The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 18 January 2017

Appeal Ref: APP/X4725/C/16/3160165
31 Warwick Street, Wakefield, WF1 5BJ

- 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 Act).
- The appeal is made by Mr Asif Abbas against an enforcement notice issued by Wakefield Metropolitan District Council.
- The notice was issued on 8 September 2016.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use from joiner's workshop, Use Class B1, to a vehicles repair garage, Use Class B2, on the land.
- The requirement of the notice is:
  Cease the use of the land for the unauthorised vehicle repair garage (B2) use.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

2. A full statement of case was not submitted by the appellant within the prescribed period. I have therefore relied on the facts and grounds as stated in the initial appeal form and his final comments submitted in response to the Council's statement of case.

3. The determination of appeals made on legal grounds (grounds b, c, d and e) are based on the development as it existed on the date the enforcement notice was issued and I have therefore determined the appeal on that basis.

4. A ground (c) appeal is that the matter alleged in the notice does not constitute a breach of planning control. The appellant's ground (c) appeal however is not made out on that premise. Instead it is argued that the alleged breach of planning control is lawful due to the length of time it has existed (more than ten years). That argument falls within a ground (d) appeal; that the breach was immune from enforcement action at the date the notice was issued.

5. The Council have addressed the 'hidden' ground (d) and history of land use in their evidence. As such, it would not result in injustice to either party for me to do the same. I will therefore deal with the appeal on that basis.

The appeal on ground (c)

6. The key issue in this case is whether the change of use to a vehicle repair garage amounts to a material change of use requiring planning permission.

7. The burden of proof on this ground of appeal lies with the appellant, and the test of the evidence is on the balance of probability.

8. The appellant claims that the vehicle repair use is 'consistent' with the B1 Use Class. However, that does not provide substantive evidence that there has not been a material change of use.

9. There is no dispute between the parties that the former use of the appeal site was as a joiner's workshop. To my mind a vehicle repair garage is wholly different from a joiner's workshop in terms of its nature, its environmental effects and overall character of land use, such that a change from one to the other would be a material change of use.

10. The appellant's description in his evidence of the use of the appeal site supports my view in this case that there has been a significant and material change in the character of the land use. My view is reinforced by the description of the character of the use by the Council resulting from their investigations, and from the comments I have received in third party representations. Against all of that there is very little evidence before me to demonstrate that the change of use to a vehicle repair garage was not a material change of use.

11. In conclusion, the appellant has failed to discharge the burden of proof upon him that there has not been a material change of use.

12. Since the material change of use is development within section 55 of the Act, and for which planning permission has not been granted, the use constitutes a breach of planning control.

13. The appeal on ground (c) therefore fails.

The appeal on ground (d)

14. The appeal is that at the date the enforcement notice was issued it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant date for the purposes of assessing immunity of the alleged breach of planning control is ten years prior to the date of issue of the enforcement notice, which is 8 September 2006.

15. In pursuing an appeal on ground (d) the burden of proof is on the appellant. The appellant must therefore demonstrate, on the balance of probability, that the change of use had actually taken place by or before the material date and that it was continuous, without material interruption, for at least a ten year period after the date of change.

16. The appellant claims[1] that *"Car repairs have been undertaken on site for over ten years and the site qualifies for a Certificate of Lawfulness. Evidence is available for established use".* The same is reiterated in the appellant's final comments. Reference is also made to documentary proof being available. However, no such available evidence or documentary proof has been submitted.

17. The appellant also refers to the Council's business rates information[2] as evidence of a ten year use for vehicle repairs. However, my examination of that information leads me to conclude that none of the entries in that information specifically record such use. Hence it does not provide any substantive evidence in support of the appeal.

18. The appellant points to the Council's submission[3] which indicates that the business rates records confirm the unit has been rated as a *garage and repair workshop* since the early 1990's. It seems to me that that description may have been interpreted by the appellant as referring to a use for vehicle repairs. Whether or not it has been so interpreted, I find that on a plain reading of the Council's description it does not state that the site was in use for vehicle repairs.

19. In direct conflict with the appellant's evidence the Council's records indicate the property was unoccupied between 2007 and 2011 (a three to four year gap within the ten year period prior to the issue of the notice). No substantive evidence of there being a continuous use for vehicle repairs during that period has been provided by the appellant.

20. Reference is made to the current use occurring in 2013 when the Council investigated complaints. Be that as it may, it does not provide evidence of a continuous ten year period of use.

21. The appellant points to a lack of evidence from the Council in supporting its case. However, as I have stated previously, the burden of proof is upon the appellant. No other evidence, for example in the form of affidavits from operators, business trading records, receipts, bills, or other similar documents, have been submitted to support the claimed ten year use.

22. Overall, I find that there is very little evidence submitted to demonstrate that there has been a continuous ten year use for vehicle repairs. Consequently, the burden of proof upon the appellant has not been discharged. The appellant's evidence is further diminished by being conflicted by the Council's contrary submissions, and also by third party representations from local residents I have received.

23. I conclude on the balance of probability that the breach of planning control is not immune from enforcement action and the appeal on ground (d) fails.

The appeal on ground (a)

24. I consider the main issue to be the effect of the use on the living conditions of occupiers of nearby residential properties with regard to noise disturbance, highway safety, and the effect on the character and appearance of the area.

[1] Appellant's Appeal Form: Facts and Grounds
[2] Council's Statement, Appendix 3
[3] Council's Statement, paragraph 3.2

25. The appellant considers that the use of the site for vehicle repairs is compatible with the long history of commercial use and with the former B1 Use Class. I disagree. I have already found that the use is materially different from the use as a joiner's workshop, resulting in a material change of use. Moreover, whether or not the appeal should be allowed should be judged on the main issues I have set out above.

26. It is argued that complaints from local residents arose after a single 'fire' incident. However, that contrasts with the Council's evidence in respect of complaints made to them, and with the detailed representations I have received opposing the appeal. They refer to disturbance from vehicles awaiting repair being left in the street, the arrival and departure of recovery vehicles with flashing lights, frequency of vehicle movements, parking conflict with local residents vehicles, noise from customers talking outside nearby houses, loud noise from engine revving, and grinding and banging noise from repairs at various times of the day and night.

27. No surveys in respect of noise emissions and levels, or in respect of vehicular trip generation, have been submitted by the appellant in support of the appeal.

28. On the balance of all the evidence before me, I conclude that the use results in a significantly harmful and unacceptable level of noise disturbance to local residents, and a reduction in highway safety from the frequency of vehicle movements to and from the site. As such, it also detracts from the character and appearance of the area. Given these conclusions I find that the use conflicts with Policies CS1, CS10 of the Wakefield Metropolitan District Local Development Framework Core Strategy (LDF), and Policies D9 and D20 of the LDF Development Policies Document.

29. I have considered whether the use of planning conditions would adequately control the operation of the business such that planning permission could be granted. However, there is no evidence before me to establish that the majority of business customers are local residents as claimed, and a planning condition seeking to restrict the use in that way would be an unreasonable requirement and unenforceable.

30. I acknowledge that planning conditions could control the hours of business operation and prevent any vehicles awaiting repair from being left in the street. However, given the size of the site such containment restrictions could make the business economically unviable and could not in any event prevent customers parking in the street. Moreover, such conditions would not adequately mitigate or overcome the significant level of harm from noise and disturbance I have identified.

31. For all the above reasons the appeal on ground (a) fails.

Thomas Shields

INSPECTOR