
Appeal Decision

Inquiry held on 28 March 2017

Site visit made on 28 March 2017

by Paul Dignan MSc PhD

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

Decision date: 04 May 2017

Appeal Ref: APP/T0355/C/16/3150896
32 Montrose Way, Datchet, Slough, SL3 9ND.

- 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 Maninder Singh Virdi against an enforcement notice issued by the Council of the Royal Borough of Windsor and Maidenhead.
 - The enforcement notice, numbered 15/50554/ENF, was issued on 26 April 2016.
 - The breach of planning control as alleged in the notice is Without planning permission the material change of use of the Land from residential to a mixed use of residential and business.
 - The requirements of the notice are: a) Cease the use of the land for the storage, repair and maintenance of motor vehicles not connected with the residential use of the Land; and b) Remove all vehicles not associated with the use of the Land for residential purposes.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected by the deletion in Section 3 of the word 'business' and its replacement by the words 'the repair and maintenance of motor vehicles'; by the deletion at Section 4(i) of the number '4' and its replacement by the number '10'; and by the deletion in Section 5(a) of the word 'storage,'. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. At the Inquiry an application for costs was made by the Council against Mr Virdi. This application is the subject of a separate Decision.

Background and preliminary matters

3. Mr Virdi has been living in the appeal property, a maisonette in a residential estate, for about 8 years. He is a motor vehicle mechanic but was unable to work for a number of years due to an accident, though he is now well enough to work again. He has always worked on cars at the property, initially his own but more recently for others, and since the enforcement notice was issued he has started to operate a vehicle repair service from a separate business premises.
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4. The enforcement notice alleges a change of use to a mixed use of residential and business, but it is clear from the requirements that it is the use of the land for purposes connected with the repair and maintenance of motor vehicles that the Council objects to, and hence the description of the allegation should be more clearly defined to reflect this. The Council did not in fact allege a vehicle storage use at the property, and hence it is not appropriate to include it in the requirements. The notice also makes reference to the alleged breach having occurred within the last 4 years, obviously intending to refer to the period after which immunity from enforcement would accrue under section 171B of the 1990 Act. Since the allegation is of a breach of planning control comprising a material change of use to a mixed use, the appropriate period is 10 years.
5. I have the power to correct or amend these problems with the notice provided that there is no injustice. This was discussed at the Inquiry and it was agreed that no injustice would arise, and I shall amend the notice accordingly. I should note that the mis-recital of the period for enforcement led the appellant to appeal on ground (d), which is that it is too late to take enforcement action, but clearly an appeal on this ground could not succeed given the legislative provisions, regardless of the error in the notice. The appellant was made aware of this error early in the appeal process and he has not been unduly prejudiced. It was agreed at the Inquiry that the appeal on ground (d) would not be pursued.

Reasons

6. The sole remaining ground of appeal is ground (b), which is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters have not occurred. Although Mr Virdi maintains that he has always worked on his own vehicles at the property, he acknowledged that as he recovered from his accident he has been repairing vehicles at the property for other people, and in making the appeal it was stated that there was no question that Mr Virdi was conducting occasional private work at the property, but that it did not amount to running a full-time business.
7. For a change of use to a mixed use to have occurred, it is not necessary that the vehicle repair use be a full-time business, a change of use will have occurred if the vehicle repair/maintenance activities have gone beyond what could reasonably be described as ancillary or incidental to the use of the property as a dwellinghouse. Car repairs can be incidental to a dwellinghouse use, but this is only likely to be the case where it involves the occupants' own vehicles, or where it is carried out as a hobby. Regularly repairing or servicing vehicles for other people are not activities that would normally be considered to be incidental or ancillary to a dwellinghouse use. In this case Mr Virdi's own estimate of how many vehicles he was repairing at the property was about 5 per month. Even if, as he claimed, this was mainly for relatives, in my view this goes well beyond what could reasonably be considered to be incidental to a dwellinghouse use. As a matter of fact and degree, I conclude that there has been a change of use of the property as described in the notice as amended.
8. On this basis alone the Council submitted that the appeal on this ground could not succeed. However, since there is no appeal on ground (c), which is that the matters, if they have occurred, do not constitute a breach of planning control, I consider it appropriate and fair to consider the allegation as a whole, namely

- whether what has occurred amounts to a change of use that is material in planning terms.
9. There is no statutory definition of 'material change of use', but it is linked to the significance of a change and the resulting impact on the use of land and buildings, including the effects of the change upon neighbouring uses and the locality. On the latter point, I heard from neighbours who supported Mr Virdi, testifying that his activities did not disturb them, but other neighbours complained of traffic problems caused by vans and cars either being worked on or waiting to be worked on, and suggested a far higher throughput more recently than the 5 vehicles per month suggested by Mr Virdi.
 10. The enforcement investigation resulted from complaints from nearby residents and led to 8 unannounced visits by a Council enforcement officer. That officer has now left the Council, but the Council's evidence is based on his contemporaneous site visit notes, and photographs taken on 6 of the visits are in evidence. These photographs show vehicles, mainly vans, being worked on during each of the visits, both on the property driveway and on the public highway. Some of the works observed by the enforcement officer involved the removal of engines using an engine hoist. He also observed vehicle parts delivery vans coming and going from the property, a point also raised in one of the complaints that prompted the investigation. That officer claimed to have spoken to Mr Virdi, who advised him that he worked on approximately 5 vehicles per week, and that only 2 of the 6 vans noted on that visit belonged to him. He recorded conversations with Mr Virdi on 4 of the site visits.
 11. When these conversations were raised with Mr Virdi in cross-examination and in re-examination he claimed that he never spoke to the Council officer, and that he just came and took pictures then left again. I find this difficult to believe. Some of the photographs were taken on the property itself, including one of the interior of the garage in the rear garden, a neighbour recalled seeing Mr and Mrs Virdi talking to the Council officer, and Mrs Virdi herself acknowledged that they had spoken to the officer. Further, the ownership of one of the vans at the property recorded as having been claimed by Mr Virdi at one of the site visits was confirmed by Mr Virdi at the Inquiry. These inconsistencies have led me to conclude that Mr Virdi's evidence at the Inquiry could not be fully relied upon.
 12. The site visit photographs and the activities recorded on the site visits paint a picture of a significant vehicle repair and maintenance business operating from the driveway of the appeal property and also from significant parts of the public highway outside, with a vehicle turnover substantially higher than the 5/month claimed by Mr Virdi in oral evidence, a matter corroborated by objecting neighbours in sworn evidence. While it was put that some of the vans pictured on the highway may have belonged to neighbours, certainly some were associated with Mr Virdi, who was seen working on them. The extent of vehicles, tools, engines and other vehicle parts present on and around the property, and the activity recorded, including revving engines, is firmly indicative of a material change in the character of the use of the property, as is the level of complaint generated in the wider neighbourhood, notwithstanding that some near neighbours have been supportive.
 13. Whilst the vehicle repair and maintenance activities may have been operating for some years at a level that might have been within the ambit of a use

incidental to the use of the property as a dwellinghouse, it seems clear to me on the evidence that the vehicle repair and maintenance activity more recently, probably after the 2012-2014 period when Mr Virdi could not work, increased to a level where it became a significant separate use of the land, and one that materially affected the character and amenity of the neighbourhood. I consider therefore, as a matter of fact and degree, that the breach of planning control alleged in the notice occurred, and it follows that the appeal cannot succeed.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nargis Awan	Solicitor, Awan Legal Associates
She called	
Maninder Singh Virdi	The appellant
Ghawan Dhiman	Neighbour
Sukhpreet Virdi	Appellant's wife
Anil Kerkaria	Agent and appeal property owner
Karen Cowley	Neighbour
Helen Brouder	Neighbour
Paul Morton	Neighbour
Kaldip Barsal	Neighbour

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Lenaghan	Of Counsel, Wokingham and Royal Borough of Windsor and Maidenhead Legal Services
He called	
Victoria Goldberg	Manager, Development Management, RBWM

INTERESTED PERSONS:

Terrance Hoult	Neighbour
Lenny Douwes	Neighbour
Mrs Bacon	Neighbour