

Enforcement and possible unauthorised development

1. Introduction

This report considers current matters of enforcement and possible unauthorised development. Authority to take planning enforcement action is delegated to the Head of Economy, Planning and Strategic Housing. Matters that require a Committee decision are reported, together with delegated decisions to take action.

It is not an offence to carry out works without planning permission and the National Planning Policy Framework (NPPF) states that enforcement action is discretionary and that local planning authorities should act proportionately in responding to suspected breaches of planning control. Local authorities are also advised to take action only where it is appropriate to do so. The purpose of this report is therefore to report to Committee decisions with regard to enforcement action and/or to seek approval for further action.

2. Policy

The Council's Approach to Planning Enforcement is set out in the adopted Local Enforcement Plan. The essential thrust of the Plan is that we will not condone wilful breaches of planning law, but we will exercise our discretion regarding enforcement action if it is considered expedient to do so. Our priorities with regard to enforcement are:

- To focus our resources to ensure that the most pressing and harmful issues are addressed appropriately.
- In determining the expediency of enforcement action we will have regard to the seriousness of any harm which is evident as a result of a breach of planning control.
- Matters which can potentially have a serious impact on the safety or amenity of residents or occupiers of property or on the natural environment will take priority over minor infractions and matters of dispute between neighbours.

3. Items

Each item contains a full description, details of any investigation, and an assessment of the situation and concludes with a recommendation.

This report relates to:

Item 1 Decisions for Enforcement Action

Item 2 Delegated Decisions on Enforcement Action

All information, recommendations and advice contained in this report are understood to be correct at the time of writing this report. Any change in circumstances will be updated verbally at the Committee meeting. Where a recommendation is either altered or substantially amended between preparing the report and the Committee meeting, a separate sheet will be circulated at the meeting to assist Members in following the modifications proposed.

4. Human rights

The Human Rights Act 1998 (the Act) has incorporated part of the European Convention on Human Rights into English law. Any recommendation either to take or not to take enforcement action has been assessed to make sure that the decision is compatible with the Act. If there is a potential conflict this will be highlighted in the individual report on the relevant item.

5. Financial implications

There are no direct financial implications arising from this report. However, in the event of an appeal, further resources will be put towards defending the Council's decision. Rarely, and in certain circumstances, decisions on planning enforcement cases result in the Council facing an application for costs arising from a planning appeal. Officers will aim to alert Members where this may be likely and provide appropriate advice in such circumstances.

6. Recommendation

That the report be **NOTED**

Tim Mills

Executive Head of Property & Growth

BACKGROUND PAPERS

Rushmoor Local Plan (2019)

Rushmoor Local Enforcement Plan (2016)

National Planning Policy Framework (NPPF)

Item 1

Site location: Park Road Garage, 107 Park Road, Farnborough

Alleged breach: 1. Unauthorised Change of Use from a Mixed-Use Vehicle Sales and Repair Garage (Sui generis and personal to the North American Motor Company) to a Hand Vehicle Washing and Valeting Premises, with ancillary Workshop (Sui generis); and 2. Unauthorised display of advertisements.

Recommendation: 1. Issue Enforcement Notice; 2. Prosecution

Description:

Park Road Garage is on the eastern side of Park Road, has a secondary frontage to Short Street and contains a two-storey building set back from the Park Road frontage with a forecourt parking area in front. There is a showroom area on the ground floor with residential above. The property was, until recently, used as a car sales and parking area by the 'North American Motor Company'. There is also a vehicular cross over from Short Street to a workshop to the rear of the ground floor.

The site has a long history of commercial use. It was the Park Road petrol filling station and repair garage until the mid-1990s; then a mixed-use vehicle sales premises and repair garage (sui generis). The 'North American Motor Company' have occupied the site since at least 2003, working on and then selling from the forecourt, second hand vehicles.

Relevant planning history is as follows:

- 95/00392/COU – Change of use of premises from car and petrol sales with vehicle workshop to car and petrol sales with M.O.T testing station – Permission granted in November 1995
- 99/00239/ADV – Continued display of one internally illuminated forecourt sign – Granted in July 1999
- 99/00242/FUL – Relief from condition No. 3 of planning permission 95/00392/COU to allow variation of forecourt parking – Permission refused in September 1999
- **03/00432/COU** – Change of use to a vehicle repair garage – Permission granted in August 2003

Relevant conditions of the most recent planning permission (03/00432/COU) are:

2. This permission shall enure only for the benefit of North American Motor Company and for no other person, persons, company or organisation and shall not enure for the benefit of the use of the land.

Reason – In granting this permission the Local Planning Authority has had regard to the applicant's special circumstances and the Authority requires to retain control over the future use of the land.

3. No machinery shall be operated, no process shall be carried out and no deliveries taken or despatched from the site outside the following times:
07:30 to 17:30 hours Monday to Fridays; and
08:30 14:00 hours on Saturdays.

The premises shall not be used at all on Sundays and Bank or Statutory Holidays.

Reason – To protect the amenities of occupiers of nearby properties.

5. All activities involving power driven tools and machinery shall not take place anywhere on the application site except within the workshop units with all door and window openings closed.

Reason – To protect the amenity of occupiers of nearby residential premises.

Investigation:

The Council received complaints in January 2023 that the site had recently been occupied by a hand vehicle washing and valeting business.

Environmental Health also received noise complaints from two separate addresses in February 2023 concerning associated jet washing and vacuuming noise issues, especially during the weekends and evenings.

A subsequent site visit revealed that a 'T & G Car Care Centre' had wholly occupied the site and put up new corporate fascia signage, and unauthorised window signage, advertising various types of wash and valet services. Furthermore, that the forecourt area was being used as the car washing and valeting area; and one half of the former showroom area refurbished as a waiting area. The signs advertise various different service washes and valet services as well as 'Battery Diagnostics', 'Hand Polish', 'Vehicle Wraps' and 'Window Tinting'.

Use as a Hand Vehicle Washing and Valeting business (Sui generis) requires planning permission. Since no planning permission exists for such a use this use is unauthorised.

Condition No.2 attached to the 2003 permission for use as a vehicle repair garage was made personal to the North American Motor Company and for no other person, persons, company or organisation. This personal permission was not time-limited. The effect of this in planning law is that should a personal use cease in these circumstances, the property would then have a 'nil' use, i.e. planning permission would be required for *any* subsequent use of the premises. No other party could continue the previous use and the property could not lawfully revert to any previous use. No such permission has been sought or obtained from the Council.

A letter was delivered to the operator concerning the unauthorised use on 27 January 2023 seeking their intentions with regard to resolving the breach of planning control. A commercial letting agent replied stating the operator was of the understanding that they did not need planning permission, but had now engaged a qualified town planner to assist with submitting a planning application. Having undertaken a full assessment of the situation the Council advised the commercial letting agent was, on 3 March 2023, advised that it was considered that a planning permission, temporary or otherwise, was unlikely to be granted on account of the clear evidence of unacceptable amenity impacts upon neighbours.

The Council's Environmental Health Officer also visited the site and spoke to the operator on 16 February 2023; and subsequently wrote a letter to the operator raising

concerns about the noise from the jet washer and vacuum that they had witnessed being used.

A Planning Contravention Notice (PCN) was served on both the landowner and the business operator on 10 March 2023 concerning the suspected breach, seeking further information concerning the ownership of the property and the operator/owners' intentions. In response, a Planning Agent contacted the Council on 13 March 2023 asking for clarification of the LPA's position on the unauthorised use. The PCN was then returned by the business operator on 30 March 2023, whom explained that they considered that the lawful planning use of the property was 'Garage/Vehicle sale with ancillary workshop and car wash (sui generis)'. No information was provided to back-up this assertion, although it would appear implicit in their response that the operator believes that there has been no change of use on the site, or that the car valet element is ancillary to an existing lawful use of the site and, as such, does not require planning permission. It is noted that, since the planning officer's first site visit on 27 January 2023, secondary signage was added to the fascia of the building on or about the 30 March 2023 advertising that 'MOT, Tyres, Repairs, Brake and Exhaust' services were also available at the site.

Nevertheless, as the on-going use on the site has been witnessed by Officers on a daily basis to be the washing and/or valeting of vehicles, and complaints were still being received from local residents, a letter was sent to the operator on 12 April 2023 explaining that, for the reasons previously explained to their planning agent, it was unlikely that planning permission could be granted for the operation of a vehicle washing and valeting service at the site.

On 14 April 2023 the operator attempted to submit a retrospective planning application for a 'Hand car wash and MOT service and car sale', but this was found to be invalid for a number of fundamental reasons. No floor or site layout plans, no 'red line' location plan, no Design and Access Statement, no acoustic report (which the operator had been advised would be required), insufficient application fee and one site/roof plan that is illegible. Although the operator has been advised of the reasons for invalidity, no further attempt has been made to submit a planning application seeking the retention of the unauthorised use to date.

Commentary:

Regard to provisions of development plan –

Section 172 of the Town and Country Planning Act 1990 states '*The local planning authority may issue a notice where it appears to them –*

- a) *That there has been a breach of planning control; and*
- b) *That it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.*

Principle of development –

The previous use of the site as a mixed-use vehicle sales and vehicle repair premises was personal and not time-limited; and existed solely for the benefit of the 'North American Motor Company' (Condition No.5 of 03/00432/COU). This use has ceased, the premises have a 'nil' use and any new use requires planning permission. Any application for use of the site would have to be assessed against planning policy and development control criteria. The previous authorised use of the site is, nevertheless,

a material consideration and a point of comparison for any future use of the site that may be proposed.

Impact upon Residential Amenity –

Local Plan Policy DE1 (Design in the Built Environment) of the Rushmoor Local Plan (adopted 21 February 2019) states that development will be required to *‘make a positive contribution towards improving the quality of the built environment and will, where relevant to the proposal c) not cause harm to the proposed, existing and/or adjacent users by reason of loss of light, privacy or outlook, or noise, light pollution, vibration, smell or air pollution’*.

Local Plan Policy DE10 (Pollution) states *‘Development will be permitted provided that it does not give rise to, or would be subject to, unacceptable levels of pollution; and it is satisfactorily demonstrated that any adverse impacts of pollution, either arising from the proposed development or impacting on proposed sensitive development or the natural environment will be adequately mitigated or otherwise minimised to an acceptable level. Where development is proposed on a site by may be impacted by pollution, such a proposal shall be supported by a report that investigates the risks associated with the site and the possible impacts on the development, its future users and the natural and built environment. The report shall propose adequate mitigation or remediation when required to achieve a safe and acceptable development. This report shall be written in line with best practice guidance’*.

The National Planning Policy Framework (NPPF) states that planning policies and decisions should *‘mitigate and reduce to a minimum, potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life’* (para. 180).

The site is in a residential street and is surrounded by residential properties. The nearest residential property is No.109 Park Road, which directly abuts the north side boundary. No.4 Short Street is to the rear of the site, although there is a narrow single storey workshop building situated in-between. No.105 Park Road is less than 7 metres from the site on the opposite side of Short Street. Flats 1-6, No.116 Park Road are 25m from the site on the opposite side of Park Road.

Notwithstanding the current ‘nil’ use of the property, it is pertinent to consider the past authorised use of the site as a repair garage with car sales by the American Car Garage when considering the amenity impacts of the current unauthorised use. Whilst the repair garage use had the potential to cause some disturbance to residents through noise, vibration, disturbance and activity, such instances were relatively infrequent due to the small-scale nature of the rear workshop and, indeed, the general relatively low intensity of use of the site. This is reflected in the lack of complaints to the Council concerning the previous use of the site.

However, significant noise and activity is associated with the current unauthorised vehicle washing and valeting use, giving rise to the sustained complaints being received. It is also noted that conditions imposed on permission 03/00432/COU mitigated the amenity impacts of the previous use by restricting hours of operation and prohibiting use of mechanical and motorised tools. The sale of American vehicles at the site involved the occasional manoeuvring of vehicles around and on/off the site, however this was on a small scale compared to the more continuous noise and activity involving the use of jet washers, commercial vacuum cleaners etc that are likely to be

associated with car washing and valeting. At busy times, commercial car washing and valeting uses can generate a continuous and sustained throughput of vehicles generating significant noise pollution that is considered to be unacceptable in proximity to residential properties.

The Council's Environmental Health Team undertook some noise monitoring from a nearby residential dwelling on Monday 23 March 2023 and have reported the following: *"With windows closed noise from the jet wash was clearly audible in their downstairs front room and with windows open it was the dominant noise source they also have a vacuum on site that tends to be on for longer durations than the use of the jet wash and this produces a different character of noise, lower volume but higher pitched so cuts through even the noise of the jet wash. There was only 3 cars washed in my time there and I didn't consider the noise to be a nuisance at that time of day and day of week but with fine weather and windows open I suspect we will receive more complaint. EH haven't had any other complaints coming forward but if I were to do a BS4142 noise survey/assessment at the nearest residential façade I'm fairly confident of what the outcome would be."*

In considering enforcement action the Council must consider whether there are any means of mitigating the impacts of the unauthorised development that could be introduced or adopted by the operators to obviate the need for enforcement action and allow the business to continue operating at the site. However, it is considered that there are none that are practicable, enforceable, would provide adequate mitigation; or would not create other planning harms. It could, for example, be possible to erect some permanent structure(s) enclosing parts of the site forecourt area seeking to contain noise emissions arising from the vehicle washing and valeting activity. However, such structures would have to be large and bulky; and would, therefore, be likely to have an unacceptable impact upon visual amenity. Similarly, re-locating the vehicle washing and valeting activity to different locations within the site would simply result in the most severe impacts affecting one neighbour on to another.

In light of the evident adverse impacts upon residential amenity resulting from noise nuisance and general activity and disturbance, and the lack of any effective means of mitigation that could render this acceptable, it is considered that the operation of the site as a hand vehicle washing and valeting use with ancillary or mixed use workshop is incompatible with the adjoining residential properties and detrimental to residential amenity through noise and contrary to Policies DE1, DE10 and para. 180 of the NPPF, and it would, therefore, be expedient to issue an Enforcement Notice.

Impact on visual amenities –

It is considered that the change of use of the premises to a vehicle washing and valeting use as existing would have little impact on visual amenity or the general character of the area given the previous use.

New signage has been applied to the outside of four of the display windows on the building. These advertisement displays are unauthorised and considered to be out of keeping with the visual amenity of the area. Accordingly, since it is an immediate offence to display unauthorised advertisements it is also considered that it is expedient for the Council to pursue the prosecution of the site operators and/or owners in this respect.

Full recommendation:

It is recommended that the Corporate Legal Manager, in consultation with the Corporate Planning Manager, be authorised to:

- A. Issue an **Enforcement Notice** to require the cessation of the use of the site for hand vehicle washing and valeting with a period of 1 month for compliance;
- B. **Commence Prosecution** proceedings in respect of the unauthorised advertisement display in the event that the unauthorised advertisements are not removed by 30 June 2023.

Item 2

Delegated decisions by the Corporate Planning Manager to take no further action in respect of alleged breaches of planning control.

The following decisions are reported for INFORMATION purposes only. They relate to enforcement cases that are in breach of planning but no application has been forthcoming and where a decision to take no further action has been taken in accordance with the Council's Scheme of Delegation.

Address	29a Southampton Street Farnborough
Ward	St Mark's
Alleged Breach	Retention of new window and patio doors.
Decision	No Further Action be taken
Decision Date	24 th May 2023
Commentary	<p>A complaint was made that the owner of the above address had installed a door at first floor level and erected railings around the roof of a flat-roofed single-storey extension to create a first-floor amenity terrace area. The complainant considered this to result in an unacceptable loss of privacy because people standing on the roof terrace you overlook neighbours. They also installed patio doors at ground floor level.</p> <p>The property owner was contacted by the Council, and they subsequently removed the railings and removed the first-floor door by fitting a new window in its place. However, the patio doors at ground floor level were not reinstated to their original form as they were considered to be an acceptable form of development.</p> <p>The owner was asked to submit a retrospective planning application for the retention of the new first-floor window and the patio doors but no such application has been received to date.</p>
Alternatives	An enforcement notice could be issued but as the development is considered acceptable and permission would be granted should an application be submitted, it is not considered expedient for the council to take any further action on this matter.
Case Officer	Tara Hasty
Associated Documents	Enforcement Reference 22/00115/RESWRK



Address **14 Frost Drive Wellesley Aldershot**

Ward Wellington

Alleged Breach Installation of satellite dish

Decision No Further Action be taken

Decision Date 5th June 2023

Commentary A satellite dish has been installed at this property facing a highway. This requires planning permission due to the Article 4 Direction placed on the Wellesley Development. The original position of the dish was unacceptable in planning terms; but the owners have since moved the dish to under the eaves where it is less visible. The owners are aware that planning permission is still required, but an application has not been forthcoming to date.

Alternatives An enforcement notice could be issued. However, as the revised location of the satellite dish is considered to be acceptable and, as such, permission would be granted were an application to be submitted, it is not considered expedient for the Council to take further action.

Case Officer Tara Hasty

Associated Documents Enforcement Reference 22/00143/AERIAL

