies the potentially significant noise sources associated with the proposed development to be noise associated with the valeting bays and noise associated with the jet wash.
10. The NIA assesses the cumulative resultant noise levels arising from both the valeting bays and the jet wash at surrounding noise sensitive receptors, applying a penalty of 3 dB to reflect the intermittent nature of the noise in accordance with BS 4142.
11. The cumulative noise rating levels are calculated at 41dB $L_{Ar,T}$ at NSR1 (No 1 Esk Terrace) and 32 dB $L_{Ar,T}$ at NSR2 (2 Mitchell Street). Background noise levels in the vicinity of the NSRs were around 52-54 dB $L_{Aeq,T}$ and 43-46 dB $L_{A90,T}$ respectively. In accordance with BS 4142, noise levels associated with the development are predicted to be at least 2dB below background and, therefore, according to the NIA represent a low impact, depending on context.
12. The NIA concludes that the noise rating levels would be at least 11 dB below existing 'quiet' daytime ambient (L_{Aeq}) noise levels. At NRS2 noise rating levels would be 18dB below the minimum 'good' standard for internal daytime amenity with the windows partially open. It also concludes that with the provision of the acoustic fence, noise rating levels would be around 9 dB below the minimum 'good' standard for external amenity at NSR1. It, therefore, concludes that noise associated with the proposed development is considered to represent a No Observed Adverse Effect Level (NOAEL).
13. The Council have raised a number of concerns regarding the assumptions contained in the NIA. In terms of the valeting bays, the NIA is undertaken on the basis that two vacuum cleaners could be in use simultaneously in each of the bays and that the roller shutter door would be shut. Taking account of distance attenuation and attenuation as a result of the roller shutter door and the building itself the NIA calculates that the resultant sound pressure level at NSR1 would be 22 dB $L_{Aeq,T}$ and 24dB $L_{Aeq,T}$ at NSR2. The Council has not questioned the calculated noise levels

¹ Noise Impact Assessment, Environmental Noise Solutions Limited, 30 November 2016

arising from the use of the vacuum cleaner in the valeting bays or the internal noise levels. However, it is concerned that the condition suggested by the appellant which would require the roller shutter door to remain shut during valeting operations would not be enforceable.

14. The suggested wording of the condition would not preclude valeting taking place outside of the building. Consequently, I would have re-worded such a condition to require that 'valeting only take place *within the building* whilst the roller shutter door is shut' had I decided to allow the appeal. Nonetheless, I consider that such a condition would be enforceable as it would be clear to see whether the door was open or not whilst valeting was taking place. On this basis Council officers and local residents could see whether an infringement was taking place and could take photographs to prove it. The condition would, therefore, meet the tests set out in paragraph 206 of the National Planning Policy Framework (the Framework). On the basis of the shutter door being shut, the noise arising from the proposed valeting bay would not have a harmful effect on the occupier of No 2 Mitchell Street or surrounding occupiers.
15. Nonetheless, I note that there would only be one door serving the two valeting bays and as such there may be occasions when the door would need to be opened to enable the access or egress of a vehicle in the adjacent bay whilst a vehicle is being valeted. Consequently, notwithstanding the enforceability of the condition, it may be difficult, although not necessarily impossible for the appellant to comply with. However, the frequent opening and shutting of the roller shutter door would be a source of noise in itself which does not appear to have been taken into account in the NIA and this could be harmful to surrounding occupiers, in particular the occupier(s) of No 2 Mitchell Street.
16. In terms of noise arising from the jet wash bays, the NIA identifies the principle source of noise as the high pressure jet wash and the assessment is undertaken on the basis that the three jet wash bays would be in operation at the same time. Measurements of car wash operations undertaken previously by ENS at existing car wash/valeting facilities have been utilised for the purposes of the assessment.
17. The assessment was also undertaken on the basis that the proposed 2.5m high acoustic fence along the northern boundary of the site would provide screening attenuation of 15 dB (A) to NSR1. The proposed two-storey building is calculated as providing screening attenuation of 22 dB (A). The NIA concludes that the resultant noise level at NSR1 would be 38 dB L_{Aeq} and at 27 dB L_{Aeq} at NSR2.
18. The Council has raised concerns regarding the assumptions contained in the NIA including source and receiver height. I agree with the appellant that the average car washing height of 1m assumed in the NIA is a reasonable assumption particularly taken over the whole wash cycle. I also consider that 2m is an appropriate receptor height for the rear amenity area at NSR1 taking into account sloping ground levels which mean that the amenity area is around the same height as Durham Road and that the jet car wash would be around 1m lower than Durham Road as shown on drawing 16.2016-05. Furthermore, as the jet wash noise is not tonal or impulsive, I consider that a 3 dB character correction for being audible at source is an appropriate reduction consistent with BS 4142.
19. The Council is also concerned that the effectiveness of the acoustic barrier would be limited as it would not be continuous in order to allow cars to exit onto Esk Terrace. Consequently, it considers that there would be noise over and around the proposed barrier and that the suggested 15dB screening attenuation to NSR1 seems excessive.

20. I accept the appellant's point that the purpose of the barrier calculations in Appendix 3 is simply to determine the amount of barrier attenuation based on path difference and number of units. The effect of the barrier attenuation is then applied to the anticipated levels of jet wash noise in table 5.2 along with distance attenuation. The appellant emphasises that the basis behind any barrier calculation is that the sound will go over it and that the amount of attenuation varies as a function of path difference between the direct sound path and the path over the barrier.
21. The NIA calculates that the path difference over the barrier would be 0.13m whilst the path difference around the barrier would be >4m. The appellant, therefore, considers that the sound going over the barrier would be the principle sound propagation path to NSR1. However, I note that although the Maekawa barrier calculation carried out in Appendix 3 of the NIA takes account of the path difference over the barrier, the calculation and the NIA in general does not take account of the path difference around the barrier.
22. Furthermore, it appears from the plans that the path difference around the barrier from jet wash bay number 1 would be significantly less than 4m. I cannot, therefore, be certain that the barrier is long enough to prevent sound diffraction around the edge of the barrier which would result in degradations in the barrier's performance. Consequently, notwithstanding the frequency range of the jet wash, I share the Council's concerns that the barrier would not attenuate noise to the degree to which has been suggested.
23. I cannot, therefore, be certain that the resultant noise levels suggested in the NIA are correct or below the 50 dB guideline for external amenity space contained in BS 8233: 2014 'Guidance on Sound Insulation and Noise Reduction for Buildings'. Consequently, on the basis of the evidence before me, I cannot be certain that the proposal would not have a harmful effect on the living conditions of surrounding occupiers and in particular, the occupier(s) of No 1 Esk Terrace. The appeal site would be used during the day when it would be reasonable for the occupiers to expect to use their private amenity space without being subject to undue noise and disturbance.
24. The Council is concerned that the NIA does not consider the potential effect of the noise on the office accommodation at Lion House. The appellant has clarified that without taking any screening into account noise levels associated with the jet wash bays would be around 57 dB L_{Aeq} at Lion House and 50 dB L_{Aeq} at the nearby school. Allowing a 15 dB attenuation for a partially open window, this would correspond to internal ambient noise levels of 42 dB L_{Aeq} and 35 dB L_{Aeq} respectively which would accord with the relevant guidelines². I am, therefore, satisfied that the proposal would not have a harmful effect on the occupiers of Lion House or the school. Whilst I note the Council's concerns with regards to the lack of clarity on opening hours, I could have attached a condition controlling the hours of operation had I decided to allow the appeal.
25. Attention is drawn to a jet wash on the A60 Tickhill Road, Doncaster where the jet wash is situated in a residential area. However, only limited details of that case are provided and I am not aware of the evidence which was before the Council. I cannot, therefore, be certain that the case is directly comparable to the appeal proposal which limits the weight which I can attach to it in my Decision. Whilst the appeal site has been occupied by commercial uses in the past including a garage, workshop and petrol filling station, there is no evidence before me regarding the noise generated by these uses.

² BB 93 'Acoustic design of Schools: performance standards'.

26. For the reasons stated above, on the basis of the evidence before me, I am unable to conclude that the proposal would not have a harmful effect on the living conditions of surrounding occupiers and in particular existing occupiers at No 1 Esk Avenue and No 2 Mitchell Street. The proposal would, therefore, be contrary to criterion iii. of Policy CS14 of the Core Strategy and Urban Core Plan (CSUCP) (2015) and criterion a of saved Policy DC2 of the Council's Unitary Development Plan (UDP) (1998) which together seek to prevent negative impacts and disturbance to nearby residents from, amongst other things, noise.

Character and appearance

27. This part of the western side of Durham Road is characterised by terraced properties fronting directly onto the pavement or set behind small front gardens enclosed by low boundary brick walls. The Council does not raise concerns regarding the design of the proposed building to the rear of the site or the low level brick wall with pillars and from everything which I have seen in submissions and on my site visit; I have no reason to disagree.

28. The northern boundary fronting onto Esk Terrace would feature a 2.5m high timber acoustic fence situated on the inside of the brick wall. Alongside bay 1 of the jet wash area there would be a 2.5m high face brickwork baffle wall. The frontages and corner plots of surrounding properties are defined predominately by low to medium height brick boundary walls. The acoustic fence would exceed the height of most boundary walls and would be significantly higher than the low level brick wall which it would sit behind. The close boarded timber fence would present a solid, predominately blank frontage to Esk Terrace and the materials would be inconsistent with the predominant brick boundary walls of surrounding properties. Furthermore, the proposed 2.5m high brickwork baffle wall would be a monolithic structure with little or no articulation and it would be visible from both Durham Road and Esk Terrace.

29. Attention is drawn to the proposed landscaping which would be planted in between the low level brick wall and the acoustic fence. Although additional planting would soften the appearance of the fence to a degree, it would take some time to establish and there is no guarantee that it would remain in perpetuity. Consequently, I can only place limited weight on the value of the vegetation in screening the fence during its lifetime. Taking these factors in combination, the proposed acoustic fence and baffle wall would be an incongruous addition at odds with the character and appearance of the area.

30. The proposal would have some benefits in terms of utilising a vacant site and making a contribution to the local economy; however, these benefits would be outweighed by the totality of harm which I have identified.

31. For the reasons stated, the proposal would harm the character and appearance of the area. It would, therefore, be contrary to Policies CS14 and CS15 of the CSUCP and saved policies ENV3 and DC2 of the UDP which collectively seek to secure high quality design which responds positively to local distinctiveness and character.

Conclusion

32. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

Caroline Mulloy

Inspector



Costs Decision

Site visit made on 8 January 2018

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 23rd January 2018

Costs application in relation to Appeal Ref: APP/H4505/W/17/3182085 Former Bling Bling Car Wash, Durham Road, Birtley DH3 1LS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gateshead Council for a full award of costs against Mr S Hakim.
 - The appeal was against the refusal of planning permission for the erection of building to provide a shop and car valeting area on ground floor with storage above. Use of forecourt for parking and as a car wash.
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Decision

1. The application for an award of costs is dismissed.

Reasons

2. Paragraph 30 of Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The Council's application for costs relies on the grounds that the right of appeal has been exercised unreasonably with no reasonable prospect of success, with particular reference to an application/appeal following a recent appeal decision¹ in respect of a similar development on the same site where the Inspector decided that the proposal was unacceptable and circumstances had not materially changed in the intervening period.
4. The previous scheme related to the erection of a building to provide a shop and car valeting area on the ground floor, two flats on the first floor and the use of the forecourt for parking and as a car wash. The Inspector concluded that he could not be satisfied on the basis of the evidence that the proposal would not have an unacceptable effect upon the living conditions of nearby residents and future occupiers of the proposed flats in respect of noise and disturbance.
5. The current appeal proposal is materially different to the previous proposal in that the first floor of the building to the rear of the site is now proposed to be used for storage as opposed to residential which overcomes the previous Inspector's concerns in relation to the effect of the proposal on future occupiers. In addition, the appellant has sought a consultant's advice on the matter of noise and a Noise Impact Assessment was submitted in support of the proposal. Furthermore, the current

¹ Appeal reference: APP/H4505/W/16/3146322

scheme includes acoustic measures in an attempt to overcome the previous Inspector's concerns relating to the effect of the previous proposal on existing occupiers in terms of noise and disturbance.

6. I have found that on the basis of the evidence submitted, I cannot be certain that the proposal would not have a harmful effect on surrounding occupiers and that the proposed acoustic fence and baffle would have a harmful effect on the character and appearance of the area. Nevertheless, the current appeal proposal is materially different from the previous scheme and the appellant has made reasonable attempts to overcome the previous reasons for refusal and the previous Inspector's concerns. I, therefore, find that the right of appeal was not exercised with no reasonable prospect of success.

Conclusion

7. For the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. In these circumstances it is not necessary to consider the question of any expense incurred. For this reason, an award of costs is, therefore, not justified.

Caroline Mulloy

INSPECTOR

APPENDIX 3

OUTSTANDING APPEALS

Planning Application No	Appeal Site (Ward)	Subject	Appeal Type	Appeal Status
DC/16/01261/FUL	Coalburns Cottages 4 Coalburns Cottages Greenside Ryton NE40 4JL	Demolition of existing garage followed by erection of new dormer bungalow with four parking spaces (as amended 16.05.2017)	Written	Appeal In Progress
DC/16/01319/FUL	Former Bling Bling Car Wash Durham Road Birtley DH3 1LS	Erection of building to provide a shop and car valeting area on ground floor with storage above; Use of forecourt for parking and as a car wash	Written	Appeal Dismissed
DC/17/00156/COU	Site Of Scottish Motor Auctions Group Shadon Way Birtley DH3 2SA	Change of use from unused land to a hardstanding parking area with drive through route and enclosure by means of a new perimeter security fence	Written	Appeal In Progress
DC/17/00473/HHA	17 Limetrees Gardens Low Fell Gateshead NE9 5BE	First floor extensions to side and rear	Written	Appeal in Progress
DC/17/00010/FUL	Ogilvie House Princes Park Gateshead NE11 0NF	Erection of 2.4m high mesh fencing around perimeter of site. Proposal includes installation of single automatic roller gate at site entrance, single leaf pedestrian gate to east elevation and single pedestrian gate to west elevation	Written	Appeal in Progress