
Appeal Decision

Site visit made on 10 May 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 17 May 2017

Appeal Ref: APP/G5180/C/16/3158293

**Land on the west side of Lower Road, Orpington also known as
1A Sanderstead Road, Orpington, BR5 4AE**

- 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 Xhevat Bafcari against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, numbered 14/00069, was issued on 24 August 2016.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from Van Hire Yard to use of the above Land as a hand car wash and valet facility with associated business operations, structures, equipment and new access into Sanderstead Road at the above Land.
- The requirements of the notice are:
 - (a) Cease the use of the above Land as a hand car wash and valet facility with associated business operations, structures, equipment and new access into Sanderstead Road at the above land;
 - (b) Remove from the Land all associated equipment, machinery, associated canopy, enclosed vacuum, jet wash and all miscellaneous tools and other items which relate to the car cash[sic] Business, and any resulting debris; and
 - (c) Cease the use of the associated unauthorised access into Sanderstead Road; and remove the access into Sanderstead Road; and remove from the Land any resulting debris.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld, subject to a correction.

Application for costs

1. An application for costs was made by the Council of the London Borough of Bromley against Mr Xhevat Bafcari. This application is the subject of a separate Decision.

Background procedural matters

2. Previous retrospective applications for planning permission to change the use of the land to a hand car wash and valeting facility were refused by the Council and then dismissed on appeal under Refs APP/G5180/W/15/3003268 and APP/G5180/W/16/3146055. These followed an initial retrospective application Ref 14/00429, which was refused by the Council on 28 March 2014. The latter appeal proposal was resubmitted to the Council under Ref 16/01162, but with
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an additional parking survey. The Council also refused that application and whilst the appellant sought to appeal against that decision, the appeal was deemed out of time by the Planning Inspectorate, because it should have been submitted within 28 days of the service of the enforcement notice, to which this appeal relates.

3. The appellants also applied for a lawful development certificate (LDC) in respect of the use of the land as a hand car wash and valeting facility and for staff accommodation and living accommodation. An appeal against the Council's refusal of that LDC was dismissed on 17 March 2016 under Ref APP/G5180/X/15/3131592 (the LDC appeal).
4. In any event, the appellant has not appealed against the enforcement notice on ground (a) and it is not for me to consider whether the use is acceptable in planning terms, or whether it could be made acceptable by the imposition of conditions. The planning merits are not before me and I have no power to grant planning permission for the use.

The notice

5. As will be apparent from the heading to this decision, there was a minor typographical error in requirement (b) of the notice in that it referred to the "car cash" business, rather than car wash. Though neither party refers to this, it was an obvious error. It is clear to me that no one was misled by it, but it ought to be corrected. I will do so, being satisfied that no injustice will result.

Ground (b)

6. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact.
7. The appellant does not dispute that the site was previously used by a van hire business and it is now used as a hand car wash and valet facility and indeed the appellant produces letters from 2 previous vehicle hire operators who occupied the site. The appellant's argument is rather that these operations also involved the washing and valeting of vehicles. However, this really relates to the question of whether the change is material in planning terms, rather than whether it has occurred as a matter of fact. That question falls to be considered under ground (c).
8. The appellant also maintains that there has always been an access onto Sanderstead Road and he merely replaced the access doors, which were in poor condition. However, a letter from the previous occupiers, Xtra Van Ltd, indicates that, prior to their occupation, there had been a rear entrance and exits onto Sanderstead Road, but they later blocked this off for security reasons. The occupiers of 5 Sanderstead Road say there was no access onto Sanderstead Road and no doors, in poor condition or otherwise, just the rear end of a building. They also say the appellant has provided "an unapproved cross-over". This is all consistent with photographic evidence which they and the Council provide from 2008 and 2012. This appears to show the rear end of a building on the appeal site and overgrown vegetation between that and the carriageway, rather than the concrete ramp which is there now and was apparent in a 2014 photograph.

9. Whatever the position may have been in previous years, I am satisfied on the balance of probability that, just before the car wash/valeting use began, there was no access onto Sanderstead Road and this was opened up to facilitate the use. A roller shutter door has been installed and vehicles now exit via a concrete ramp onto Sanderstead Road, having entered from Lower Road.
10. The appellant has not proved on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact. The appeal on ground (b) therefore fails.

Ground (c)

11. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control.
12. The essence of the appellant's case is that, although the site is now busier, vehicle washing and valeting took place there for some 20 years, as part of the previous use. Furthermore, the type of equipment referred to in requirement (b) of the notice was present throughout that time, though it has been replaced with newer, less noisy equipment in different locations.¹
13. Although the LDC appeal also concerned other matters, the Inspector in that case considered the car wash/valeting element and stated: *"...the available evidence indicates that when van hire operations were based at the site, any washing and cleaning of vehicles would have been ancillary or incidental to hiring vans, not a primary use...It is clear from what I saw at the site and from the written evidence, including letters from local residents, that the use of the site by Mr Bafcari's business is materially different from the previous use primarily for vehicle hire. One reason for this is that the car washing and cleaning activity has had a much greater impact on the local environment than the previous use, which appears to have mostly involved parking and marshalling vans with some incidental cleaning. The cleaning which then took place was evidently much less noticeable locally and much less intrusive than the current car washing activity..."*
14. Although the appellant acknowledges that his business is busier than the previous unsuccessful enterprise, a letter from the site owners says that, to the best of their knowledge, the previous van hire business operated 7 days a week and the vans were kept and cleaned on site. Another letter from Diamond Self Drive states that the site held about 25 vehicles, which were washed, valeted and repaired 7 days a week, including jet washing, hoovering and the use of power tools for repairs.
15. However, the occupiers of No 143 Lower Road say that vehicles were cleaned using ordinary hoses and vacuum cleaners and it was a minor activity in the context of an unobtrusive vehicle hire business. In any event, incidental cleaning of the operator's fleet of hire vehicles would not have been on the scale now undertaken by a dedicated car wash/valeting facility, with very frequent use of jet washers and an industrial vacuum cleaner. I have seen no evidence to lead me to a different conclusion to that reached by the Inspector in the LDC appeal. As a matter of fact and degree, I consider that the character

¹ There is no appeal on ground (f) but, in any event, the new equipment has been provided to facilitate the use and the notice can require its removal.

of the activities undertaken on the site, as part of the car wash/valeting use, is different from that associated with the former vehicle hire use.

16. I note that the appellant has now undertaken noise mitigation measures, including the provision of mobile screens, a vacuum enclosure and a jet pump enclosure. I witnessed the vacuum and one of two jet washers in operation. The appellant has also erected signs on site concerning neighbour relations and has designated staff to be responsible for marshalling vehicles. In addition, he has offered to reduce the hours of operation. However, given that there is no ground (a) appeal/deemed application for planning permission, my role is not to consider whether the use is now acceptable, or could be made acceptable in planning terms; it is merely to determine whether, at the time the notice was served, there had been a material change of use requiring planning permission. I note that, in both the previous appeals Refs APP/G5180/W/15/3003268 and APP/G5180/W/16/3146055, the Inspectors found that the use would harm neighbours' living conditions. However, even a new use which has a lesser impact on neighbours' amenity may be materially different from the one it replaces, and therefore require planning permission.
17. I conclude on this ground that, whether or not the use is acceptable in planning terms, the appellant has not proved on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. This ground of appeal therefore fails.

Overall conclusion

18. Having regard to my conclusions on grounds (b) and (c) I am satisfied that the appeal should be dismissed.

Decision

19. I direct that the notice be corrected in section 5(b) by deleting the word "cash" and substituting the word "wash". Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

J A Murray

INSPECTOR