

Hyndburn Borough Council – Committee Report

Application Ref: 11/24/0356

Application Address: 295 Burnley Road, Accrington, BB5 6HA

Description of Development: FULL: Change of use from dwelling (C3) to mixed use dwelling and car repairs (B2) within lower ground floor garage and yard area (retrospective)

The application called in to Committee by Councillor Parkins for consideration of the issues involved.

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in preparation of this report, particularly the implications arising from the following rights:-

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right to peaceful enjoyment of possessions and protection of property.

Description of site and proposed development

The application dwellinghouse fronts the north side of Burnley Road (A679). Whitewell Road runs northwards along the east side of the property from its junction with Burnley Road. It is at the end of a row of similar dwellings, at the edge of a large residential area to the rear. Across Whitewell Road is a short residential terrace, beyond which is the Cemetery. Whitewell Road is un-made and serves as an access to the residential area and a pedestrian access to the Cemetery.

The building appears as a substantial single storey dwelling at the front, however, due to the topography, it has a lower ground floor to the rear.

The present application is to regularise the use of two of the lower ground floor garages and the rear forecourt area as a commercial garage.

The applicant's Planning Statement describes the use as follows:

“The applicant uses this area at the rear for his business, with two of the three available garage bays contain all of his equipment. The size and relatively low internal ceiling heights within the bays, provide a natural constraint to the type, amount, intensity and nature of work which can be carried out.

His working hours are generally 9.30am to 5.30pm Monday to Friday, with some occasional weekend working. As a rule only a maximum of three jobs are booked in per day, owing to the fact that the applicant is a sole trader and can only accommodate a limited amount within his working hours.

In the main, electric tools and equipment are used with the only notably noise generating machinery being a compressor for inflating tyres. No grinding or welding takes place.”

Consultation responses (summarised)

Neighbour notified by letter.

Consultation period expired 3rd September 2024

Representations have been received from 3 neighbouring residents making objections and comments summarised and itemised as follows:

1. It is a commercial garage in a residential area.
2. Noise, disturbance and hazard from frequent traffic movements sometimes 7 days per week.
3. Loss of privacy.
4. Noise nuisance from power tools, compressor, ramp operation, engine running and doors slamming.
5. Exhaust fumes
6. Storage of waste oil, brake fluid, car parts and other waste.
7. Yard full of cars waiting repair.
8. Hazard from vehicles reversing out of yard.
9. Plenty of commercial areas for location of car repair garages.
10. That the commercial use is in breach of a covenant in the deeds of the property.
11. Late night arrival of vehicles recovered on break-down trucks; neighbours have sent in images to support this.
12. Parking of vehicles. Blocking of driveways.
13. Parts delivery van calling 5/6 days per week.
14. Occasionally employing an additional person.
15. Working practices have intensified over last 3 years; become a lot noisier and smelly since the business started in 2021.
16. Garage alarm sounding frequently during night time.

Highway Authority – Makes the following comments.

The site was visited on 9 September 2024. This is a retrospective application with the change of use having been carried out since September 2021.

Having reviewed the documents submitted, together with site observations, Lancashire County Council acting as the local highway authority does not raise an objection regarding the proposed development and are of the opinion that the development will not have a significant impact on highway safety, capacity or

amenity in the immediate vicinity of the site subject to the following comments being noted and conditions being applied to any formal planning approval granted.

Proposal

The change of use is from a dwelling house (C3) to a mixed use of a dwelling and car repairs business (B2) within two bays of the lower ground floor garage and part of the adjacent yard area.

Site access

The rear of the property, where the lower ground floor garage and yard area are situated, is accessed from Whitewell Road which is a privately maintained road. It provides vehicular access to a number of residential properties, pedestrian access to the adjacent cemetery and Public Footpath ref FP11-01-021 (Accrington) passes along it from the junction with Burnley Road Whitewell Road is in a poor state of repair with its surface broken up and patched in places, except within the junction with Burnley Road which forms part of the publicly maintained highway network and within the private access to the rear of Nos 289 – 295 Burnley Road.

Car & cycle parking

Recommendations in the borough council's Parking Standards for a B2 use is one parking space per 45 sq m of floor space. Based on the plans submitted (Lower Ground Floor Plan ref 714/4 and Plan of Rear Driveway ref 714/2) two car parking spaces should be provided. The highway authority considers that two car parking spaces can be provided within the site in the areas indicated on the plans which should not impact on the domestic parking. The commercial use of the garage bays and yard area should be restricted by condition to ensure that the site's operation does not impact on the surrounding highway network or access to neighbouring residential properties.

Site Operation

The submitted Supporting Statement (ref LJG298 dated 12.8.24) includes details of the current working hours (page 2). The borough council's Environmental Health response recommends that working hours are controlled by condition, which the highway authority supports.

The Supporting Statement (page 5) also includes details of other suggested conditions which would control the site's use both within the B2 use class and restricting the use to the applicant which should cease if the applicant was to move or stop working. Again the highway authority would support such conditions to ensure that the site's use does not generate activities which may impact on the surrounding highway network without these activities first being assessed.

Conclusion

The highway authority raises no objection to this retrospective application subject to conditions being applied regarding working hours; restricting the commercial use to the garaging and yard area on the submitted plans; restricting the site's use within

the B2 use class and the restriction of the site's use to the applicant so that commercial use shall cease should the applicant move or stop working.

Environmental Health Officer – Makes the following comments.

The information contained within this application indicates that the operation has been established for a number of years. I can confirm that the activities have not resulted in any complaints in relation to noise or odours, in that time.

In order to assist future issues, I would suggest that the working hours specified in the supporting statement (09.30 – 17.30, Monday to Friday) are the subject of a condition. There is also a suggestion that some weekend work takes place. I would suggest that this too is formalised, with work allowed only between 09.30 and 13.00 on Saturdays, with no work on Sundays or Bank/Public Holidays.

Whilst it is not mentioned, I would also suggest that the re-spraying of vehicles or parts of vehicles is not permitted at the premises.

The supporting statement also suggests that the use be restricted to the current occupier. In order to prevent any future intensification, I would support this.

Relevant Policies

National Planning Policy Framework (NPPF)

Core Strategy – Adopted January 2012

T1: Improving Connectivity.

Env6: High Quality Design

Env7: Environmental Amenity

Development Management DPD

DM1: Employment Development

DM26: Design Quality and Materials.

DM29: Environmental Amenity

DM32: Sustainable Transport, Traffic and Highway Safety.

Planning history (as relevant)

None

Observations and assessment

Procedural

Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration (NPPF paragraph 2).

NPPF defines sustainable development (paragraph 8), sets a presumption in favour of such development, requiring that: proposals in accordance with an up-to-date development plan be approved without delay (paragraph 11); and, that decisions should be approached in a positive and constructive way (paragraph 38).

Considerations

The application seeks to regularise the use of the basement of a 'split-level' dwelling house as a car repair garage. There are representations in respect of the application. The main planning considerations are the acceptability of the continued use, in principle, in terms of its impact on residential amenity and highway safety, and, consideration of any other matters arising from consultation responses or otherwise.

Principle of Development

Planning law requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The relevant policies are Core Strategy Policy Env7 and policies DM1 and DM29 of the Development Management DPD.

DMDPD Policy DM1 says that employment will be supported where (as relevant to this application)

“b. that it will not give rise to unacceptable adverse impacts on the amenity of neighbouring land uses by virtue of increased levels of noise, odour, emissions or dust; and,

d. that the traffic generated by new employment development does not have an unacceptable adverse impact on local amenity and does not compromise the safety of other highway users.”

The policy states that generally:

“Development that would incorporate processes that would involve emissions to the atmosphere will not normally be permitted within or immediately adjacent to residential areas unless the applicant can demonstrate that mitigation measures would suitably protect amenity.”

The supporting text includes that:

“When considering development proposals [...] It is necessary to ask whether this noise be adequately mitigated or controlled through the use of a planning condition and whether the proposed business would operate within "normal" working hours [...].”

CS Policy Env7 states (as relevant to the present application) that, *“Proposals will be permitted only if it is demonstrated that the material impacts arising by reason of traffic, visual impact, noise, dust, emissions, pollution, odour and other nuisances do not give rise to unacceptable adverse impacts or loss of local amenity and can be properly controlled.”*

DMDPD Policy DM29 states that:

“1. Development will be required to protect, and where possible improve, the amenity of surrounding existing and future residents. The Council will require that new development:..

d. does not create an unacceptable level of noise, vibration, artificial light, odour, fumes of dust pollution during construction and over the life of the development.”

Highway Safety

The Highway Authority is content with the proposal as regards highway safety.

Impact on Residential Amenity

There is an element of tension between the views expressed about the development.

The neighbouring residents refer to a list of concerns over the last 3 years arising from the business operation close to their dwellings.

The applicant's supporting statement includes the suggestion that conditions could be imposed in relation to hours of operation, restricting the use within the wide-ranging industrial use class and possibly as a personal permission so that the business would not be transferable to others. The indicated working hours are generally 9.30am to 5.30pm Monday to Friday, with some occasional weekend working.

The Environmental Health Officer refers to there being no complaint received about operation of the use and suggests that working hours are limited by condition, with a further condition to prohibit paint spraying.

However, the car repair business, by its nature, operation and location appears inevitably to impact adversely on the residential amenity of nearby dwellings. Such a use would not normally be granted in a residential area due to conflict with the relevant policies. It would be identified as being out of character with the residential area.

Courts¹ point to the need for consistency in decision making. It is reasonable that similar impacts on residents – such as comings and goings to premises, vehicle movement, car parking/obstruction of driveways, noise from activity at the premises, and the like, be assessed consistently.

Some of the residents' concerns refer to late night operations, which might be ameliorated to a degree by restricting the working hours. However the impacts of the day-time operation would remain. It may be possible to itemise various noise generating operations (such as operation of compressor(s) or machine tools) and restrict or time limit by condition. However, car repairs involves much activity –

¹ Eg: Wiltshire District Council v Secretary of State for the Environment (1993) 65 P&CR 137

opening/closing of doors/hatches, test running, manoeuvring of cars in/out, arrival/departure of vehicles for repair; indeed, it is identified as being within the general industrial class of uses.

At the outset of planning discussions about a new proposal such uses would normally be guided to a location in an industrial or commercial business area. Also, it would not be reasonable or equitable to grant a personal permission to the operator as all garage operators are personal in the same sense.

Conclusion

The car repair garage is out of place in the residential area. It adversely affects the amenities of the area and is likely to continue to do so in an unacceptable way even if it is restricted by condition. It is in conflict with the development plan and the recommendation is made on that basis.

Recommendation

That the application be REFUSED for the following reasons:

Reason:

By reason of its location in a residential area and the impacts of its activities (including noise and fumes from car repairs and the movement and parking of vehicles) the continued use of the car repair garage would adversely affect the residential amenities and living conditions of nearby residents. This would be contrary to Policy Env7 of the Hyndburn Core Strategy and policies DM1 and DM29 of the Hyndburn Development Management Development Plan Document.