



Appeal Decision

by Helen Smith BA(Hons) BTP MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 27/11/2024

Appeal reference: CAS-03402-W8Z4H2

Site address: Merthyr Motor Auctions, Red Barrel House, Pant Road, Dowlais, Merthyr Tydfil, CF48 3SH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Merthyr Tydfil Car Auction Ltd against the decision of Merthyr Tydfil County Borough Council.
 - The application Ref P/23/0110, dated 28 April 2023, was refused by notice dated 24 October 2023.
 - The application sought planning permission for the variation of condition (e) of appeal decisions APP6410/C95/508749 and APP6410/C/95/508750 to allow access to the lower yard after 18:30 hrs for circa 30 vehicles on 2 evenings per week (Mondays and Thursdays).
 - The condition in dispute is condition (e) which states that: *No activity shall take place on the site before 08:00 hrs or after 18:30 hrs on weekdays and Saturdays, nor at anytime on Sundays or Public Holidays, the sole exception to this condition being in the event of a transporter arriving whilst the auction activities are being undertaken in the upper yard, such transporter shall be permitted to enter the lower yard for the purposes of parking only.*
 - The reason given for the condition, as set out in the Inspector's decision, is in the interest of residential amenities of nearby houses.
 - A site visit was made on 4 September 2024.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by Mr and Mrs Thomas against Merthyr Tydfil Car Auction Ltd. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect that varying the disputed condition would have on the living conditions of neighbouring residents, with particular regard to noise and disturbance.

Reasons

4. The appeal relates to a motor auctions business and the wider site is separated into two parts, an upper yard (referred to as the main yard) and a lower yard. The surrounding area is predominantly residential, with the exception of some small-scale retail and commercial uses on Pant Road. The eastern boundary of the site comprises a high embankment with residential properties beyond and due to their elevated position and distance from the rear yard they are unlikely to be impacted by the proposed change in hours. However, there are several properties backing onto the western boundary of the site and due to their small rear gardens, their rear elevations are close to the shared boundary of the lower yard, most notably 1 and 2 Garden Cottages, Gwernllwyn-Fach, Living Stone and Rhosbren Fach. 1 and 2 Garden Cottages are at a higher level than the appeal site, but the other dwellings are at a slightly lower level.
5. The appellant seeks to vary the wording of condition (e) to: *'No activity shall take place outside of the hours of 08:00-22:30 on a Monday and Thursday, 08:00 – 18:30 on a Tuesday, Wednesday, Friday and Saturday and not at all on a Sunday.'* It is stated that this would enable in person auctions at the main yard to take place, as it did prior to the COVID pandemic and the implications of the loss of parts of the main yard as a consequence of the Compulsory Purchase Order (CPO) relating to the works to the A465. In support of the proposal the appellant has submitted vehicle flow diagrams to demonstrate how the site would be used during the proposed extended hours.
6. In recognising the potential impact of noise from development proposals on soundscapes (i.e. the acoustic environment as perceived or experienced and/or understood by a person or people), Planning Policy Wales Edition 12 (PPW) advises that proposed development should be designed wherever possible to prevent adverse effects, or limit/constrain any effects, to amenity, health and the environment. It also states that lower levels of noise can still be annoying or disruptive and impact on amenity, and that the planning system must protect amenity and it is not acceptable to rely on statutory nuisance under the Environmental Protection Act 1990 to do so. It continues to advise that in circumstances where impacts are unacceptable, for example where adequate mitigation is unlikely to be sufficient to safeguard local amenity, it will be appropriate to refuse permission.
7. In support of PPW, Technical Advice Note 11: Noise (TAN 11) gives advice on noise and advises that local planning authorities must ensure that noise generating development does not cause an unacceptable degree of disturbance. It advises that noise characteristics and levels can vary substantially according to their source and type of activity and that sudden impulses, irregular noise or noise which contains a distinguishable continuous tone will require special consideration. Policies SW11 and EnW4 of the Merthyr Tydfil Replacement Local Development Plan (LDP) are consistent with PPW and TAN 11 in that they seek to protect local and residential amenity.
8. The Noise Assessment (NA) concludes that the proposal would cause a negligible change in the acoustic climate. The Council have not disputed the findings and conclusions of the NA. Nevertheless, the NA recognises that any ancillary noise events associated with the proposed use of the lower yard would be random, unpredictable and transient. As it considered that these would not be a nuisance in law, they were not considered relevant to the NA. I recognise that the Council's Environmental Health Manager has not objected to the proposal, nevertheless, whilst such ancillary noise activities may not result in a statutory noise nuisance, in the planning terms of residential amenity, it often involves consideration of potential impacts that vary to nuisance in a statutory sense.

9. The further Noise Impact Assessment of Ad-Hoc Noise Sources (Ad-hoc NA) concluded that impacts from ad-hoc noise sources would be 'not significant'. However, it did not include an assessment of vehicles' reversing beepers and alarms as it is contended that these would be disabled. Nevertheless, this would be difficult to guarantee, particularly as a large proportion of vehicles at the site include vans, ambulances and flatbed trucks which are more likely to have reversing alarms. Indeed, at my site visit I heard several reversing alarms from vehicles being manoeuvred on the site. Some vehicles may be quieter than those that would have been on the site when the Inspector allowed the previous appeal, and I note that it is not intended to use the lower yard for the manoeuvring of HGVs. However, the appellant says that vehicles being moved to the lower yard would be various sized vans and cars, some of which are likely to be louder than smaller standard cars.
10. The use of the appeal site includes up to circa 30 vehicles to be moved to the lower yard during an auction. The appellant states that the majority of these vehicle movements would take place between the period of 19:00 – 20:00. Nonetheless, this would result in intense activity within the site for that period of time with vehicle movements and associated disturbance taking place an estimated every 2 minutes. Furthermore, the proposed variation of the condition would allow the use of the yard and buildings up until 22:30, including instances when purchasers may wish to pick up vehicles once the auction has concluded.
11. Although the proposed extended hours relate to 2 nights of the week, the general activity of the movement of such a large amount of vehicles and the associated sudden and random opening and closing of vehicle doors, engines idling and revving, reversing alarms and potential for staff coming and going, would result in a level of noise and disturbance that would be noticeable and disturbing to the occupiers of the surrounding dwellings. This would be particularly so given the close proximity of the rear of the nearby dwellings and as the activity would take place at a time when the surrounding area would likely be quieter, when it is reasonable for residents to expect to enjoy a degree of peace and quiet. Such impacts would be particularly noticeable during the summer months when residents would be likely to be relaxing in their gardens and have their windows open. Notwithstanding the findings of the NA and the Ad-Hoc NA, the proposal would significantly harm the living conditions of the occupiers of nearby dwellings.
12. My attention has been brought to a successful appeal for the award of compensation to neighbours for damages for nuisances, including noise, in 2013. This together with the representations from neighbouring residents, clearly shows that operations in the rear yard in connection with the motor auction business has caused noise and disturbance to residents in the past, even when operating within the permitted hours. This adds weight to my findings that the proposed extension to the hours later in the evenings would not be acceptable.
13. In terms of the need for the proposal, I note that the amount of operational and non-operational land lost as a consequence of the CPO, both temporary and permanent, is disputed by the parties and that there are various temporary and permanent mitigation proposals, which the appellant states would not enable them to operate in person auctions. I do not doubt that there has been disruption to the operation of the business and that there are operational difficulties for the reintroduction of in person auctions.
14. However, although the appellant states this has had a dramatic effect on the business, and despite the business being operated without in person auctions for some time, no compelling evidence has been submitted in relation to the effects on the business as a direct consequence of not being able to reintroduce in person auctions. Further, no

justification has been submitted in relation to why in person auctions could not take place within the permitted operating times of the lower yard. In any event, the need for the proposal does not outweigh the harm I have identified to the living conditions of the occupiers of nearby dwellings, which would be significant and overriding.

15. For the reasons set out above, I conclude that the disputed condition is necessary in the interests of the living conditions of nearby residents, and to comply with LDP policies SW11 and EnW4 of the LDP and the objectives of PPW and TAN 11.

Other Matters

16. I have had regard to the representations in relation to the potential for increase in fumes, odour, vibration and air pollution. The proposal would increase the times when such impacts could be noticeable. Nevertheless, I have no cogent evidence that these would cause harm to the living conditions of residents. In relation to light pollution, as the floodlights are existing and can be used outside of the permitted operating hours of the lower yard, the proposal would be unlikely to lead to an increase in impacts on residents and ecological interests.
17. I note the representations in relation to potential highway impacts. However, the use of the lower yard for an extended period of time would be unlikely to impact traffic movements outside of the site and I have no cogent evidence to indicate otherwise.
18. I acknowledge the representation of support for the proposal, however, this does not outweigh the harm I have identified.

Conclusion

19. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be dismissed.
20. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

H Smith

INSPECTOR