

Planning Committee

7th October, 2020

Subject:	Decisions of the Planning Inspectorate
Director:	Interim Director – Regeneration and Growth Tammy Stokes
Contribution towards Vision 2030:	  
Contact Officer(s):	<p>John Baker Service Manager - Development Planning and Building Consultancy John_baker@sandwell.gov.uk</p> <p>Alison Bishop Development Planning Manager Alison_bishop@sandwell.gov.uk</p>

DECISION RECOMMENDATIONS

That Planning Committee:

Notes the decisions of the Planning Inspectorate as detailed in the attached appendices.

1 PURPOSE OF THE REPORT

This report is submitted to inform the Committee of the outcomes of appeals that have been made to the Planning Inspectorate by applicants who were unhappy with the Committee's decision on their application.

2 IMPLICATIONS FOR SANDWELL'S VISION 2030

The planning process contributes to the following ambitions of the Vision 2030 –

Ambition 7 – We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.

Ambition 8 - Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families.

Ambition 10 - Sandwell now has a national reputation for getting things done, where all local partners are focused on what really matters in people's lives and communities.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 Applicants who disagree with the local authority's decision on their planning application may submit an appeal to the Planning Inspectorate. An appeal may also be made where the local authority has failed to determine the application within the statutory timeframe.
- 3.2 Appeals must be submitted within six months of the date of the local authority's decision notice.
- 3.3 Decisions on the following appeals are reported, with further detailed set out in the attached decision notices:-

Application Ref No.	Site Address	Inspectorate Decision
DC/19/62954	Telecommunication Mast B0097 131 Station Road Cradley Heath	Allowed
DC/19/63531	The Abrahamic Foundation Unit 5 Grove Street Smethwick B66 2QS	Allowed with conditions

ENF/10/7852	BMW Autoparts Pleasant Street West Bromwich B70 7DT	Dismissed
DC/20/64094	15 Reddal Hill Road Cradley Heath B64 5JE	Dismissed

4 STRATEGIC RESOURCE IMPLICATIONS

- 4.1 There are no direct implications in terms of the Council's strategic resources.
- 4.2 If the Planning Inspectorate overturns the Committee's decision and grants consent, the Council may be required to pay the costs of such an appeal, for which there is no designated budget.

5 LEGAL AND GOVERNANCE CONSIDERATIONS

- 5.1 The Planning Committee has delegated powers to determine planning applications within current Council policy.
- 5.2 Section 78 of the Town and Country Planning Act 1990 gives applicants a right to appeal when they disagree with the local authority's decision on their application, or where the local authority has failed to determine the application within the statutory timeframe.

Tammy Stokes
Interim Director – Regeneration and Growth



Appeal Decision

Site visit made on 11 August 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2020

Appeal Ref: APP/G4620/W/20/3249146

Telecommunication Mast B0097, 131 Station Road, Cradley Heath B64 6PL

- 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 Mobile Broadband Network Limited (MBNL) against the decision of Sandwell Metropolitan Borough Council.
- The application Ref DC/19/62954, dated 25 March 2019, was refused by notice dated 13 November 2019.
- The development proposed is the replacement of the existing 15m monopole with a 20m lattice tower to support 6 no. aperture (each aperture capable of accommodating 2 no. antenna each- 12 total), 9 no cabinets and development ancillary thereto.

Decision

1. The appeal is allowed and planning permission is granted for the replacement of the existing 15m monopole with a 20m lattice tower to support 6 no. aperture (each aperture capable of accommodating 2 no. antenna each- 12 total), 9 no cabinets and development ancillary thereto at Telecommunication Mast B0097, 131 Station Road, Cradley Heath B64 6PL in accordance with the terms of the application, Ref DC/19/62954, dated 25 March 2019, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - i) 002 – Site Location Plan – Rev B
 - ii) 004 – Lease Demise Plan – Rev B
 - iii) 100 – Existing Site Plan – Rev B
 - iv) 150 – Existing Elevation A – Rev B
 - v) 215 – Max Configuration Site Plan – Rev B
 - vi) 265 – Max Configuration Elevation – Rev B

Procedural Matters

2. The description of development has been taken from the appeal forms and the decision notice, which more accurately describe the proposal and omit unnecessary detail. The appeal has been dealt with accordingly.

3. The Council refers to visual amenity in its decision notice. This phrase can be interpreted in a number of different ways, however from the policy references in its reasons for refusal as well as detail within its officer report, it is clear that the focus of the dispute is the effect on the character and appearance of the area, and not necessarily the living conditions of neighbouring occupiers. The appeal has been dealt with on this basis.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

5. The site is located adjacent to Dudley Canal, on land where there is an existing telecommunications mast. The immediate context of the site is defined by industrial and commercial uses. Consequently, during my site visit, I found the area around the site was predominantly utilitarian in character, albeit with limited numbers of residential properties interspersed throughout. There is more established residential development beyond the immediate context of the site, but the degree of separation with the site meant it appeared peripheral and somewhat detached. The Council states that land to the north is allocated for housing, but there is no evidence substantiating that this is the case or what specific details are of relevance to the proposal. Therefore, I am unable to fully assess the implications under the appeal.
6. In amongst the prevailing development surrounding the site there is substantial green infrastructure provision, including large mature trees, some of which appeared taller than the existing mast, and from certain vantage points obscured it completely from view. Views of the existing mast were available from points along Station Road in the west and Dudley Canal in the north, but its prominence is reduced against a backdrop of green infrastructure. Outside of these specific viewpoints, the majority of long distance views, such as those from the peripheral residential areas described previously, are likely to be restricted either by green infrastructure or intervening industrial and commercial development in the immediate vicinity of the site. Short distance views, such as those from the adjacent stretch of the canal or the limited numbers of residential properties nearby, are taken within the context of industrial development, where the existing mast accords with the prevailing utilitarian character.
7. Among other things, the proposal would replace the existing mast with a new mast comprising an increased height of around 5 metres. In and of itself this height increase may be somewhat noticeable. However, in the context of the substantial green infrastructure within the vicinity of the site (which already exceeds the height of the existing mast and either obscures it from view or softens its appearance) and other intervening development that restrict views even further, I do not find it likely that the new mast would be any more prominent in the landscape. Even if a degree of additional prominence was perceptible, the aforementioned mitigating circumstances would prevent it from being harmful. Notwithstanding its scale, the new mast would retain a similar utilitarian character and appearance in comparison to the existing mast and therefore would assimilate into the prevailing context.

8. The Council states that no attempt has been made by the appellant to soften the impact by incorporating a good quality design which could potentially even enhance the area. However, I find this unnecessary, for the reasons already explained, given the prevailing character and appearance of the area and that the design would be somewhat softened by existing green infrastructure in any event.
9. The appellant has demonstrated that the existing mast was not technologically capable of being upgraded and therefore a new mast was required for the purposes of delivering new technology (5G services). Furthermore, it is stated that there are no tall buildings or other existing masts nearby capable of accommodating the new infrastructure, and there is no evidence suggesting this is not the case.
10. The new mast would be repositioned slightly relative to the existing mast, due to utilities constraints, but the new position is largely the same and the overall effect on the surroundings would be negligible. Consequently, there is sufficient evidence to suggest the appellant has explored and considered other opportunities for using existing infrastructure before delivering new infrastructure.
11. Overall, the proposal would deliver a utilitarian piece of infrastructure that would assimilate into an industrial and utilitarian context, without harming the character and appearance of the area. Consequently, it would accord with Policy ENV4 of the Black Country Core Strategy 2011 and Policy SAD TEL1 of the Site Allocations and Delivery Development Plan Document 2012. Among other things, these seek to ensure telecommunications masts are designed to minimise their impact whilst respecting operational efficiency and protect the Black Country Canal network.

Conditions

12. The Council were given the opportunity to suggest conditions but did not submit any for consideration. The Canal and River Trust raised matters relating to the impact of surface water runoff on water quality and the impact of construction on a below ground sluice, and whether conditions are necessary in this context. However, there is no evidence that the foundations associated with the replacement mast would be any more intrusive than the existing mast or that there is additional hard surfacing capable of exacerbating runoff. Consequently, I cannot conclude that conditions are necessary to safeguard water quality or the integrity of the below ground sluice. Accordingly, I have attached the standard conditions in accordance with Planning Practice Guidance, setting out the time limit for implementation and securing compliance with the approved plans, which are necessary to provide certainty.

Conclusion

13. For the reasons given the appeal is allowed, and planning permission is granted, subject to conditions.

Liam Page

INSPECTOR



Appeal Decision

Site visit made on 4 September 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2020

Appeal Ref: APP/G4620/W/20/3249204

5 Ionic Buildings, Grove Street, Smethwick, West Midlands B66 2QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for use of the first and second floor as prayer/community centre with associated parking for which a previous planning permission was granted for a limited period.
- The appeal is made by Mr Abdul Rahman of the Afghan Society in the West Midlands against the decision of Sandwell Metropolitan Borough Council.
- The application Ref DC/19/63631 is dated 10 September 2019.
- The application sought planning permission for use of the first and second floor as prayer/community centre with associated parking without complying with a condition (the disputed condition) attached to planning permission Ref DC/17/60914, dated 25 September 2017.
- The disputed condition is Condition 2, which says:
The use authorised by this permission shall be discontinued at the expiration of a period of 2 years from the date of this permission.
- The reason given for the condition is:
To enable the Local Planning Authority to review the development at the expiration of the permitted period in the light of its impact on:
 - (i) *surrounding land users given that the adopted Smethwick AAP has allocated the adjoining site to the west of Grove Street for a new acute hospital with permission granted and will be completed by July 2018 and that the land relating to application site is allocated for residential use; parking and highway safety.*
 - (ii)

Decision

1. The appeal is allowed and planning permission is granted for use of the first and second floor as prayer/community centre with associated parking at 5 Ionic Buildings, Grove Street, Smethwick, West Midlands B66 2QS in accordance with the application Ref DC/19/63631 dated 10 September 2019, without compliance with Condition 2 on planning permission Ref DC/17/60914, dated 25 September 2017 but subject to the following conditions:
 - 1) The use hereby permitted shall be for a limited period being the period of 2 years from the date of this decision and shall be discontinued on or before that date.
 - 2) The car parking area to the ground floor shall be retained for the purposes of parking cars for the life of the permission.

Procedural matters

2. Notwithstanding what is stated on the original application form and its reference to permission DC/15/58579, this appeal seeks to use the site in non-compliance with Condition 2 of permission DC/17/60914.
3. In his statement the appellant has said he is seeking to use the building as a prayer room for 4 years more. However, the application was to allow the use to continue for a further 2 years, and I have considered it accordingly.

Main Issues

4. The main issues in this case are
 - a) the effect of the development on highway safety and
 - b) its impact on the comprehensive redevelopment of the area.

Reasons

Highway safety

5. The appeal premises lie in an industrial area on the east side of Grove Street, and they have been subject to a series of temporary permissions since 2011 to permit their use as a prayer room and community centre.
6. The concerns of the Council with regard to the existing impact on highway safety focus on vehicular activity around Friday prayers. As a result, I arrived at the site at 1225h and observed the situation until 1420h. I appreciate that this was just a single visit, and slightly different results may be apparent had I been present on other days, at other times or even between the same times but on another week. However, despite that I have no reason to consider what I saw was not broadly representative. Indeed, I am mindful that the Council has placed great weight on a parking report that too was based on one day's observations only. There could well be traffic demands arising from the use at other times during the week, but I have no reason to consider they would be more acute than those connected with Friday prayers.
7. Based on my observations and the submissions, even when there is no activity associated with the prayer room there is extensive kerbside parking on the road during the working day. Moreover, the siting of some adjacent commercial premises at the back of the pavement means goods or vehicles are loaded or unloaded on Grove Street while there is a certain amount of traffic reversing onto or off the carriageway. However, it is a relatively wide road with good forward visibility, and it does not seem to carry a particularly heavy flow of traffic or pedestrians. As a result, these activities do not result in any highway danger and vehicles appeared to travel safely.
8. I anticipate that parking pressures from people visiting the prayer room are confined to relatively short periods and the amount of traffic involved would be limited. During Friday prayers I saw the ground floor parking area was used to capacity. Moreover, I consider the remaining cars that could not fit into the parking area could be reasonably accommodated within the existing pattern of parked vehicles along the road without compromising safety further. While most of those attending prayers will be leaving at about the

same time, given the amount of traffic likely to be involved and the character of the road this is not problematic.

9. In the light of the above, and subject to a condition requiring the retention of the car park, I have no reason to consider that this use causes harm to highway safety at present.
10. In the future the context of the site will change, as a large new hospital is currently under construction on the opposite side of Grove Street, and the Council says it is due to be operational in 2022. Although that will, no doubt, attract sizeable traffic flows once it opens, I have no details as to the role Grove Street would play in serving that hospital, or whether accesses from other roads would exist for either vehicles or pedestrians. Mindful of these points, and also taking into account the limited effect of the vehicular activity connected with the prayer room, I cannot conclude the traffic flows round the hospital would be affected unacceptably by this use.
11. Finally, I understand parking surveys need to be undertaken as part of the planning permission for the hospital. While the use of the prayer room may affect traffic in the area when the surveys are undertaken, again I have no reason to consider that would be to any appreciable degree. In any event, it is fair to assume the other commercial uses on Grove Street would have an influence on the results as well, and, given how often this must occur when undertaking such surveys, I anticipate they could be readily accommodated in any conclusions that were drawn. I therefore find that the development's impact on any such survey would not be misleading.
12. Accordingly, I conclude the development does not adversely affect highway safety at present, and I have no basis to consider it would harm highway safety once the hospital opened or result in any parking surveys being misleading. As such, the proposal does not conflict with Policy SAD DM6 of the *Site Allocations and Delivery Development Plan Document* (DPD), which requires community facilities and places of worship to have regard to highway safety, or the *National Planning Policy Framework*.

The effect on the redevelopment of the area

13. The site falls within an area identified for wider residential/commercial development. Although a faith use is not necessarily incompatible with residential units, I accept that retaining the building could well inhibit the comprehensive redevelopment of the area. Therefore, I can appreciate why temporary permissions have been issued in the past.
14. However, it is unclear as to when such redevelopment would start, with the Council just stating that the timescales for completion of the hospital development mean there is '*more certainty*' the allocation for residential development '*will come forward*'. Given this lack of clarity, it has not been shown the Council's long-term intentions for the area would be prejudiced by allowing the use to operate for a further 2 years.
15. Accordingly, I conclude the proposal would not compromise the redevelopment of the area and so would not be contrary to Policy SAD H1 of the DPD, or Policy Sme4 of the *Smethwick Area Action Plan*, which seek to

protect housing allocations either in general or more specifically on this allocation.

Conclusions

16. The *Planning Practice Guidance* says

A temporary planning permission may ... be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use'). It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities).

In this instance there is a clear intention that longer-term proposals will be coming forward in due course, and that seems to have been a basis on which the Council has allowed temporary permissions on the site in the past. As the hospital nears completion it is reasonable to assume the prospect of those longer-term proposals materialising is increasing, but given the apparent uncertainty that still exists I have no basis to find they are to occur in the short-term. In my view, this constitutes a clear rationale for allowing the use for a further temporary period.

17. In the light of the above, and in order to ensure the use does not stand in the way of the longer-term proposals for the area, I therefore conclude a fresh temporary permission for a period of 2 years should be granted, subject to the parking condition referred to above. A condition was also imposed on permission DC/17/60914 requiring conformity with the plans, but I see no justification for its re-imposition in this instance.

JP Sargent

INSPECTOR



Appeal Decision

Site visit made on 5 August 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/G4620/C/19/3239303

BM Autos, Pleasant Street, West Bromwich B70 7DT

- 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 Jagdeep Chalotra (of AG Auto Parts Ltd) against an enforcement notice issued by Sandwell Metropolitan Borough Council.
- The enforcement notice was issued on 10 October 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission, the material change of use of the land from the servicing of vehicles (B2) to a mixed use of B2 and vehicle dismantling/breaking and storing of scrap vehicles and scrap car parts (sui generis) ("the Unauthorised Use")*.
- The requirements of the notice are:-
 - Cease the unauthorised use.
 - Remove from the site all existing scrap vehicles together with scrap car parts and other materials associated with the unauthorised scrap vehicle dismantling/breaking.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (e) of the Town and Country Planning Act 1990 ('the Act') as amended.

Summary decision: The appeal is dismissed and the enforcement notice is upheld with corrections, as set out below in the Formal Decision.

Matters concerning the notice

1. The requirements of the enforcement notice (the 'notice') depend on knowing what the affected "Land" is. Paragraph 2 of the notice refers to the site 'edged black on the attached plan'. This is an error because the site is actually shown edged in red and shaded pink on the plan. There is no suggestion that the recipient of the notice does not understand where the allegation is. As no injustice would be caused, I will correct paragraph 2 of the notice accordingly.
2. The allegation is also incorrect. When a site is 'mixed use' it is a *sui generis* use, so the use classes described in the Schedule 1 of the Use Classes Order¹ do not apply. It can reasonably be inferred that the alleged use should be described as "...to a mixed use comprising the servicing of vehicles, vehicle dismantling/breaking and storing of scrap vehicles and vehicle parts". I will correct paragraph 3 of the notice accordingly.
3. The Council has described the alleged use as the 'unauthorised use' and required that to cease. But the 'unauthorised use' is the alleged mixed use that includes the servicing of vehicles - that element of the mixed use is lawful and should not be required to cease. Therefore, I shall correct the requirement in

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

paragraph 5.1 of the notice to require the cessation of 'the vehicle dismantling/breaking and storing of scrap vehicles and vehicle parts'.

The Appeal on Ground (e)

4. An appeal on ground (e) is that copies of the enforcement notice were not served as required by s172 of the Act: that is, on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. As with grounds (b) and (d), this is a legal ground of appeal and the onus is on the appellant to make his case on the balance of probability.
5. Mr Chalotra for the appellant company contends the notice was served on the wrong company and therefore the notice is null and void.
6. The land subject to the notice is described by the Council as 'The site of the BM Autos', but Mr Chalotra states there has never been a company by that name on the site, nor has a company ever traded under that name. The appellant company is AG Auto Parts Ltd. Although there is no signage on the site with that company name, there is no dispute that AG Auto Parts Ltd are trading from the land subject to the notice.
7. It is not clear why the Council got the appellant company name wrong, or whether the Council could have been reasonably expected to get the name right. However, those matters are of little consequence because the Council served copies of the notice on Mr Chalotra as a land owner, whose company is AG Auto Parts Ltd. He would have seen from the attached plan that the notice related to the land where the company was trading from. Indeed, through Mr Chalotra, the appellant company made a valid appeal against the notice.
8. I find that on the balance of probability the notice was served as required by s172 of the Act. In any event, s176(5) provides that failure to serve the notice as required may be disregarded if the appellant or person required to be served with a copy of the notice has not been substantially prejudiced. I find that the appellant company was able to appeal and therefore was not substantially prejudiced and so the appeal on ground (e) must fail.
9. Given the evidence on this issue it would be appropriate, and would cause no injustice, for me to correct the notice to delete the erroneous reference to BM Autos from the site address in paragraph 2.

The Appeal on Ground (b)

10. Ground (b) is that the matters alleged in the notice have not occurred as a matter of fact. A ground (b) appeal does not require consideration of whether those matters are no longer occurring. The burden of proof falls on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred as a matter of fact.
11. However, I need to consider ground (b) on the basis of the corrected allegation, namely a "*mixed use comprising the servicing of vehicles, vehicle dismantling/breaking and storing of scrap vehicles and vehicle parts.*"
12. The appellant's case is, in effect, that the alleged change of use has not occurred because the site remains solely used for the servicing and repair of

vehicles. Any activity which might have appeared to the Council to be 'vehicle dismantling/breaking' or 'storing of scrap vehicles and vehicle parts' was not the primary use, but activity incidental to the lawful use of vehicle servicing and repairs.

13. To support this, Mr Chalotra states that the appellant company is not a scrapyard and does not deal with end-of-life vehicles as any vehicles to be scrapped are dealt with by the local scrapyard. He relies on the Environment Agency not finding any evidence of car scrap, breakage, or end-of-life activities at the site. The Environment Agency's comments (8 March 2018 and 24 October 2018) are reported in the Council's statement. He also confirms that his company services and repairs specialist motor vehicles (BMWs) as part of the planning permission on the site for a B2 (or General Industrial use)² and that some parts are kept on site due to the cost, and difficulties of obtaining, second-hand parts. However, this evidence does not show precisely or unambiguously that vehicle servicing is the sole primary use of the site and that 'vehicle dismantling/breaking' or 'storing of scrap vehicles and vehicle parts' has not occurred on the site.
14. The Council has provided a statement comprising records of site visits, including occasions when scrap parts and broken/damaged cars were on site. The Council also refer to a meeting in which Mr Chalotra admitted to he used to take parts of vehicles, but doesn't anymore because he now has enough parts. There is also the 2011 planning application³ to 'adjust' the planning permission from servicing to 'servicing and vehicle dismantling' that was refused. Following refusal of planning permission, Mr Chalotra says that the 'planned diversification' of the business did not happen. The appellant's submitted photos show a vehicle-related business and cars at the site, but do not unambiguously show that the alleged matters have not occurred as a matter of fact.
15. S174(2)(b) of the Act is that matters 'have not' occurred. Even if broken and scrap vehicles were removed from the site, the appellant has not shown on the balance of probability that the alleged change of use had not occurred by the date the notice was issued.
16. On my site visit the cars I saw parked around the frontage of the site were intact, did not have obviously damaged bodywork or parts missing. I saw 6 ramps inside the building and some cars being worked on. I also saw various second-hand or salvaged car parts, such as doors, bonnets, engines and other components, stored in an orderly fashion on tall shelved racks inside the building as well as outside in the secure compound to the side and rear of the building. However, my observations are not decisive, but add weight to my conclusions that the alleged matters have occurred.
17. The appellant's evidence is limited and for the reasons above it follows that I conclude the corrected alleged matters have occurred and the appeal on ground (b) fails.
18. Whilst there is no ground (c) appeal – that there is no breach of planning control – the material change of use was likely to have been in breach of planning control. The appellant's uncontested evidence is that planning

² under the Use Classes Order

³ Reference number DC/11/53967

permission pertaining to the site was for B2 or general industrial use. While B2 uses may include the servicing of vehicles, Article 3(6) of the Use Classes Order makes it clear that no class includes use for part (g) 'as a scrapyard, or a yard for the...breaking of motor vehicles'.

The Appeal on Ground (d)

19. Ground (d) is that at the date that the notice was issued it was too late to take enforcement action. In order to succeed on this ground the appellant has to show, on the balance of probability, that the alleged use began more than ten years before the date the notice was issued on 10 October 2019, and the alleged use continued from then without material interruption for a period of ten years so as to be immune from enforcement. Hence a ground (d) appeal requires comparison between the use of the appeal site when the notice was issued on 10 October 2019 and the use as it existed ten years before that. The burden of proof rests with the appellant.
20. The appellant alleges the business has been trading on the site in its current format for over ten years. In support of this Mr Chalotra submits evidence from the Council's Revenues and Benefits department that shows two companies have been liable for Business Rates on the site since April 2008 - which is when Mr Chalotra purchased the site as evidenced by the submitted HM Land Registry Register extract – and these are firstly BMW Auto Parts and later AG Auto Parts Ltd. These company names are enough to show that the site has probably been used for some use related to vehicles or vehicles parts for more than ten years. But they are not enough to show, on the balance of probability, that the alleged mixed use (i.e. the *servicing of vehicles, vehicle dismantling/breaking and storages of scrap vehicles and vehicle parts*) commenced before 10 October 2009.
21. It is undisputed that the 2011 planning application was made in respect of vehicle dismantling. As a result of refusal of planning permission, Mr Chalotra states that the 'planned diversification' of the business did not happen. This would lead me to infer that the alleged mixed use was not being carried out in 2011 and hence not in the ten years before the notice was issued. Mr Chalotra has also stated that vehicle dismantling did not take place during the ten year period. He has not shown that this element of the mixed use ceased for an insignificant period. Even if the alleged mixed use commenced more than ten years before the notice was issued, the appellant has not shown that the alleged mixed use took place for any continuous ten year period.
22. From the evidence before me I find, on the balance of probability, the alleged use is not immune from enforcement action. The appeal on ground (d) fails.

Other Matters

23. The appellant has referred to improvements he has made to the building and the site, supported by various photographs, and other reasons why he considers the alleged mix use is acceptable. Local residents and councillors, on the other hand, have set out objections to the use. I cannot consider the merits or otherwise of the development because the appellant has not sought planning permission via an appeal on ground (a). The appellant also suggests there are other garage and car repair businesses on the industrial estate and feels victimised by the Council, but this is also a matter outside my remit.

Conclusion

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

25. It is directed that the enforcement notice be corrected by:-

- The **deletion** of the text of paragraph 2 in its entirety and **substitution** with the following: '*Land at Pleasant Street, West Bromwich, B70 7DT as shown edged in red and shaded pink on the attached plan ("the Land")*'.
- The **deletion** of 'to a mixed use of B2 and' in paragraph 3 and **substitution** with: 'to a mixed use of servicing of vehicles and'.
- **Adding** '*for vehicle dismantling/breaking and storing of scrap vehicles and scrap cars parts*' to the end of paragraph 5.1.

26. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

K Stephens
INSPECTOR



Appeal Decision

Site visit made on 22 September 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2020

Appeal Ref: APP/G4620/D/20/3254791

15 Reddal Hill Road, Cradley Heath B64 5JE

- 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 M Banaras against the decision of Sandwell Metropolitan Borough Council.
- The application Ref DC/20/64094, dated 9 March 2020, was refused by notice dated 15 May 2020.
- The development proposed is a drop kerb access to new driveway.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's decision notice does not refer to any local development plan policies and I am not directed to any in the appeal submissions. I have therefore had regard to the National Planning Policy Framework which is an established material consideration in planning decisions.

Main Issue

3. The main issue is the effect of the development on highway safety.

Reasons

4. The site fronts Reddal Hill Road (A4100), which, according to the Council, is a high volume 30mph traffic route. In the vicinity of the site the carriageway is subject to waiting, loading and parking restrictions and there are no domestic access points for vehicles on to Reddal Hill Road on this part of the road.
5. The site's frontage lies slightly offset from the junction of Reddal Hill Road with Brook Lane. The roadway in the vicinity consists of two lanes separated by a chevroned area forming part of a combined right turn lane for vehicles turning into Brook Lane and Haden Road. A short distance to the west of the frontage is a pedestrian refuge facilitating pedestrian crossing continuous with a path lying adjacent to the side of the dwelling.
6. The parking arrangement shown on the submitted plans would be sufficient to accommodate two vehicles. However, the arrangement and restricted width of the site would limit the capability to turn vehicles within it to enable access and egress in a forward gear.
7. Any requirement to manoeuvre into or out of the site using a reverse gear would result in vehicles travelling at slow speed or stopping within the highway

with potential to impede the free flow of traffic. Although visibility in both main directions of travel is good, manoeuvring would be made hazardous due to the proximity of the right turn lane, the pedestrian refuge and vehicles emerging from the junction with Brook Lane.

8. Reversing out of the site would generally require movement into the chevroned area and in close proximity to the crossing point. This would have the potential to impede visibility for both approaching traffic and pedestrians using the crossing. Reversing into the site without crossing the chevroned area would result in movement or positioning contrary to the direction of approaching vehicular traffic. In either scenario, the proposal would add a further point of conflict for those using the Brook Lane junction and on the main road itself. This would significantly elevate the potential for both vehicular and pedestrian conflicts.
9. For those reasons, I find that the proposal would have significant potential to prejudice highway safety in the vicinity of the site. This would conflict with the National Planning Policy Framework which requires new development to create places that are safe for existing and future users.
10. In support of the appeal, the appellant advises that the development would provide improvements to access for an elderly relative. This may be more suitable for their specific access requirements than the existing arrangement where parking is provided to the rear of the property from Mace Street.
11. Age is a 'relevant protected characteristic' and I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I have also had regard to rights conveyed within the Human Rights Act.
12. In respect of the above, whilst I acknowledge the benefits that would result to the appellant and elderly relatives, I note that this benefit is not dependent on the proposed development and could be achieved through the existing arrangement whereby vehicular parking and pedestrian access can be achieved at the rear of the site and via the rear door of the property respectively. Consequently, although a refusal of planning permission may deprive the family of alternative parking provision it would not prevent parking within the site or prejudice the ability to access the dwelling from the rear. Accordingly, those personal circumstances are not a strong justification for setting aside national policies with the legitimate aim of protecting highway safety in the public interest. I therefore attach them limited weight having regard to the particular circumstances of the case.

Conclusion

13. For the above reasons, the appeal should be dismissed.

R Hitchcock

INSPECTOR