



Appeal Decision

Site visit made on 19 March 2014

by J Whitehouse MA, PG Dip, LLB, MRTPI

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

Decision date: 30 May 2014

Appeal ref: APP/A5270/C/13/2208770

Premises known as Get Bike, Unit C (and car parking area), Orion Park, Northfield Avenue, West Ealing, W13 9SJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the Council of the London Borough of Ealing.
- The appeal is made by Mr Louis Karmios.
- The notice was issued on 18 October 2013.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the site for the sale, hire and repair of motorcycles and for motorcycle training.
- The requirements of the notice are to: Cease the use of the site as a mixed use for the sale, hire and repair of motorcycles and for motorcycle training.
- The period for compliance with the requirements is: 6 months after the date this notice takes effect.
- The appeal is proceeding 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 subject to a correction, and planning permission is granted in the terms set out below in the Decision.

Preliminary matters

1. The requirements in paragraph 5 of the notice refer to the use of the site as a mixed use for the sale, hire and repair of motorcycles and for motorcycle training. The allegation in paragraph 3 of the notice does not refer to a mixed use. I therefore intend to correct the notice to rectify this inconsistency. I consider that the change can be made without injustice to either party.
2. The Appellant argues that the reasons for issuing the notice relate to external motorcycle training only. The allegation makes it clear that it is the entire mixed use that is attacked by the notice and, accordingly, I will consider this appeal on the basis of the mixed use as derived from the description of the breach of planning control. However, as the individual components are clearly severable from the overall mixed use of the land and premises, it is also open to me to consider whether planning permission should be granted for one or some of the composite uses.
3. The Planning Practice Guidance has been issued since the parties made their representations. I shall have regard to it in reaching my decision. I have not

however, in the light of the issues in this appeal, considered it necessary to refer back to the parties and invite comments.

The appeal on ground (a) and the deemed planning application

Main issue

4. I consider that the main issue in this appeal is the effect of the development on the living conditions of neighbouring residents with particular reference to noise and disturbance.

Reasons

5. The appellant, in his response to the comments of interested parties, refers to the lawful use of the site for industrial purposes. I acknowledge that this is the lawful use, and I have considered the appeal with this in mind.
6. In relation to the use of the land and premises as a mixed use for the sale, hire and repair of motorcycles, the Council has not put forward any evidence as to how these elements of the use result in unacceptable harm to the living conditions of nearby occupiers. The Council has suggested conditions restricting the hours of operation and the times at which motorcycles, mopeds or equipment shall be collected from the premises in the interests of the living conditions of the occupiers of nearby dwellings. In relation to motorcycle repairs, a further condition is suggested to limit noise levels of machinery used inside the building, which the Appellant has agreed to. Given the reasons for issuing the notice and the lack of evidence to demonstrate that these uses result in unacceptable harm, I intend to grant conditional planning permission for these composite uses.
7. I saw that motorcycle training includes an element of indoor classroom based training and an element of outdoor practical training. It is the external activities that are of concern to the Council. Motorcycle training courses are provided from Monday to Saturday for approximately six hours each day. I note from the comments submitted by third parties that external training has previously been provided at 0745 hours on Saturdays, and also on Sundays. However, from the evidence before me, early morning training on Saturdays appears to have ceased, and training on Sundays is also no longer provided.
8. Outdoor training is provided within 3 separate areas of the site. From Monday to Friday only area 1, associated with and to the west of Unit C, is used. On Saturdays, however, areas 2 and 3 also become available when they are not required for parking and circulation for the other units on the estate. There are up to three, two-hour sessions per day on each training area. Each session involves up to four students on motorcycles and an instructor on foot.
9. To the north of each of the three areas identified are residential properties. The external training involves the constant running of up to four motorcycles on area 1 beside the boundary with residential properties. I experienced the impact of the development from No 16 Jefferson Close. Having regard to the very short lengths of the gardens of the terraced houses in Jefferson Close, separated from the area concerned by a wall some 1.5 – 1.8m high, the noise from the external training is unduly intrusive and seriously and unacceptably reduces the occupiers' enjoyment of their gardens. In addition, having regard

to the modest size of the houses, the noise is also unacceptably disturbing from within the properties whilst the rear windows are opened. I note that some of the flats in Mayo Court to the east of Jefferson Close lie even closer to the boundary than the terraced houses in Jefferson Close and the occupiers also are similarly affected.

10. The Appellant has suggested amendments to the conditions that the Council have requested should planning permission be granted for motorcycle training. These include restricting the hours of operation, restricting the times at which motorcycles, mopeds and equipment could be collected, the use of in-helmet headsets, restricting the number of pupils and motorcycles in the external training areas, and requiring details of noise levels from machinery to be agreed and implemented. Whilst the suggested conditions would go some way to reducing the noise and disturbance to adjoining occupiers from the external training, I do not consider that they would overcome the unacceptable harm to the living conditions of nearby residents that I have identified above. This is because there would still be a constant running of some motorcycles, and associated revving of engines, in close proximity to the gardens of nearby dwellings.
11. The Appellant distinguishes between the internal classroom training and the external practical training on motorbikes suggesting that permission should be granted for the internal classroom based training. The Council have not provided any evidence of harm in relation to the internal classroom element of motorcycle training. I consider that a planning condition preventing any external motorcycle training taking place, would overcome the harm identified as a result of the motorcycle training activities, and would allow internal classroom training to continue as the appellant suggests.
12. Overall, I share the concerns of the Council and local residents in relation to the unacceptable noise and disturbance that is caused by the external motorcycle training. In all other respects I do not find the mixed use harmful. If the appellant were to continue external training activities, it would be open to the Council to issue a breach of condition notice for which there is no right of appeal.
13. I conclude that, subject to the imposition of conditions, the use of the land and premises as a mixed use for the sale, hire and repair of motorcycles and for motorcycle training would not result in unacceptable harm to the living conditions of neighbouring residents with particular regard to noise and disturbance. The development is therefore not contrary to Policy 7.15 of the *London Plan*, Policy 1.1 of *Ealing's Development (or Core) Strategy 2026*, adopted in April 2012, and Policy 7A of *Development Management Development Plan Document*, adopted in December 2013.

Conditions

14. I will impose conditions restricting the hours of operation and the times at which motorcycles, mopeds or equipment shall be collected from the premises, restricting noise levels of machinery used inside the building, and to prevent any motorcycle training taking place outside the building in the interests of the living conditions of the occupiers of nearby dwellings. These conditions, are reasonable and necessary and meet the requirements of Paragraph 206 of the *National Planning Policy Framework*, adopted in 2012 ("The Framework").

Conclusion: Ground (a)

15. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) do not therefore need to be considered.

Formal decision

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16. The enforcement notice is corrected by:

- i) the deletion of the allegation in paragraph 3 of the notice and the substitution of the words "*Without planning permission, the change of use of the site to a mixed use for the sale, hire, and repair of motorcycles and for motorcycle training*".

17. Subject to this correction, 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 and buildings at Get Bike, Unit C (and car parking area), Orion Park, Northfield Avenue, West Ealing, W13 9SJ, as shown on the plan attached to the notice, for a mixed use for the sale, hire and repair of motorcycles and for motorcycle training subject to the following conditions:

- 1) No motorcycle training shall take place outside of the building at any time.
- 2) The use shall not take place, and there shall be no collection of motorcycles, mopeds or equipment, other than between 0730 – 1900 hours Mondays - Saturdays.
- 3) No tools or machinery with an acoustic standard in excess of 5dB below the background (L90) level, measured 3m from the ground floor façade of any noise sensitive dwelling, and assessed via the methodology found within BS412:1997, shall be used at any time within the site.

J Whitehouse

INSPECTOR