

E/14/0093/B – Material Change of Use of land to car wash business at Former Waters Garage, 3–9 North Road, Hertford, SG14 4LN

Parish: HERTFORD CP

Ward: HERTFORD BENGEO

RECOMMENDATION:

That the Director of Neighbourhood Services, in consultation with the Director of Finance and Support Services, be authorised to take enforcement action under section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the cessation of the unauthorised use.

Period for compliance: 28 days

Reason why it is expedient to issue an enforcement notice:

1. The car wash, by reason of the increased level of activity at the site, results in an unacceptable level of disturbance and noise generation to residents of nearby properties. Furthermore, no information has been submitted to the Council to ensure that the use operates in a way that minimises the impact of noise nuisance, or that adequate surface water drainage is provided. The unauthorised use is thereby contrary to policies ENV1, ENV21 and ENV24 of the East Herts Local Plan Second Review April 2007.

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1.0 Background:

- 1.1 The site is shown outlined in red on the Ordnance Survey extract. It is located within a predominantly residential area of Hertford on the periphery of the town centre and is within the Hertford Conservation Area. The site comprises the former Waters Garage site with large overhead canopy. The site was most recently used for car sales, but previously operated as a petrol station. The site is likely to be redeveloped in the future and the Council has received two applications for residential led redevelopment schemes at the site. However, both those have been withdrawn.
- 1.2 In March 2014, it was brought to the attention of the Council that the site, which had not been in use for a number of years, had re-opened, with cars for sale and a car wash operating at the site.
- 1.3 Officers investigated the use, and concluded that the car wash element

of the business resulted in a 'material change of use'. The level of activity, signage, floorspace and number of employees dedicated to the car wash use is indicative of the car wash running as a separate operation to the car sales, and Officers are satisfied that is not an ancillary operation (for which planning permission would not be required). The site is now considered to be a "mixed use" site which is materially different from the previous and lawful *sui generis* "car sales" use.

- 1.4 Correspondence was sent to the site owner's agent who has been representing the owner, a company based in Guernsey, requesting that either the unauthorised use be ceased, or an application for planning permission be submitted within 28 days. No reply was received to this correspondence, and the use continues to operate.

2.0 Planning History:

- 2.1 The relevant planning history in this case is as follows:

3/14/0414/FP	12 month temporary consent for A1 retail use for Emmaus Charity.	Approved
3/12/0428/LC	Demolition of existing structures.	Withdrawn
3/12/0427/FP	Conversion and extension to form 2 no. 3 bed houses and ground floor retail with 10 apartments above.	Withdrawn
3/07/0797/FP	Creation of new hard standing parking/display bays, new block paving, landscaping, drop down bollards and dropped kerb.	Refused
3/05/2166/LC	Demolition of former petrol station canopy and shop kiosk	Granted
3/05/0467/FP	Change of use from Petrol filling station (Sui Generis) to display of motor vehicles for sale (Sui Generis)	Granted

3.0 Policy:

- 3.1 The relevant saved policies of the East Herts Local Plan Second Review April 2007 in this case are:

EDE2 – Loss of Employment Sites
ENV1 – Design and Environmental Quality.
ENV21 – Surface Water Drainage
ENV24 – Noise Generating Development

3.2 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are also material considerations in this matter.

4.0 Considerations:

- 4.1 The Former Waters Garage site is located within close proximity to a number of residential properties. Local residents have expressed concerns regarding the noise and disturbance caused by the car wash operation, and the Environmental Health team has been investigating these. Additionally, the Environment Agency have been investigating surface water/draining and sewage related issues. In planning terms, the impact of the use must be balanced against the benefits of the employment generated by the site being brought back in use, as well as the historical uses which have operated at the site.
- 4.2 The site has previously operated as a petrol station, after which the use was changed to a car sales use under reference 3/05/0467/FP. Whilst the car sales use eventually ceased a number of years ago, Officers do not consider that the use of the site was abandoned, and therefore planning permission would not be required to operate the site for car sales only. Car sales generally operates with traditional working hours (with some extended evening hours); would generate limited passing trade and is considered to be a low key use with limited disturbance to local residents. It is accepted that the cars for sale would need to be valeted, but this would not be on the same scale as a car wash business. Overall, Officers consider that the use of the site for employment purposes is compliant with Policy EDE 2, which is afforded significant weight in this case. However, the current mixed use of the site has the potential for much greater impact on local residents if allowed to operate unrestricted.
- 4.3 Since the site was brought into use again in 2014, concerns have been expressed regarding the noise and disturbance the car wash generates. The operating hours are advertised as 8am-7pm for 7 days a week. Whilst the noise of traffic from the nearby Gascoyne Way is likely to result in the noise from the pressure washers assimilating with the background noise during weekdays, the amount of traffic (and therefore the level of background noise) is much reduced at weekends. Additionally, noise and disturbance from vehicles entering and exiting the site also continues on Saturdays and Sundays, which are times at which noise and disturbance is likely to have a significantly greater impact on local residents. Accordingly Officers consider that the unregulated operation of the car wash with no hours of operation restriction has a detrimental impact on the amenity of local residents.

E/14/0093/B

- 4.4 Officers are also concerned that inadequate surface water drainage details may be implemented. The Council has not received any details of surface water drainage, and local residents have expressed their concerns regarding the inadequate drainage, with harmful pollutants potentially being discharged into the water table. Issues with smell have also been expressed by local residents, which further suggests that inadequate drainage provisions are in place. Accordingly, Officers also consider the use in its unregulated form to be contrary to Policy ENV21.
- 4.5 On balance, Officers consider that the retention of employment use at the site is a significant positive factor in favour of the use of the site. However, the mixed use as it currently operates has a significant detrimental impact on the amenity of local residents and the local environment. Whilst the use in principle could be acceptable if appropriately restricted and with proper noise/drainage solutions considered, no application has been submitted, and Officers can only therefore consider the mixed use operation of the site in its unregulated form. Officers therefore consider that the harm to local residents and the local environment outweighs the employment benefits of the use, and it is therefore expedient to take formal enforcement action against the use
- 4.6 As the last use of the site was for car sales, Officers consider it appropriate for any enforcement notice to allege the breach of planning control as the change of use of the site to a mixed use (car sales and car wash) with the whole site included, but for the steps required for compliance to state cessation of the car wash use only. This 'under-enforcement' accords with Government guidance on enforcing against mixed-use sites where one or more of the uses is considered to be acceptable.

5.0 Recommendation:

- 5.1 For the above reasons it is recommended that authorisation be given to issue and serve an Enforcement Notice requiring the cessation of the unauthorised car wash use.