
Appeal Decision

Site visit made on 5 September 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 23 February 2017

Appeal Ref: APP/J1860/C/16/3150562

Land to the east of Pendock Road, Pendock, Gloucestershire

- 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 David Andrew Wyatt against an enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice, numbered E/13/00005/COU3, was issued on 14 April 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the change of use of the Land from a nil use to a mixed use consisting of scrap storage and handling, vehicle sales activities, vehicle storage and vehicle repairs.
 - The requirements of the notice are: To cease the use of the Land for the mixed use consisting of scrap storage and handling, vehicle sales activities, vehicle storage and vehicle repairs; and remove the scrap, vehicles and associated caravan from the Land and lawfully remove all associated equipment and resulting materials from the Land.
 - The period for compliance with the requirements is within four calendar months of the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Application for costs

2. An application for costs was made by Malvern District Council against Mr David Andrew Wyatt. This application is the subject of a separate Decision.

Preliminary Matters Relating to the Enforcement Notice

3. The appellant alleges that the enforcement notice is flawed and incapable of correction without causing prejudice. He notes that red line boundary on the plan attached to the notice covers a smaller area than the plan submitted by the appellant in relation to an application for a certificate of lawful use (CLU)¹. However, the fact that the boundary does not correspond to the plan submitted with the CLU application does not, of itself, render the notice invalid.
4. At my site visit it was extremely difficult to distinguish where the boundary of the plan attached to the notice was in relation to any distinguishable features due to overgrown vegetation and the large number of vehicles and other items that are located on the land. I am satisfied that the plan covers the majority of the area where activity was taking place but it is possible that a number of vehicles were situated on land beyond the red line, particularly at the northern

¹ LPA reference 13/00441/CLE & appeal reference APP/J1860/X/15/3006294

edge of the site. There is no suggestion that the plan extends onto land that is not related to the alleged breach. Consequently, it seems to me that there would be no prejudice on the part of the appellant if the appeal were to continue on the basis of the plan attached to the notice. Equally, it would be open to the Council to issue a further notice in relation to any land outwith the red line boundary if it was considered that any unlawful activity was taking place on that land. Therefore, I have considered the appeal on the basis of the plan attached to the enforcement notice.

5. The appellant suggests that the requirement to "remove all associated equipment and resulting materials from the land" at section 5.2 is vague and ambiguous. The Council has clarified that the requirement relates to the removal of any resulting equipment, tools or rubbish that may be left over as a result of compliance with the other elements of the notice. To my mind, that element of the requirement is clearly expressed and the appellant, or his licensee, would be in the best position to understand if any associated equipment and materials remained on site following the compliance with the other elements of the notice. I am content that no correction to the notice is necessary to enable the appellant to understand what is required.

The Appeal on Ground (b)

6. An appeal on ground (b) is made on the basis that the matters alleged in the notice have not occurred. When making an appeal on legal grounds, including ground (b), the onus is on the appellant to demonstrate his case on the balance of probabilities. The appellant disputes the matters in the alleged breach of planning control have occurred on two grounds.
7. Firstly, he contends that the primary use of the site is for vehicle repairs and that the other uses alleged within the enforcement notice had not occurred or, if they did occur, were ancillary to the primary use and did not represent primary uses in their own right. As such, he asserts that the site was not in a mixed use at the time the notice was served. He also contends that the description of the former use as a 'nil use' is inaccurate and does not reflect the history of the site. In his view, the lawful use of the site falls within Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 (the UCO) as a use for vehicle repairs. I shall examine each element separately.

Whether the site was in use as a mixed use, as alleged, at the time the notice was served

8. The appellant's position, as set out above, is clearly contrary to the conclusions of the Inspector in relation to the CLU appeal. He concluded that *'there appears to have been a considerable element of scrap storage and handling (rather like a "breaker's yard") and of vehicle sales, to an extent that such activities were components of a mixed use. Vehicle repairs may well have featured in the mixture, but I judge that the overall mixed use was materially different from "repair garage and workshop", did not fall into any classes of the UCO, and was a sui generis use'*.
9. Those conclusions were based upon the use at the time the CLU application was made in April 2013 and were based on the evidence presented including advertisements of vehicles for sale on E-Bay, photographs of the site, letters from neighbouring residents, records of the Council officer case notes and the respective statements of the parties. Much of that information has been

replicated and submitted in relation to the current appeal. The Council has also provided more recent screenshots from Gumtree, one of which appears to advertise a vehicle for sale and the other appears to be a request from Mr Preston, who operates the site, to purchase "Hiab trucks" or "Hiabs on their own".

10. Further to that decision, the appellant has submitted little direct evidence that would support a different conclusion. Nothing is before me to suggest that there has been any change in the way the site operated between the point at which the CLU application was made and the time the enforcement notice was served. The business at the site is not run by the appellant but is let to a licensee, Mr Preston. No information from the licensee has been provided, such as business accounts or declarations from employees, to shed any light on the nature of the business. It is not apparent how often the appellant, or his agent, visit the premises or how intimate their knowledge is of the business affairs of the licensee. The appellant notes that the terms of the licence do not authorise the use for anything other than vehicle repairs within Use Class B2 of the Town and Country Planning (Use Classes) Order 1987 (the UCO) but it does not follow that the alleged uses are not taking place because they are not permitted under the licence.
11. The photographs provided by the Council from two different site visits depict a variety of vehicles within the site, including transit style vans, mechanical diggers and what appeared to be the trailer or housing from the back of a wagon. That arrangement was similar at the time of my visit where a large number of vans, wagons, diggers and wagon 'backs' were sited across the site, in addition to the caravan that appeared to be in use as a tea making room. In fact, almost all of the space within the site was taken up by vehicles or parts in various states of disrepair, some of which appeared to have been in situ for a considerable period judging by the overgrown nature of the land. Given the small size of the workshop building, relative to the number of vehicles on site, it seems unlikely to me that all of the vehicles or parts were on site to be repaired within the garage. Therefore, a number of vehicles and parts appeared to be stored for no apparent reason.
12. The appellant suggests that the term "vehicle sales activities" is ambiguous but the term clearly refers to the activity of selling vehicles at the site and I am satisfied that the notice is clearly expressed in that regard. It is clear that vehicle sales have taken place from the site, as depicted by the internet sales particulars produced by the Council. The photographs were taken at the site, as can be seen by the presence of the workshop building and the dwellings to the rear on some of the shots. A number of the vehicles appear to be advertised for sale in an unrepaired state which would indicate that those sales were not directly linked to any repair work being undertaken in the garage. Anecdotal evidence also indicates that those seeking to purchase vehicles have called at the house of a neighbouring resident to enquire as to the whereabouts of the occupants of the appeal site.
13. Consequently, there is little doubt that vehicles have been sold from the premises. In order to reach a conclusion that any sales were ancillary to a vehicle repair use I would need information regarding the extent of any vehicle repair use, the level of vehicle sales and the relationship between repairs and sales. In the absence of any corroborative information regarding the nature of

the business the appellant has not made that case and I cannot draw such a conclusion.

14. The appellant also contends that the term "scrap handling" is ambiguous and suggests that "scrap dealing" would be a more accurate term. The Inspector in relation to the CLU appeal referred to "a considerable element of scrap storage and handling (rather like a "breakers yard")" and the Council may well have taken the term "scrap handling" from that description. To my mind, the notice clearly expresses what is alleged which is that scrap is stored and handled at the site, "rather like a breakers yard". In that context I find no ambiguity and am satisfied that the appellant has understood and responded to the allegation.
15. No evidence has been presented to suggest that the previous Inspector was wrong in his conclusion that scrap storage and handling was taking place in April 2013 or to indicate that those activities have ceased since that point. The photographs taken by the Council in February and April 2016 both show a recovery lorry on site embossed with the logo "Auto Dismantlers Alloa". In the photographs taken in February a small lorry was loaded on the back of the recovery vehicle. The name of the vehicle would suggest a link to a scrap related business. I have also been provided with photographs taken by a neighbouring resident, covering the period from 2013 onwards, which appear to depict scrap being brought to/from the site.
16. Other letters from neighbouring residents and the Parish Council suggest that broken down vehicles are often delivered on 'low loaders', that vehicles are broken on the site, and that scrap metal is handled at the premises. The letters are not statutory declarations and it may be difficult for residents to take an objective view of the activities at the site. Nonetheless, the views are consistently expressed by a number of individuals, as well the Parish Council, and are supported by photographic evidence. I have no reason to doubt that the information provided is false or aimed at deception. Moreover, whilst I did not witness any scrap dealing or breaking of vehicles or parts at my visit, the sheer number of vehicles and partially dismantled mechanical items that were located at the site was suggestive of a use akin to a breaker's yard, as described by the previous Inspector.
17. Consequently, from the evidence before me, the description of the current use at the time the notice was served appears to be an accurate reflection of the range of uses that were being undertaken at the site. There is no dispute that repairs took place within the workshop; cars were clearly being sold from the site; other vehicles and items appear to have been stored at the site for no obvious purpose; and there is evidence of scrap dealing and handling, akin to a breaker's yard. In the absence of any information from the appellant relating to the business such as accounts, turnover, details of customers, statements from employees, it is not possible to determine that any one of those uses represented the primary use of the site and I conclude, on the balance of probability, that the site was in use as a mixed use as described in the notice.

The previous use at the time the Enforcement Notice was served

18. No evidence has been presented to show that the site was in active use for any purpose immediately prior to the commencement of the use described in the enforcement notice. However, the appellant maintains that the site benefitted from lawful use rights as a repair garage within use class B2 at the time the notice was served. That claim relates back to two planning applications

submitted and approved in 1950 and 1951. The precise nature of those decisions has been considered previously in the CLU appeal. The plans and decision notices relating to those decisions are missing and the only available official record appears to be the register of decisions made by Upton upon Severn Rural District Council and the copy of the local authority map or "plotting sheet" which marked the extent of the application boundaries. In the absence of full details it is difficult to be certain of what was approved at that time.

19. The 1950 permission was described as an outline permission for the erection of a workshop. Conditions were attached including one which stated that "the premises are used for light industrial purposes only". A "light industrial" use would be considered to fall within Use Class B1 of the Town and Country Planning (Use Classes) Order 1987 and a repair garage would not fall within that category but would be a B2 general industrial use. Whether that was the case in 1950 is not clear; neither party has provided any evidence that would shed light on what the term "light industrial" would have encompassed at that time.
20. In February 1951 a "consent" for the "erection of repair garage and workshop" was granted. The appellant maintains that the 1951 consent was a free standing planning permission, as opposed to a reserved matters approval on the basis that the description of development as a repair garage and workshop was outwith the scope of the outline permission which was for light industrial purposes only.
21. That position was seemingly accepted by the Council in submissions regarding the CLU appeal but the Inspector took a different view and determined that the 1951 "consent" was a reserved matters application. Accordingly, he considered that the condition limiting the use to light industrial purposes still applied. His reasons are fully set out in the appeal decision letter, but include reference to the timing of the 1951 application, which was submitted a few weeks after the 1950 application and reference to a drawing numbered 1142 which apparently showed details of building design and materials.
22. Although I recognise that consistency in decision making is important I am not bound by the conclusions if the evidence suggests a different conclusion should be reached. The appellant has questioned whether the previous Inspector took account of a document entitled "Schedule – List of Deeds and Documents", dated 20 August 1951. That document refers to a "certificate of planning permission from Upton on Severn RDC, dated 27 February 1951. The date of 27 February 1951 does not correspond to the date at which either application appears to have been granted and no description of what the "certificate of planning permission" relates to is provided. Consequently, whether or not the previous Inspector was aware of the document, it sheds little light on the nature of the approvals granted in 1950 and 1951.
23. Notwithstanding the above, I have some difficulty in following the approach of my colleague in relation to the 1951 application. The description of the 1951 application made clear that permission was being sought for the erection of a "repair garage and workshop". That application was approved. Whilst the application was made soon after the 1950 outline application it does not follow that it was a submission for reserved matters. The applicant may have considered that the "light industrial" condition on the 1950 permission for the

“erection of a workshop” did not meet his requirements and followed up with a full application for the more specific use of “repair garage and workshop”. The fact that a drawing showing the building appears to have been submitted does not suggest that it was a reserved matters approval because a drawing would equally be required with an application for full planning permission.

24. From a present day approach if outline planning permission was granted for a workshop, restricted by condition to a use within Use Class B1, it would not be appropriate to submit a reserved matters application on the basis that the proposed development would be the erection of a repair garage within Use Class B2. The use would be outside the scope of the outline permission and a separate planning permission would be required.
25. To my mind, it would have been inconsistent to grant planning permission for a building for the specific use of a workshop and repair garage if a condition was in force that would prevent the building being used for that purpose. It seems to me that the planning authority at the time must have considered the 1951 application on the basis that permission was being sought for the erection of a “repair garage and workshop”. Consequently, on the balance of the evidence before me I conclude that planning permission was granted in 1951 for the erection of a building for that purpose.
26. Having reached that conclusion, I must consider whether that permission was implemented and whether any use rights remain intact. It is not clear whether the 1951 planning permission was granted subject to a condition that required the development to be commenced within a specific period. There is anecdotal evidence that the site was used as a repair garage from some point in the 1950s up until roughly the late 1980s but no corroborative evidence in terms of business accounts or statutory declarations is before me to enable a full understanding of when the use was commenced or when the building was erected.
27. Planning permission was granted for a toilet block and septic tank in association with the garage in 1966, 15 years after the 1951 permission. The timing of that application does not provide an indication as to whether the permission was implemented in line with any time limit that may have been imposed. Similarly, in the absence of the approved plans, it is difficult to ascertain whether the development was undertaken in accordance with the 1951 permission. Whilst the failure of the Council to keep full records is unfortunate, the onus is on the appellant to demonstrate his case and the evidence before me is less than clear on the issue of whether the 1951 permission was implemented.
28. It appears that the active use of the site as a repair garage ceased at some point in the late 1980s. Very little information has been provided by the appellant that would enable me to ascertain how the site was used from that period up to the point that the present mixed use commenced. Information provided by neighbouring residents indicates that the site was used at points during that period as a private facility for the storage of domestic items. Photographs taken in 1998 and 2011 and an overhead view from 2008 show little activity at the site although I accept that those images are merely a snapshot in time. Email correspondence between the Parish Council and the District Council, dating from 2005², suggests that no business use had occurred

² Photographs and email correspondence appended to the letter from Mr & Mrs Chick

since the late 1980s and refers to a "short lived residence in a caravan". Planning permission for a "change of use of workshop site to include occupation of residential caravan" was approved in 1984³. It is unclear if the comments of the Parish Council relate to development approved by that permission.

29. The evidence relating to those alternative uses is limited and was not given under oath but I have no particular reason to doubt that the information is an accurate reflection. The email correspondence between the Parish Council and the Council appears to have been based on information from residents and those with local knowledge of the site. Moreover, although the appellant disputes the information provided by interested parties he has provided no information of his own to demonstrate how the site was used from the late 1980s up to approximately 2013 when the present use commenced. Thus, from the information provided, the site may well have been used for purposes other than commercial vehicle repairs during that period.
30. The toilet block and septic tank associated with the garage have been removed and the previous Inspector referred to the housing development on land adjacent to the site which was granted planning permission, subject to a condition that an existing entrance to the garage site would be closed except for access to the new houses. The Council has provided copies of the relevant permissions and, on the information before me, I consider it likely that the site boundary in relation to those applications fell outside of the site boundary of the 1951 permission. The copy of the pre-1974 local authority map or 'plotting sheet' depicts the extent of applications 8/51 and 101/50 in the north-western corner of plot No. 161. The dwellings have been constructed in the northern and north-eastern end of that plot on land not covered by the 1951 permission. In addition, the condition requiring an existing access to be closed⁴ was attached to an outline permission but that condition was not imposed on a later application to renew that permission⁵. Consequently, it seems likely that the grant of planning permission for adjacent housing did not have any direct effect on any use rights relating to the appeal site.
31. However, for the reasons given, it is unclear if the 1951 permission was implemented in accordance with any conditions that may have been attached. Even if that was the case the limited evidence before me indicates that the land may have been put to one or more alternative uses from the 1980s onwards. The previous Inspector drew a distinction between the use of the appeal site and the case of *Stockton on Tees BC v SSCLG*⁶. In that case, the planning permission for 80 seasonal caravans had not been abandoned because there had been no intervening use and no active steps had been taken to prevent its recurrence. Given the possibility of intervening uses I see no reason to reach a different conclusion from the previous Inspector in that regard.
32. The onus is on the appellant to demonstrate his case. Given the ambiguity described above I am not satisfied, on the balance of probabilities, that the site benefitted from lawful use rights within Use Class B2 when the change of use occurred. The site does not appear to have been in active use immediately prior to the breach and, from the information before me, it is not clear that it

³ LPA reference: 84/00787/FUL, approved 27 June 1984, as set out within the Planning History section of the Council's statement of appeal

⁴ LPA reference MH91/1168

⁵ LPA reference MH97/0514

⁶ *Stockton on Tees BC v SSCLG & Elijah Ward* [2010] EWHC 1766 (Admin)

benefitted from any lawful use rights. Therefore, I find that the description of the alleged breach of planning control was an accurate reflection of the breach that had occurred. For those reasons, the appeal on ground (b) fails.

The Appeal on Ground (c)

33. The basis of the appeal on ground (c) is related to the appeal on ground (b) in that the appellant maintains that the land benefitted from lawful use rights as a repair garage within Use Class B2 of the UCO at the time the notice was served. However, I have concluded that the site does not benefit from lawful use rights as a repair garage and that, at the time the notice was served, the site was in use for a mixed use, comprising the various elements described within the alleged breach.
34. A change in use from a nil use to a mixed use consisting of scrap storage and handling, vehicle sales activities, vehicle storage and vehicle repairs represents a material change of use for which planning permission would be required. No such planning permission has been granted and the development represents a breach of planning control. Therefore, the appeal on ground (c) must fail.

The Appeal on Ground (d)

35. The appellant's case regarding ground (d) is based on the assertion that the site was in use as a repair garage at the time the notice was served and that use for that purpose would have been immune from enforcement action. However, those submissions relate to the appeal on ground (b) - that the breach of planning control has not occurred. The appeal on that ground failed for the reasons set out above. An appeal on ground (d) is considered on the basis that the alleged breach of planning control has taken place and the question is whether the matters constituted by the breach have become immune from enforcement action as a result of the passage of time.
36. The appellant accepts that a mixed use for the purposes specified within the notice would not have gained immunity through the passage of time. Accordingly, the appeal on ground (d) must fail.

The Appeal on Ground (f)

37. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
38. The Council has not specified whether the aim of the notice is to remedy the breach of planning control or to remedy any injury to amenity. However, having regard to the terms of the notice it appears to me that the aim is to remedy the breach of planning control by ceasing the mixed use and removing all scrap, vehicles, the caravan and associated materials from the land. Those aims would appear to accord with section 173(4)(a) of the Act which states that the steps required by an enforcement notice may seek to remedy the breach by: *discontinuing any use or by restoring the land to its condition before the breach took place*.
39. The appellant's case in relation to ground (f) stems from his belief that the site benefits from lawful use rights as a repair garage within Use Class B2 of the

UCO. On that basis he contends that the requirement to cease the use of the land for vehicle repairs is excessive. He also notes that the alleged breach does not refer to the siting of the caravan and, as such, that it is excessive to require its removal.

40. For the reasons given above, the appellant has failed to demonstrate, on the balance of probability, that the site benefits from lawful use rights as a vehicle repair garage. Consequently, the requirement to cease using the land for vehicle repairs does not go beyond what is required to remedy the breach.
41. It would appear that the caravan is used as a mess room/ tea making facility. The caravan is not a building and does not represent a separate breach of planning control of itself but has been brought onto the land in connection with the unauthorised use. Thus, I am satisfied that there was no need for the Council to refer to the caravan in the description of the alleged breach and that the requirement to remove the caravan is necessary to restore the land to its condition before the breach took place, in line with section 173(4)(a) of the Act. In view of the above, the appeal on ground (f) fails.

The Appeal on Ground (g)

42. The appellant contends that a year would represent a reasonable period of time to comply with the terms of the notice on the basis that the licensee would need to find suitable alternative premises for the garage business. In his view, too short a period would be damaging to the business, to employment and the local economy. Given that little information has been provided in terms of the exact nature of the business carried out by the licensee with regards to numbers of employees and the level of activity it is difficult to attach any significant weight to those points.
43. Equally, no information has been provided to support the claim that the licensee would require that amount of time to find alternative premises. There is nothing to suggest that there is a particular need for the business to be located within a specific area that could make it difficult to find alternative premises. Moreover, there is no suggestion that the removal of the scrap, vehicles, caravan and associated material could not be achieved within the four month timescale in practical terms. I am also mindful of the need for expediency in the enforcement of the planning system, something that is particularly relevant in this case due to the close proximity of the unauthorised use to adjacent residential properties. Consequently, on the evidence presented I find that the period specified within the notice is reasonable and the appeal on ground (g) fails.

Chris Preston

INSPECTOR