

Planning Enforcement Report for 0168/2022



NOTE This map is provided only for purposes of site location and should not be read as an up to date representation of the area around the site.
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Report to Planning Committee

Reference Number:	0168/2022
Location:	Car Park to rear of 24-36 Eastham Road Arnold.
Breach of Planning Control:	Material change of use of car park to a car sales business (sui generis).

1 Background

- 1.1 In June 2022, the Council's Planning Enforcement Officer (hereafter referred to as the Officer) received a referral from Council's Environmental Health team regarding a noise nuisance case they were investigating. Their case related to an alleged network of people alleged to be selling cars from the car park located to the rear of 24-36 Eastham Road, Arnold. The details under investigation alleged that people were looking at the cars, buying them, revving them on the car park and then driving them up and down the road. Direct contact was made with the complainants by the Officer and evidence of the activity was provided. Photos and registration logs showed cars were being prepared, photographed and sold from the car park with purchasers viewing cars and paperwork being exchanged on site and on the adjacent highway. Internet adverts for the same vehicles demonstrated that a business was being operated from the site. The activity was noted at various times of day, including late at night.
- 1.2 On 21st June 2022, the Council wrote to the addresses alleged to be involved in the unauthorised activity, advising that the business use was unauthorised and should cease immediately. They were informed that both the site and the internet would be monitored for evidence of unauthorised activity. Despite contact from the Council, the business activity continued with evidence of unauthorised activity being provided by the complainant via a diary sheet and emails sent directly to the Officer. Between 21st June and 12th July more than 20 emails were sent to the Officer, noting activity witnessed by the complainant. The complainants witnessed the viewing, test driving and sale of the vehicles, with internet adverts for the same vehicles also available.
- 1.3 On 4th and 11th July 2022 two new complainants made contact with the Officer alleging a high volume of car sales had been witnessed taking place in the car park and adjacent road.
- 1.4 On 12th July 2022 Planning Contravention Notices (PCNs) were served on the addresses of those believed to be responsible, the occupiers of all flats and commercial premises (24-36 Eastham Road) as well as the respective owners as listed with the Land Registry, being those with an interest in the site. The

owner of the car park failed to respond to the PCN. The tenant of one of the addresses where the Council had evidence was involved in the activity, responded on 8th August 2022 denying knowledge of any such activity. The tenant listed only themselves as living at the property, despite complainants advising they had seen another person associated with the property involved in the sale of vehicles. This was queried by the officer by email with a request to provide details of all other adults living at the property, however no response was received. Other PCN responses indicated that other occupiers were aware of the activity but had no involvement or knowledge of who was responsible.

- 1.5 On 4th August 2022 the complainant emailed the Officer to advise that the activity had slowed down. However, more than 30 emails were received from the complainant during August and September 2022, demonstrating that the activity was still on going.
- 1.6 On 7th September 2022, colleagues in Environmental Health served a noise abatement notice under the Environmental Protection Act 1990 (as amended) on 2 of the addresses alleged to be involved in the unauthorised activity. The abatement notice cited “excessive noise from shouting and screaming at all times of the day and night, loud music and revving of vehicles”, which the complainants allege is connected with the unauthorised activity.
- 1.7 On 28th September 2022, the Officer conducted an unannounced visit to the site. Immediately on arriving at the site, a vehicle entered the car park, followed by another. The registration of one of the vehicles matched that of one of the people suspected of being involved in the unauthorised. The driver of the other vehicle got out of the car and inspected it all round before getting into the other car and driving off. The car that was inspected was listed for sale online the same day under a name similar to that of the other driver as provided within their PCN response.
- 1.8 On 29th September 2022, the Officer visited and spoke with the tenant of one of the addresses known to be involved. The tenant, seen the day before driving one of the cars, admitted that they were selling vehicles from within the car park but denied any knowledge that it was causing any harm to local residents. The other driver witnessed in photos previously provided by the complainants and the previous day by the Officer, was present in the property at the time of the officer visit. The tenant denied that this person was an occupier, and failed to provide their details. The Officer instructed the tenant to cease all unauthorised activity, warning that enforcement action would be taken should it continue. A letter was hand delivered to the same tenant during the visit, confirming the same advice. The Officer advised they would continue to monitor the site and local residents had been asked to provide evidence of unauthorised activity.
- 1.9 On 1st October 2022 an email was received from the complainant advising they had witnessed a car (witnessed by the Officer on 28th September) being test driven on 2 separate occasions that day.
- 1.10 Witness visits were undertaken by the Officer on 5th, 13th and 17th October. The car seen on 28th September by the Officer was still on site on 5th October but was not present during site visits after this. On 17th, the Officers arrival onto the cul de sac disturbed a group of people who were looking over a vehicle in the

car park. All of the people got into the car and drove off immediately on seeing the Officer arrive.

- 1.11 On 18th October, the complainant emailed the Officer to advise they witnessed the attempted sale of the vehicle (witness the day before by the Officer) the night before, starting at 10pm and going on past 11pm. The car was still present on site at the time of the email being sent.
- 1.12 Between 1st October and 9th November, a total of 8 vehicles associated with the site have been witnessed by the complainants being test driven, prepared, viewed and sold from the site and on the adjacent highway.
- 1.13 On 7th and 9th November the Council wrote to the landowners and the person responsible respectively to advise that evidence demonstrated that unauthorised activity was still on going and that the matter would be referred for enforcement action.
- 1.14 On 10th November the complainants emailed the Officer to advise on the 9th November they had witnessed a “car being taken out of courtyard for inspection, car being test driven at speed down the road, and car returning” with a sale concluding at 23:15.
- 1.15 On 15th November, an email was received from the complainant with details of another car on the site that is listed for sale on Facebook Marketplace. It had arrived on site on 14th November. A further email was received on 16th November advising that the car was now believed to have been sold with lots of activity seen on the adjacent highway and the car no longer on site.

2 Site Description

- 2.1 Eastham Road is a cul de sac consisting mostly of residential properties. There is a block of commercial units with flats above to the end of the street. The car park is situated to the rear of this block of mixed commercial/residential units, accessed directly from Eastham Road. The commercial units include a hair dressers and convenience stores.

3 Planning History

There is no relevant planning history.

4 Assessment

- 4.1 The car park is under the same ownership as units 26, 30, 32 and 36 Eastham Road, providing storage for waste receptacles associated with the commercial units, as well as the flats above. Access to all flats is via the car park as is rear access to the commercial premises.
- 4.2 The use of the site to operate a car sales business requires planning permission and no such permission has been applied for nor granted.
- 4.3 Although development has occurred without planning permission and is therefore unauthorised, local planning authorities are required to consider

government guidance when deciding whether to take planning enforcement action. Government guidance is found in the National Planning Policy Framework (NPPF) (Paragraph 59) and states that although effective enforcement is important as a means of maintaining public confidence in the planning system, ultimately enforcement action is discretionary and local planning authorities should act proportionately in responding to breaches of planning control.

4.4 The main considerations when deciding whether to take enforcement action in this case are;

i) whether the use of the site for a car sales business with associated storage of vehicles has any detrimental effect on the character of the area or the environment, on the amenities of other occupiers of nearby dwellings or on highway safety.

ii) whether the Local Planning Authority is within the ten year statutory time limit for taking action for a material change of use of the land.

Planning policy considerations

4.5 The fundamental aim of the NPPF is that the planning system should achieve sustainable development by three overarching objectives and in doing so should take local circumstances into account to reflect the character, needs and opportunities of each area. It attaches great importance to positive improvements in the conditions which people live and work and paragraph 134, the NPPF states that “Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design”.

4.6 At the local level, Policy 10 of the Greater Nottinghamshire Aligned Core Strategy (2014) seeks to proactively promote good design and reinforce valued local characteristics. In order to achieve this, the policy approach sets out a number of criteria to reinforce valued local characteristics.

4.7 Policy LPD 32 of the Local Plan Document seeks to protect the amenity of nearby residents or occupiers. This takes into account issues including noise, level of activity on site, traffic and residential visual amenity.

4.8 Policy LPD 35 requires the massing, scale and proportion of development should be appropriate to the immediate context, site constraints and the character of the surrounding area. It states that “small scale development that is insensitive to existing character can have an adverse impact on the sense of place.”

4.9 Policy LPD 61 states that “Planning permission will only be granted for development proposals which do not have a detrimental effect on highway safety, patterns of movement and the access needs of all people.”

Impact on the character of the area and the environment

- 4.9 This area of Arnold is characterised by well-kept and well-presented residential properties. Whilst there are commercial retail units adjacent to the site, the operation of a car sales business is an alien feature and is out of character for this residential street. The additional vehicular movement and visitors associated with the business is detrimental to the character of the area. The use is therefore in conflict with the NPPF and Policy 10 of the ACS and Policy LPD 35 of the Local Plan.

Impact on residential amenity

- 4.10 It is considered that the level of activity on site and number of vehicular movements associated with the use is detrimental to neighbours' amenities and will cause noise and disturbance to the occupiers of nearby dwellings affecting their enjoyment of their homes. Sale and test driving of vehicles associated with the unauthorised use of the site has frequently occurred late at night. The use is contrary to LPD Policy 32.

Impact on highway safety

- 4.11 It is considered the business is likely to cause an increase in vehicle movements, with customers viewing and purchasing vehicles. Evidence submitted to the Council indicates that the highway is being used to park and test drive vehicles that are for sale as well as those of visiting customers. The use is contrary to LPD Policy 61.
- 4.12 The unauthorised car sales operating from the site is in conflict with the above policies which all seek development of a high standard and development which does not adversely affect the area in which it is located but provides good living standards and which makes a positive contribution to the public realm and sense of place.

Time Limits

- 4.13 The statutory time limit for taking action for a material change of use of the land is 10 years. In this case the evidence available to the Council strongly suggests that the car sales business has been operating from the site for less than 10 years and the Council is within time to commence enforcement proceedings such as issuing an enforcement notice requiring the use to cease.

Human Rights

- 4.16 Under the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a right under the European Convention on Human Rights (the Convention). In this instance under Article 1 of the First Protocol of the Convention: Protection of Property, every person is entitled to the peaceful enjoyment of their possessions except in the public interest and subject to conditions provided for by law. Furthermore under Article 8 of the Convention all individuals enjoy the right to respect for his private and family life, his home and his correspondence except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of

disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

- 4.17 In considering whether to take any enforcement action, the Council has to consider the proportionality of its actions. In other words whether the proposed action would be proportionate to the objective being pursued – here the enforcement of planning control in support of National and Local Planning Policies. It is recognised that issuing an enforcement notice, or pursuing formal proceedings in the Magistrates Court if the notice is not complied with, will result in interference with the recipients' rights. However, it is considered that issuing an enforcement notice and pursuing Court action if the enforcement notice is not complied with, would be a proportionate response to the breach of planning control.

Equalities

- 4.18 The Council's Planning Enforcement team is largely dictated by legislation which reduces the risk of discrimination in this service. The Council is accountable to the public, including its stakeholders, for its decisions both to take enforcement action and not to utilise its enforcement powers. There is a legitimate expectation of the public and stakeholders that the Council will take action to address breaches of planning by such means as are appropriate in the individual circumstances and which are in accordance with the Council's policy and government legislation.
- 4.19 The Council strives for a consistent approach in targeting its enforcement action. This means that the Council will take a similar, but not the same, approach to compliance and enforcement decisions within and across sectors. It will strive to treat people in a consistent way where circumstances are similar. Each case however will be evaluated on the basis of its own facts and circumstances but will ensure that decisions or actions taken in any particular case are consistent with the law and with the Council's published policies. It should be noted that decisions on specific enforcement actions may rely on professional judgment. The Council will usually only take formal enforcement action where attempts to encourage compliance have failed as in this case.

Crime and disorder

- 4.20 The Crime and Disorder Act 1998 places a duty on the Local Planning Authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on the integrity of the planning system and the setting of a precedent if action is not taken is therefore a material consideration in the authorisation of enforcement proceedings.
- 4.21 In light of all the facts it is now considered expedient to serve an enforcement notice to require the cessation of the unauthorised business use of the land and removal of the vehicles which are offered for sale in association with the unauthorised use.

5 Conclusion

- 5.1 A breach of planning control has been identified which is detrimental to the character of the area, amenities of nearby occupiers of other residential properties and highway safety. Despite the tenant and land owner having been advised numerous times to cease the use of the site for the vehicle sales business, they have failed to do so with vehicles still being brought to the site for preparation and sale.
- 5.2 The breach conflicts with both national and local policies. Negotiations with the tenant and owners have failed to rectify the breach and failure of the Council to act in these circumstances may leave local residents with a business which adversely affects their well-being and is detrimental to the character and amenity of the area and which is beyond the control of the Council.
- 5.3 The Council should now commence enforcement action without delay by issuing a planning enforcement notice requiring the cessation of the unauthorised business and removal of all associated vehicles. If the notice is not complied with proceedings should be taken in the courts if necessary.

6 Recommendation

- 6.1 **That the Head of Development and Place be authorised to take all relevant planning enforcement action including the service of any necessary enforcement notices and, in conjunction with the Head of Governance and Customer Services, take proceedings through the courts, if required, to ensure:**
- a) the cessation of the unauthorised vehicle sales business including bringing vehicles to the property to be prepared in readiness for sale and storing vehicles awaiting sale at the property;**
- (b) the removal of all vehicles associated with the vehicle sales business.**