
Appeal Decision

Site visit made on 29 November 2016

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 December 2016

Appeal Ref: APP/T5150/C/16/3156052

Land to the rear of 606 and 608 High Street, Wembley, HA0 2AF.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Naeef Khan against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/14/0435, was issued on 30 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to tyre fitting and car wash services.
 - The requirements of the notice are Step 1. Cease the use of the premises for tyre fitting and car wash services; and Step 2. Remove all items, materials, equipment, tyres and all signs, posters and flyers associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Reasons

2. The appeal property comprises a yard and sheds at the rear of 606-608 High Street with highway access onto Thurlow Gardens.
 3. The appeal on ground (d) is that the use enforced against is immune from enforcement action because it has been on-going for at least 10 years. The appellant apparently entered into a 10-year lease of the subject premises on 24 October 2011 as "a shop for the business of providing car repair services, tyre sales and car valeting, and he has provided earlier lease documents relating to the site, albeit these do not specify any use. One was a car hire company and the other traded under the name Aerodrive, but I cannot infer from that anything beyond their likely use for car-related purposes.
 4. The Council does not dispute that the yard has previously been used for car repairs, albeit the lawfulness of such use has not been affirmatively established. However, no evidence has been provided to support the use of the site for the stated purposes, that is tyre fitting and car wash services, any time before the appellant acquired the lease of the site. A Planning Contravention Notice signed by the appellant puts the start date for tyre fitting and tyre storage as October 2011, and nothing is said anywhere about whether there had been any prior use of the site for commercial car washing or valeting.
-

5. As mentioned above, the basis of the appeal is that the use is immune from enforcement action. It relies on Section 171B(3) of the 1990 Act, which sets the period after which no enforcement action may be taken as 10 years beginning with the date of the breach. Case law has established that the use must be continuous, such that enforcement action could have been taken at any time in the relevant period. The burden of proof is on the appellant and the standard of proof is the balance of probabilities. For the appeal to succeed on this ground, the appellant must demonstrate that the land was used continuously for the stated purposes, that is tyre fitting and car wash services for at least 10 years prior to the date on which the EN was issued.
6. The notice the subject of this appeal was issued on 30 June 2016, giving a relevant 10 year date of 30 June 2006. However, no reliable evidence of such use has been provided that pre-dates October 2011. Clearly therefore it is not possible to conclude, on the balance of probabilities, that it has been demonstrated that the land was used for the use enforced against for long enough to achieve lawfulness through immunity from enforcement.
7. It follows that the appeal cannot succeed.

Paul Dignan

INSPECTOR