

Appeal Decision

Site visit made on 27 September 2016

by Janine Townsley LLB (Hons) Solicitor (Non practising)

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

Decision date: 17 February 2017

Appeal Ref: APP/D4635/C/16/3153504

11 Raven Crescent, Ashmore Park, Wednesfield, Wolverhampton, WV11 2EX

- 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 Mrs Beverley Tracey Feeney against an enforcement notice issued by Wolverhampton City Council.
 - The Council's reference is 15/00162/ENCOMP.
 - The notice was issued on 26 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission the use of the site for the parking, storage and dismantling/maintenance of motor vehicles not incidental or ancillary to the use of the site for residential/ domestic purposes.
 - The requirements of the notice are: 1. Return the level of the land to the level which existing before development commenced including a retaining wall; 2. Remove all waste materials arising from the construction and demolition; 3. Remove all vehicles, fence panels, and trailer.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (e) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Procedural Matters

2. The breached alleged is that the number of vehicles at the appeal site is over and above that normally associated with the domestic use the site. Consequently the storage of and work on the vehicles is not incidental or ancillary to the domestic use of the site. Although the Enforcement Notice (EN) is headed "Operational Development", the breach does not make any reference to operational development, although there is reference in the reasons for issuing the notice. I am mindful that I am able to uphold a requirement to remove operational development carried out to facilitate a change of use, however, this is dependent on a finding that a change of use has occurred. Since the breach referred to in the EN refers only to an alleged change of use, I have determined this appeal accordingly.
3. Part 5 of the EN, which sets out the steps required, does not require that the change of use as alleged should cease. Since the appeal is allowed for the

reasons I have set out, it has not been necessary to consider further whether the notice could be amended to address these issues.

Reasons

The Appeal on Ground (e)

4. S172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and on any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the Local Planning Authority, is materially affected. The appellant's position is that her estranged husband has a charge on the appeal property and therefore she feels he should have been served with the EN. The Council's case is that the appellant's husband is not materially affected by the enforcement action as he had not been present or contactable for some time. Given his absence over a prolonged period of time and the lack of any contact details for him, I see no reason to challenge the conclusion reached by the Council that he is not materially affected by the enforcement action and therefore the notice has properly been served. In any event, S176(5) provides for non-service to be disregarded if no substantial prejudice has arisen. As the appellant has been able to lodge an appeal against the notice, I am unable to identify any substantial prejudice in this instance. For these reasons, the appeal on ground (e) fails.

The Appeal on Ground (b)

5. This ground of appeal is that the breach of control alleged in the EN has not occurred as a matter of fact. It is the appellant's case that she has always stored cars on the property; although in the past these were stored at the rear of the dwelling. It is claimed that the frontage of the property is being used as a driveway and all vehicles parked there are registered to the appellant's sons who also live at the appeal property.
6. I have had regard to photographs provided by the Council. The most cars shown on site in any one photograph is three. I accept that each photograph does not show the same three cars but this accords with the appellants account that some have been scrapped over time and additional ones purchased. There is no detail within the Council's evidence of the number and description of cars alleged to be stored by the occupiers of the appeal property. The Council's case is that the nature of the use of the site is not domestic and that the use of the site is more akin to general industrial storage and distribution. However, there is insufficient evidence before me to satisfy me that the number of vehicles and the type of work being carried out on those vehicles is over and above that which might be considered incidental to the use of the site as a dwelling house.
7. In the absence of further information as to the number of vehicles alleged to be on site and the nature of the use in relation to those vehicles I am not convinced that a change of use in the manner set out by the Council in the EN has occurred. For this reason the appeal made in relation to ground (b) meets with success.

8. As set out above, the breach does not refer to any building operations. In any event, there is insufficient information before me to make any determination as to whether works carried out to date would have required planning permission.

Conclusion

9. For the aforementioned reasons, I consider the appeal should be allowed.

Janine Townsley

Inspector