



Appeal Decisions

Site visit made on 20 March 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 05 April 2018

Appeal A: APP/H4505/C/17/3183426

Land adjacent to Wilson's Auctions, Shadon Way, Birtley, DH3 2SW

- 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 Nigel Binks, Wilson's Auctions Limited against an enforcement notice issued by Gateshead Council.
- The enforcement notice was issued on 28 July 2017.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the Land from amenity land to use for the storage of vehicles including the formation of a hard standing and the erection of a paladin fence at an approximate height of 2.4 metres, incorporating gates.
- The requirements of the notice are (1) Cease the use of the Land for the storage of vehicles and remove all vehicles from the Land; (2) Remove the hardstanding to a depth of 300mm and replace with 300mm of clean topsoil which meets BS 3882:2015; (3) Level the topsoil so as to match the adjacent contours; (4) Erect a wall or fence not less than 1 metre in height but not greater than 2 metres in height in the locations marked in blue on the attached plan 'EN1'; (5) Replace the gates marked on the plan EN1 as 'gates' with the paladin type fence to match that which is on either side of the gates shown for reference on photograph EN2 and labelled 'fence'. For the avoidance of doubt the wall or fence referred to at step (4) above may include a gate for access to the Land for the purpose of maintaining the land but the gate shall be no higher than the wall or fence in which it is incorporated.
- The period for compliance with the requirements is: Requirement (1) 4 weeks after this notice takes effect; Requirement (2) 10 weeks after this notice takes effect; Requirement (3), (4) and (5) 12 weeks after this notice takes effect.
- The appeal is made on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of 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.

Appeal B: APP/H4505/W/17/3183421

Scottish Motor Auctions Group, Shadon Way, Portobello, Birtley DH3 2SW

- 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 Nigel Binks, Wilson's Auctions, against the decision of Gateshead Council.
- The application Ref DC/17/00156/COU, dated 15 February 2017, was refused by notice dated 18 July 2017.
- The development proposed is change of use from unused land to a hardstanding parking area with drive through route and enclosure by means of a new perimeter fence.

Summary of Decision: The appeal is allowed and planning permission granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Nigel Binks, Wilson's Auctions against Gateshead Council. This application is the subject of a separate Decision.

Appeal A - ground (a) and Appeal B

Preliminary Matter

2. With regard to Appeal B, I have taken the description of development from the Council's decision notice as agreed on the appeal form.

Main Issues

3. The main issues are the effect of the development on i) the living conditions of nearby residents with particular regard to noise and light disturbance, privacy, outlook and daylight and ii) the character and appearance of the surrounding area.

Reasons

Living Conditions

4. The appeal site, which is triangular in shape, separates the southern extent of the Portobello Industrial Estate from the residential properties situated on Fell Close to the west and those on the opposite side of Birtley Lane further to the south.
5. The western boundary of the site adjoins part of the garden of No 29 Fell Close and is also in very close proximity to the rear elevation of that dwelling which contains windows serving habitable rooms. I am in no doubt from the information before me and my visit that, due to proximity, activity associated with the appeal site including the movement and cleaning of vehicles, would have the potential to result in disturbance to residents of No 29.
6. From the lack of technical supporting information provided, I am not persuaded that simply erecting a timber fence along the site boundary would result in an effective acoustic barrier that would help to safeguard the residents of No 29 from noise disturbance. However, I am mindful that it would be possible to use a condition to restrict the time within which sources of noise and disturbance would be allowed to take place within the appeal site. This would prohibit associated vehicle movements at times when background noise levels would be lower and residents might reasonably expect to enjoy the peace and quiet of their homes and gardens during evenings and at certain times of the weekend. It would also serve to eliminate any unpleasant vehicle emission odours associated with the site during these times. However to achieve this I consider it would be necessary to impose a more restrictive condition than that recommended in the Council's officer report.
7. In addition it would appear that the cleaning of vehicles on the site using jet wash hoses, identified as a source of noise nuisance by residents, no longer occurs there. It would be appropriate to impose a condition to prohibit this from taking place on the site going forward.

8. It seems to me that these controls would strike an appropriate balance between the living conditions of residents and recognition of the area immediately to the north as an extensive industrial estate.
9. I have given consideration to concerns raised by residents with regard to the poorer standard of outlook resulting from the vehicle storage use, when compared with the previous open and green appearance of the site. The appellant proposes to erect solid timber screen fencing inside the existing paladin fence to a height of 2 metres. I consider this would be effective in screening the site; alleviating potential disturbance from car headlights and helping to safeguard the privacy of adjoining residents.
10. I note concerns raised by the residents of No 29 Fell Close that this would mean placing a substantial barrier in relatively close proximity to habitable room windows. However a fence of this height is by no means unusual in a domestic environment and would not be significantly taller than the existing timber fence serving that property. Accordingly, despite the proximity of the dwelling, I consider that this would not give rise to an undue sense of enclosure that would cause harm to outlook and daylight resulting in oppressive living conditions for those residents.
11. Taking the above factors into account and the greater degree of separation between the appeal site and residential properties on the opposite side of Birtley Lane, harm to the living conditions of those residents would not be expected.
12. A gate has been constructed within the paladin fence which was ostensibly to allow for an emergency access point between the site and Birtley Lane. However there is agreement between the main parties that there is no need for the gates.
13. Some local residents have expressed concern that this point of access would lead to cars being loaded and unloaded on Birtley Lane, in connection with the site, resulting in disruption to traffic flow, congestion and highway safety issues. Whilst this may occur in any event and I note the Council has not expressed highway safety concerns in this regard, I am sympathetic to the view that if the access point remains it may lead to a greater likelihood of this type of activity occurring with the potential of increased disturbances to local residents. I note that the appellant has no objection to the gates being welded shut in order to secure their permanent closure, and for the above reasons I consider that a condition to secure this outcome would be justified in this case.
14. Accordingly, subject to the identified conditions, I conclude that the development would not result in harm to the living conditions of nearby residents with particular regard to noise and light disturbance, privacy, outlook and daylight. I therefore find no conflict with Policy CS14 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015 (CSUCP) and Saved Policy DC2 of the Gateshead Unitary Development Plan 2010 (UDP) insofar as they seek to protect the living conditions of residents.

Character and Appearance

15. I have no reason to dispute that prior to the breach of planning control the appeal site would have formed a green buffer and that its character has been

significantly altered following the commencement of its use for intensive storage of vehicles. However it was apparent from my visit that the backdrop of a large industrial building and, despite gaps in planting, the presence of a line of semi-mature trees adjacent to the south-east boundary of the site collectively serve to mitigate the harder visual impact of vehicle storage when viewed from Birtley Lane. I am also mindful that it would be possible to further augment planting and require screen fencing through the use of suitable planning conditions. This would assist in maintaining the distinction between residential and commercial areas.

16. The existing paladin security fence, though relatively tall, comprises a fine transparent mesh, finished in a dark green colouring. Accordingly, these qualities give the fence a recessive scale and appearance which help to assimilate the structure into its surroundings.
17. I therefore conclude that any harm to the character and appearance of the surrounding area resulting from the development could be satisfactorily dealt with through the application of planning conditions. I find no conflict with Policy CS15 of the CSUCP and Saved Policy ENV3 of the UDP insofar as they seek to secure a high standard of design which responds to local character and distinctiveness.

Other Matters

18. The Council has referred to a previous refusal of planning permission for a car parking area on the site with access from Birtley Lane, dating from 2001. I have been provided with very limited information as to how it was proposed to operate that use. I am also mindful that each proposal must be decided on its individual merits and accordingly it does not simply follow that refusal of planning permission is justified in this case.
19. In terms of concerns raised regarding surface water drainage and the potential for flooding, this matter can be addressed through the imposition of an appropriate condition.
20. Although concern has been raised with regard to the appellant complying with conditions imposed, it would be open to the Council to enforce against any breach in this respect.

Conditions

21. I have had regard to the conditions that were recommended within the officer report. A condition specifying the plans is necessary to promote certainty. A condition requiring a replacement planting scheme is necessary to safeguard the character and appearance of the area. A condition requiring details of surface water drainage on the site is required in order to secure effective drainage and flood mitigation. Conditions prohibiting the jet washing and valeting of vehicles; restricting the time of movement of vehicles within and between the site; requiring details of boundary fencing and lighting within the site and the permanent closure of the superfluous access gates are required to protect the living conditions of residents.

Conclusion

22. For the reasons given above, and having had regard to all other points raised, I conclude that the appeals should succeed and planning permission be granted.

Appeal A - grounds (f) and (g)

23. Because of my decision to allow the ground (a) appeal subject to conditions, the enforcement notice will be quashed and consequently the appeals on grounds (f) and (g) do not fall to be considered and I need take no further action in this regard.

Formal Decisions

Appeal A

24. 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 Act as amended for the development already carried out, namely the use of the land adjacent to Wilson's Auctions, Shadon Way, Birtley, DH3 2SW as shown on the plan attached to the notice for the storage of vehicles including the formation of a hard standing and the erection of a paladin fence at an approximate height of 2.4 metres, incorporating gates subject to the conditions set out in the schedule below.

Appeal B

25. The appeal is allowed and planning permission is granted on the application for planning permission for the development already carried out, namely change of use from unused land to a hardstanding parking area with drive through route and enclosure by means of a new perimeter fence at Scottish Motor Auctions Group, Shadon Way, Portobello, Birtley DH3 2SW, in accordance with the terms of the application dated 15 February 2017 and subject to the conditions set out in the schedule below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan; Existing Layout Plan; Proposed Layout Plan; Site Block Plan; Proposed Elevation at X-X (Birtley Lane).
- 2) There shall be no jet washing or valeting of motor vehicles within the site.
- 3) Movement of vehicles into, out of and within the site shall occur only between the hours of 8am and 5pm on Mondays to Fridays, 9am and 2pm on Saturdays and not at any time on Sundays or Public Holidays.

- 4) Unless within two months of the date of this decision details of a physical barrier to secure compliance with condition 3 including timescale for implementation are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the agreed timescale, the use of the site hereby approved shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Prior to the installation of any external lighting within the site, details of the design, location and height of any lighting columns and the design, level of illumination and extent of light spillage of the lights themselves shall be submitted to and approved in writing by the local planning authority. The lighting shall be implemented in accordance with the approved details and thereafter retained.

- 6) Unless within two months of the date of this decision details of surface water drainage works (including details of oil interceptors) and timescale for implementation are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the agreed timescale, the use of the site hereby approved shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) Unless within two months of the date of this decision details of a replacement tree planting scheme along Birtley Lane including numbers, location, size and species and timescale for implementation are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the agreed timescale, the use of the site hereby approved shall cease until such time as a scheme is approved and implemented.

All planting, comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the approval of details. The local planning authority shall be notified in writing of the date of practical completion of the scheme within seven days of that date. Any trees or

plants which within a period of 5 years of that date are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) Unless within two months of the date of this decision details of timber boundary fencing including location, appearance and height and timescale for implementation are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the agreed timescale, the use of the site hereby approved shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 9) Unless within two months of the date of this decision details of a scheme for securing the permanent closure of the vehicle access gates in the paladin fence, including timescale for implementation, are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented in accordance with the agreed timescale, the use of the site hereby approved shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within three months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

END OF SCHEDULE OF CONDITIONS