



REGULATORY SERVICES COMMITTEE

REPORT

6 June 2013

Subject Heading:

Planning Contravention
Land adjacent to 167 Upminster Road,
Upminster

Report Author and contact details:

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Local Development Framework

Policy context:

Financial summary:

Enforcement action and a defence of the
Council's case in any appeal will have
financial implications.

The subject matter of this report deals with the following Council Objectives

Ensuring a clean, safe and green borough	<input type="checkbox"/>
Championing education and learning for all	<input type="checkbox"/>
Providing economic, social and cultural activity in thriving towns and villages	<input type="checkbox"/>
Value and enhance the life of our residents	<input checked="" type="checkbox"/>
Delivering high customer satisfaction and a stable council tax	<input type="checkbox"/>

SUMMARY

This report concerns the use of land adjacent to 167 Upminster Road as a car wash. The site comprises a car wash facility on part of the former parking area of Bridge House Public House to the east of the site. The temporary planning permission gained under reference P0920.10 expired on 6 August 2012. Despite numerous requests for a further planning application, no application has been submitted. It is considered that in the absence of a planning application with appropriate conditions, the Council are unable to control any materially harmful impact on neighbouring properties by reason of noise and disturbance or on the operation of the highway due to site layout.

The change of use has occurred within the last 10 years and therefore it is requested that authority be given to issue and serve an Enforcement Notice to seek to remedy the breach.

RECOMMENDATIONS

That the committee consider it expedient that an Enforcement Notice be issued and served to require within 6 months of the effective date of the enforcement notice:

- i) Cease the use of the land for the washing and valeting of vehicles.
- ii) Remove from the Land all machinery, equipment, apparatus, cleaning materials, vehicles, tools, scrap, waste, signage and installations brought onto the land associated with the unauthorised use at (i) above.

In the event of non compliance, and if deemed expedient, that proceedings be instituted under the provisions of the Town and Country Planning Act 1990.

REPORT DETAIL

1. Site Description

- 1.1 The site comprises a car wash facility on part of the former parking area of Bridge House Public House to the east of the site. The site is backed by a railway embankment and to the opposite side of Upminster Road are mainly commercial uses around the Upminster Bridge Underground Railway Station with some residential above. Further along Upminster Road are two-storey residential properties and on the other side of the high railway embankment.

2. The Alleged Planning Contravention

- 2.1 Without planning permission, a change of use to a car wash.

3. Relevant Planning History

P1612.01 Redevelopment of the site to provide two-storey building containing 4, self contained 1 bedroom flats associated parking and amenity space. – approved

P1186.06 Change of use of the land to a car wash and retention of portacabin – approved for temporary period

P0324.08 Retention of temporary car wash facility for a 2-year period – approved for temporary period

P0920.10 Retention of temporary car wash facility for a 2-year period – approved for temporary period.

4. **Enforcement Background**

4.1 In August 2012 the Authority received a complaint that although the temporary planning permission to use the land as a car wash had expired, the use was continuing. Officers investigated the complaint and concluded that the use was now unauthorised as a new application for further temporary or permanent permission had not been submitted.

4.2 It is alleged that noise and disturbance is being caused by the use of valeting tools and the use of jet washers.

4.3 The Authority has made numerous requests through the owner and his agent for the submission of a planning application however none has been forthcoming and the unauthorised use continues.

5. **Policy and Other Material Considerations**

5.1 The issue is whether it is expedient for the Council to serve a planning Enforcement Notice having regard to the nature and impact of the unauthorised change of use. The relevant policies are CP1, DC33, DC51, DC55 and DC61 of the adopted Local Development Framework.

6. **Justification for action intended action**

6.1 The use of a former petrol station as a car wash and valeting service constitutes a material change of use that requires planning permission. This may be acceptable in principle however in the absence of a planning application the Council are unable to impose conditions to adequately control the use.

6.2 A permanent car wash use would prevent the use of the site for its preferred use (housing). Whilst this would be contrary to policy CP1, the use of the site as a car wash for a temporary period would be acceptable on the basis that it would not result in a permanent displacement of the preferred use of the site for housing.

6.3 Policy DC55 states that planning permission will not be granted if it will result in noise and vibrations above acceptable levels.

- 6.4 Power sprays and vacuum cleaners are used on site for valeting purposes. It is the noise and disturbance for their operation that has resulted in complaints from residents. The Council is seeking to minimise the impact on local residents.
- 6.5 Policy DC61 states that *“Planning permission will not be granted where the proposal results in unacceptable overshadowing, loss of sunlight/daylight, overlooking or loss of privacy to existing and new properties and has unreasonable adverse effects on the environment by reason of noise impact, hours of operation, vibration and fumes.”*
- 6.6 There appears to be a noise impact which could be controlled by the hours of operations.
- 6.7 Policy DC32 seeks to ensure that development does not have an adverse impact on the road network. Without conditions securing an adequate layout of the site including parking and waiting space, there could be impacts on the highway.
- 6.7 For the reasons set out above and despite numerous requests the failure to submit a planning application it is considered that the use of the site needs to be controlled by the Planning Authority and in the absence of a planning application and to ensure that there is compliance with the Council’s Development Control Policies Development Plan Document namely DC33, DC51, DC55 and DC61 the Council should serve an Enforcement Notice. A period of six months to comply with the notice is considered reasonable to allow a suitable planning application to be submitted and determined.

IMPLICATIONS AND RISKS

Financial implications and risks:

Enforcement action may have financial implications for the Council.

Legal implications and risks:

Enforcement action, defence of any appeal and, if required, prosecution procedures will have resource implications for the Legal Services.

Human Resources implications and risks:

No implications identified.

Equalities implications and risks:

Section 149 of the Equalities Act 2010 (EA) came in to force on 1st April 2011 and broadly consolidates and incorporates the ‘positive equalities duties’ found in Section 71 of the Race relations Act 1976 (RRA), Section 49 of the Disability

Discrimination Act 1995 (DDA) and section 76(A)(1) of the Sexual Discrimination Act 1975 (SDA) so that due regard must be had by the decision maker to specified equality issues. The old duties under the RRA, DDA and SDA remain in force.

The duties under Section 149 of the EA do not require a particular outcome and what the decision making body decides to do once it has had the required regard to the duty is for the decision making body subject to the ordinary constraints of public and discrimination law including the Human Rights Act 1998.

Having considered the above duty and the Human Rights Act 1998 there are no equality or discrimination implications.

BACKGROUND PAPERS

OS Plan
Photographs