

Section '4' - Applications recommended for REFUSAL or DISAPPROVAL OF DETAILS

Application No : 14/02039/FULL2

Ward:
Cray Valley East

Address : 9A Perry Hall Road Orpington

OS Grid Ref: E: 546607 N: 166884

Applicant : Mr J Danmole

Objections : YES

Description of Development:

Continuation of use as hand car wash (Sui Generis) and erection of part 2.5m and part 1m high acoustic fencing.
RETROSPECTIVE APPLICATION

Key designations:

Areas of Archaeological Significance
Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Flood Zone 2
Flood Zone 3
London City Airport Safeguarding
London Distributor Roads

Proposal

The retrospective application seeks permission for the continuation of use of the site as hand car wash (Sui Generis use) and erection of part 2.5 metres and part 1 metre high acoustic fencing.

Location

The application site is located on the south-western side of Perry Hall Road, which is a busy one-way street, predominantly residential but still with some commercial premises.

Comments from Local Residents

Nearby residents were notified of the application, and their comments can be summarised as follows:

- business has been trading illegally since the beginning;

- despite permission being refused, they continue to trade 11 or 12 hours a day, seven days a week, inflicting nuisances in terms of noise, traffic and other problems on the neighbouring properties;
- use of the site for hand car wash results in an intensification of use, additional traffic operation, commercial activity and general disturbance;
- there is no history of car valeting on site. The site was regenerated from an overgrown builder's yard into a car sales forecourt with small office to rear;
- at no point has car valeting been carried out, due to lack of space;
- vehicles were cleaned for customers after purchase, but at the rear in Watsons Yard;
- a bucket of water, a sponge and a shammy aren't quite the same as the mechanical equipment in use at the existing "hand" car wash;
- Google maps photo shows 10 cars for sale with room to walk sideways between them on the car forecourt;
- the instructed engineer's report confirmed that the noise levels are a nuisance;
- several suggestions are provided, none being acted upon;
- proposed customer waiting area is not a solution in practice - will obstruct other users, and parking bays appear to be across the doorway to the tyres4u fitting area and would also block access to the lock-up garages opposite;
- only 14 cars valeted on a daily basis - hardly a viable business requiring multiple planning applications;
- no employees listed as working? There are at least 6 employees on a daily basis, apparently changed regularly, but on a rotation system as they reappear after a while;
- the opening hours provided are not adhered to, regularly seen working until 7.45pm, photographs previously provided;
- they appear to operate as and when suits them;
- if permission is granted, who would regulate them?
- loud music played on site, and also from customers radios, in competition from music at KwikFit;
- acoustic fence might help somewhat for adjoining property, but the noise extends on all sides and creates disturbance to all residents as vehicles move past the site;
- spray from jet washers means you get wet walking past;
- lack of visibility when exiting the car wash;
- despite the fence being lowered to 1 metre, the car wash is on a slight bend and visibility is reduced by the style of fence;
- potential for accident is still high;
- the information provided by a previous owner is false - cars were washed by hand, and a maximum of 7 cars could be house on the sales forecourt. In addition, the opening hours of the showroom were significantly shorter;
- the agent mentions that the area is blighted by empty shops and offices, but several empty offices have been converted to residential, as such this area is now more residential than industrial;
- the car wash is badly maintained and becoming an eyesore;
- there are perfectly adequate car wash businesses in the area that are well-run;

- frequently a sign on the pavement blocking pedestrian thoroughfare and creating a hazard;
- do not believe the car wash have provided enough reasons for permission to be granted;
- the area is not 'semi-industrial', it is residential with the exception of KwikFit and Watsons Yard;

Comments from Consultees

Environmental Health recommend that the application is refused.

The Acoustic Report submitted with the application recommends a barrier of some 4.5 metres in height, and therefore it is considered by the Council's Environmental Health Officer that the proposal for part 2.5 metres and part 1.0 metre would be ineffective. As such, the proposal would give rise to loss of amenity due to noise from the car wash and vacuum cleaning equipment.

Highways - concerns relating to the number of vehicles using the site, and whether the number of vehicle movements will be more or less than previous. The visibility is at present considered acceptable on the basis of the number of vehicles proposed to use it on a daily basis (an average of 14 cars daily, found during a survey undertaken over the period of a month, as submitted in the Planning Statement). However, the highways Engineer has advised that should the height of the fence be increased in order to achieve the noise mitigation required by Environmental Health, this would compromise visibility, and a perspex screen would not be acceptable. In addition if the number of vehicles utilising the site increases above this number, the visibility will not be acceptable.

Planning Considerations

The application falls to be determined in accordance with the following policies of the Unitary Development Plan

BE1 Design of New Development
 EMP5 Development Outside Businesses Areas
 EMP6
 T3 Parking
 T18 Road Safety

London Plan Policy 5.13
 London Plan Policy 7.15

Mayors Ambient Noise Strategy

National Planning Policy Framework

Planning History

In terms of history at the site, an unauthorised change of use was implemented from car sales to car wash. An enforcement notice was served for the cessation of

this use, an Appeal was lodged against the enforcement notice, and the appeal was dismissed by the Inspector.

The Inspector determined that the main issue would be the impact of the use on the character and appearance of the locality. During the Enforcement appeal, a large advertising board was erected along the front boundary with the adjacent residential property, which was visible from the west. There was also advertising on the pavement and a yellow canopy. The advertising was considered to stand out against the low front boundary treatments of the residential properties, and resulted in an incongruous addition that has resulted in harm to the streetscene. It was considered inevitable that the use would have an impact upon the living conditions of those living nearby.

The Inspector stated that whilst the appellant believed there to be sufficient space on the forecourt to process three cars, there was no evidence to corroborate that the size of the site is sufficient. Whilst queues for hand car washes are not unusual, the Inspector felt that the current space would be insufficient to meet a surge in customers and queues would inevitably form down the road and outside the residential properties. Based on a description by the appellant that the business is a 'successful and viable' business, the Inspector found it reasonable to assume that the level of current use is above and beyond what was previously experienced by way of noise and disturbance and would have changed the character of the area. This was considered to have an unacceptable impact upon the living conditions of those living nearby.

As a result, the Inspector concluded that the development had led to harm to the character and appearance of the area and subsequently harm to the living conditions of those living nearby, contrary to relevant planning policy, and the enforcement notice was upheld.

A compliance period of 1 month was provided from the date of the decision, notably 29th October 2013.

Most recently, planning permission was refused for a retrospective planning application relating to the continuation of use as had car wash (Sui Generis) and 2.5m high acoustic fencing, ref. 14/00174, for the following reasons:

1. The use of the site for a hand car wash is considered to result in an intensification of use, additional traffic operation, commercial activity and general disturbance, which by reason of increased levels of noise and disturbance, has an unacceptable impact upon the living conditions of those living nearby, contrary to Policies BE1 and T18 of the Unitary Development plan, London Plan Policy 5.3 and London Plan Policy 7.15.
2. The proposal does not have adequate visibility and if permitted, would be injurious to conditions of road safety on Perry Hall Road, contrary to Policy T18 of the Unitary Development Plan.
3. In the absence of sufficient information to demonstrate the maximum potential of the operation and the impact on parking in the locality, the

proposal would be likely to result in an increase in demand for on-street parking and traffic queues in the road alongside the site, detrimental to residential amenities and prejudicial to the safety and free flow of traffic, contrary to Policies BE1 and T18 of the Unitary Development Plan; and

4. In the absence of technical data relating to the proposed acoustic fencing and a predicted acoustic benefit which can be backed up by measured data, the use will have a detrimental impact upon the living conditions of those living nearby, contrary to Policies BE1, London Plan Policy 5.3, London Plan Policy 7.15 and the Mayors Ambient Noise Strategy.

Conclusions

Initially, an enforcement notice was served on 3rd July 2013, with the Notice effective on 28th August 2013, and compliance period being 1 month after the notice becomes effective.

The Enforcement Notice specified the following requirements:

- a) Cease the Use of the Land for all purposes connected with the use as a car wash and;
- b) Remove from the Land all equipment, machinery, materials and signage relating to the car wash and;
- c) Remove from the Land any resulting debris.

The Council's Policies noted in the enforcement notice are: BE1 and EMP6 of the Council's Unitary Development Plan. These policies refer to the need for high standards of design and to respect the street scene. The uses should not have a significant adverse impact on the amenity of the surrounding area.

Whilst there is a valid enforcement notice at the above site, the applicant is not precluded from submitting a revised planning application, however it should be noted that the Council would have to take the view whether or not it should determine the revised application, depending on the nature of the revised application.

The appeal was a ground A appeal "That Planning Permission should be granted for what is alleged in the enforcement Notice, or that the condition that is alleged not to have been complied with should be discharged".

That the owner appealed the enforcement notice and the Appeal Decision is dated 9th December 2013. The appeal was dismissed and the Inspector upheld the enforcement notice. The Inspector mentioned that the main issue of the above matter is that of the impact of the use on the character and appearance of the locality.

As discussed during the 'history' section of this report, The Inspector mentioned, amongst other issues, the following in his reasons:

- a) That the site is in a busy one-way road with a mixed use of residential and commercial premises;
- b) Paragraph 7 Line 11 and 12 of the Inspector's decision mentions "it is inevitable that the use will have an impact upon the living conditions of those living nearby".

Paragraph 8 the Inspector recognises "the inclusion of Policy EMP6 in the notice points to an impact on amenity...." the Inspector also mentioned that there is no evidence to corroborate the view that the size of the site is sufficient. The Council's assertion that during busy times the use would lead to a queue of cars awaiting valets to be carried out was also considered to be unqualified by the Inspector, however the Inspector did consider that the size of the current site would be insufficient to meet a surge in customers and queues would inevitably form down the road and outside the residential properties.

- c) Paragraph 9 of the Inspector's decision mentions the current use of the above site as described by the applicant as a 'successful and viable' business , as such it would be reasonable to assume that the level of current use is above and beyond what was previously experienced (regardless of the other existing uses) by way of noise and disturbance, changing the character of the area and causing an unacceptable impact upon the living conditions of those living nearby.

Whilst the advertisements are ancillary to the use of the above site, issues regarding advertisements are dealt with separate to the above matter.

Following the enforcement notice, an application was submitted (and Planning, Design and Access Statement) through agents Robinson Escott Planning LLP under ref. 14/00174 which was refused for the reasons set out above in the history section.

The Council may determine an application or indeed a revised application where it is substantially different to the original (i.e. the first) application. A substantially different application would therefore be regarded as a 'new' application, and be treated as such.

Each application therefore needs to be dealt with according to its merits.

Paragraph 1 of the Planning Design and Access Statement submitted in support of the current application states that additional documentation and a revised drawing have been prepared in order to overcome the previous refusal grounds. A Noise Impact Assessment prepared by Dynamic Response to assess the impact of the use, and a revised drawing has been prepared which shows alterations to the proposed acoustic fence along the common boundary with No.9 Perry Hall Road.

Concerns were previously raised by Environmental Health due to the impact of the use of the site in relation to noise and disturbance caused to neighbouring residents. These concerns remain.

It is suggested that the Acoustic Report instructed by the applicant/agent and submitted in support of the application recommends a barrier of some 4.5 metres in height, which is not being provided. It is therefore considered by the Council's Environmental Health Officer that the proposal for acoustic fencing that is part 2.5 metres and part 1.0 metre in height would be ineffective and as such, the proposal would give rise to loss of amenity due to noise from the car wash and vacuum cleaning equipment.

The agent has suggested increasing the height of the acoustic fencing in order to overcome the concerns raised by Environmental Health, and that the upper element of the fence could be transparent Perspex. The Council's Highways Officer does not consider that this is acceptable and advised that it will still compromise Highways safety.

The Council Highways Engineer has also raised concern with regard to the proposed use of an existing crossover for exit from the site. The acoustic fence has been reduced to 1 metre in height forward of the front elevation of the neighbouring property, which has been done in order to provide adequate visibility for vehicles exiting the site. It is noted, however, that this compromises the ability of the fence to achieve the required noise mitigation. The supporting statement refers to an average of 14 cars using the car wash business on the site on a daily basis over a one month period, which the Highways Engineer confirmed is acceptable from a visibility point of view. However, the Highways Engineer states that if this number were to increase then it is likely to have a detrimental impact upon visibility. The sightline however remains constrained by the adjacent property, and due to the bend in the road the sightline appears to be less than 15 metres which is unacceptable; therefore, any intensification of use of the access would raise further concerns.

The current application appears to have looked at the Inspectors' concerns previously raised, along with the refusal grounds associated with ref. 14/00174, and has attempted to address some of those concerns. However it is determined that the current application has still not sufficiently addressed the issues/concerns raised by the Inspector in his appeal decision or in the previous refusal grounds.

As such, it is considered that the continued use of the site for a hand car wash is not acceptable in that it would result in a significant loss of amenity to local residents by reason of noise and disturbance, will impact detrimentally on the character of the area and is likely to result in an intensification of use of the site and existing crossover which will have a prejudicial impact upon the visibility from the site and consequently road safety in the area.

Background papers referred to during production of this report comprise all correspondence on the files refs. 14/00174 and 14/02039, set out in the Planning History section above, excluding exempt information.

RECOMMENDATION: PERMISSION BE REFUSED

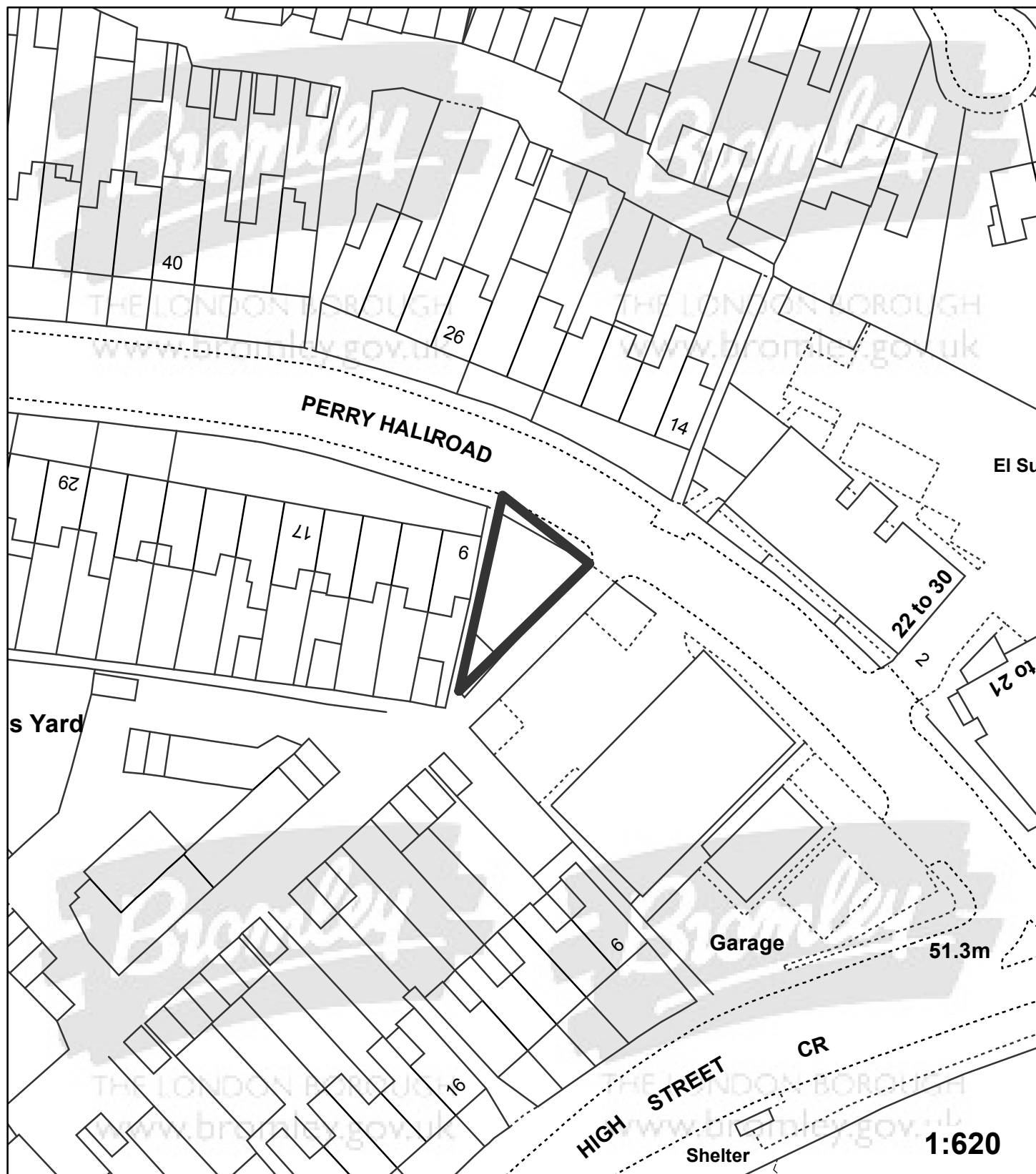
The reasons for refusal are:

- 1 The application fails to comply with the recommendations within the Acoustic Report with regard to the height of the acoustic fencing, and as such the use will have a detrimental impact upon the living conditions of those living nearby, contrary to Policy BE1, London Plan Policy 5.3, London Plan Policy 7.15 and the Mayor's Ambient Noise Strategy.
- 2 The use of the site for a hand car wash is considered to result in an intensification of use, additional traffic operation, commercial activity and general disturbance, which by reason of increased levels of noise and disturbance, has an unacceptable impact upon the living conditions of those living nearby, contrary to Policies BE1 and T18 of the Unitary Development Plan, London Plan Policy 5.3 and London Plan Policy 7.15.
- 3 The proposal does not have adequate visibility and if permitted, would be injurious to conditions of road safety on Perry Hall Road, contrary to Policy T18 of the Unitary Development Plan.
- 4 In the absence of sufficient information to demonstrate the maximum potential of the operation and the impact on parking in the locality, the proposal would be likely to result in an increase in demand for on-street parking and traffic queues in the road alongside the site, as well as a detrimental impact upon the visibility for vehicles exiting the site onto Perry Hall Road, detrimental to residential amenities and prejudicial to the safety and free flow of traffic, contrary to Policies BE1 and T18 of the Unitary Development Plan.

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"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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