
Appeals Decision

Site visit made on 24 May 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 13 July 2017

Appeals Ref: APP/C3240/C/16/3163628 and 3163629

Land at 17 Old Vicarage Road, Dawley, Telford, TF4 3NQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr David Lunn and Mrs Lynne Lunn against an enforcement notice issued by Telford and Wrekin Council.
 - The enforcement notice was issued on 3 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the land from residential, to a mixed use of residential and the storage, servicing and repair of motor vehicles.
 - The requirements of the notice are:
 1. Cease the use of the land for the storage of motor vehicles and scrap vehicles;
 2. Remove all motor vehicles and scrap vehicles from the land, with the exception of any roadworthy vehicles that are both within registered keepership of an occupier of 17 Old Vicarage Road, Dawley and in regular use for purposes incidental to the enjoyment of the dwellinghouse
 3. Cease the use of the land for the servicing and/or repairing of motor vehicles, save for the carrying out of routine maintenance to vehicles that are both within registered keepership of an occupier of 17 Old Vicarage Road, Dawley and incidental to the enjoyment of the dwellinghouse
 - The period for compliance with the requirements is within one month from the date upon which this Notice takes effect i.e. by the 3rd January 2017.
 - The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeals are dismissed and the enforcement notice is upheld as corrected.

Procedural matter

2. The appeal form indicated that the appeals were on ground (b) only. However it has been confirmed subsequently that the appeals are intended to proceed solely on ground (c).

The enforcement notice

3. Section 55(2)(d) of the 1990 Act states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not be taken to involve development.
 4. The notice targets storage, servicing and repair of motor vehicles that go beyond purposes incidental to the enjoyment of the dwelling. Storage of
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vehicles can be a separate use of land in its own right¹ but it may also occur in connection with a residential use. Although the alleged use is a single mixed use, the first requirement of the notice clearly requires only the storage use component to cease, and as such it cannot take away existing rights to store vehicles on the land for purposes incidental to its use as a dwelling.

5. The second and third requirements specifically restrict the extent to which a use may be said to be incidental to the dwelling use, by using the words "regular use" and "routine maintenance". Whilst the regularity with which an activity is carried on might be one relevant factor, such intervals could vary without it necessarily being determined that as a matter of fact and degree, the use is no longer incidental. So, for example, the frequency of use may also be relevant. Nor do I see why it is essential that all vehicles must be registered as owned by someone who occupies the dwelling. I will therefore amend the notice to clarify that the relevant activities should cease other than where they are carried on for purposes incidental to the enjoyment of the dwellinghouse.
6. One person's scrap vehicle can be another's classic car waiting to be restored. Such is the variance in the positions of the main parties, hence the Council's description in the notice of "scrap vehicles". There were no vehicle parts being openly stored on the land and I saw no reason to differentiate, for the purposes of the notice, between motor vehicles that were roadworthy from those that were not. For clarity I will amend the notice to omit "scrap vehicles".
7. The period for compliance gives the date of "3rd January 2017" which would be misleading in light of the appeals that have been made. The period for compliance would commence from the date of my Decision. I will correct the notice accordingly.

The appeals on ground (c)

8. The issue under ground (c) is whether or not what is alleged in the enforcement notice to have taken place constitutes a breach of planning control. The burden of proof is on the appellants to show on the balance of probability that no material change of use has taken place.
9. The appellants assert that they do not run a business and therefore no planning permission is required. However the notice does not refer to a commercial use and does not allege that a business is carried on, so this assertion does not assist the appellants in their case.
10. No 17 is a family-sized semi-detached dwellinghouse in a corner plot at the end of Old Vicarage Road and close to a churchyard in a relatively quiet suburban area. In addition to the front and rear garden areas there is a drive to the front with an area of hardstanding, some of which is partially overgrown, to the east of the drive. Behind the hardstanding and next to the drive is a building with an open bay to the front, used as a garage as well as a workshop.
11. All this property and land is included in the scope of the notice and is a single unit of occupation, within a single enclosure with no internal physical boundaries. From what I have seen and read I am satisfied that the premises form a single planning unit that coincides with the curtilage of the dwelling, in which the material change of use is alleged to have taken place.

¹ Class B8 (use for storage or as a distribution centre) of the Use Classes Order 1987 as amended.

12. When I visited, the garage contained a grey VW car and, in the rear several items of equipment for repairing or maintaining motor vehicles, together with various engine parts. The drive and hardstanding were fully occupied with vehicles parked tightly together in tandem. Apart from the vehicle in the garage there were ten other vehicles. Of these four were parked on the drive, one of which only partially so, having half its body length outside, taking up approximately two-thirds of the width of the public footway. Six vehicles were on the adjacent hardstanding, some of which had clearly been stationary on the property for some time given the vegetation growing around the wheels. The vehicles included a large white van with logos that read "Fleet Support Vehicle", and "tyre shop"; and a Ford IVECO recovery truck.
13. Council officers have recorded between ten and seventeen vehicles on the site at any one time. In the four most recent visits by officers from June 2016 to February 2017, twenty-four different vehicles have been witnessed and photographed on the site. These included taxis, vans and cars. A visit in November 2016 revealed that Mr Lunn was repairing or servicing a van for its owner who was present and who was unconnected with the appellants or their family. In February 2017 a taxi was observed being serviced and whereas the Council states that its officer was told by Mr Lunn that he, Mr Lunn owned the taxi, subsequent inquiry confirmed that neither Mr Lunn nor Mrs Lunn owned it. These and several other accounts of visits by the Council are not disputed.
14. The appellants' case is that they own all vehicles on the site. Mr Lunn states that he owns three Jaguars and a recovery truck used for his employment. Mrs Lunn states that she owns an estate car, a convertible, a saloon and a sports car, all used on a regular basis. The French-registered van on the drive is owned by relatives who stay at the house. Siblings and adult children of the appellants visit regularly and Mr Lunn maintains their vehicles.
15. Mr Lunn also states that he repairs or maintains other vehicles in exchange for help from his wider family in building the garage. However the recovery truck has been seen on the site during every visit by the Council, whether Mr Lunn was present or not, leading the Council to conclude that the truck is mainly used in connection with repairing or servicing of vehicles at the site, either to transport the vehicles to or from the site or in connection with repairs or servicing on the land. I see no reason to disagree. The Council's evidence paints a convincing picture of a high turnover of large numbers of different vehicles observed to be on the site which have not been shown to be owned exclusively by the appellants or their grown-up family.
16. Several complaints were made to the Council about the use of the site for the storage and repair of motor vehicles, dating from 2014. Further complaints were made in May 2016 that this use was not only continuing, but had intensified. Complaints continued up to the time when the notice was issued.
17. From the appellants' own statements, the land subject to the enforcement notice is being used for the storage, servicing and repair of motor vehicles. Although several vehicles on the land may be owned by the appellants, their storage in these large numbers, whether for hobby purposes or not, amounts in my view to a material change of use of the land, outside what could normally be expected to occur in the grounds of this suburban semi-detached dwelling.
18. Nor, on the evidence, am I persuaded that the nature and level of servicing and repairing of vehicles on the site is purely in connection with the normal use

and enjoyment of this dwelling. Overall it is clear to me that the vehicular elements of the mixed use are extensive and systemic, going materially beyond what I would regard as reasonably incidental to the residential use of No 17.

19. I note the appeal decisions supplied by the Council, however it would be unwise to extrapolate from these decisions a set number of vehicles whose use may or may not be incidental in a given case. I appreciate the concerns that might arise from not specifying a certain number but whether a use of land is "development" in section 55(2)(d) is a judgement to be made in the circumstances at any given time. Householders cannot generally be told how many vehicles they can keep before permission for a change of use is required. Any figure specified the enforcement notice would therefore be arbitrary.
20. Breach of an effective enforcement notice risks prosecution so there is a need for clarity, but householders usually know whether vehicles at their house are there for purposes genuinely incidental to the residential use. If vehicles are restored as a hobby, care needs to be taken and where there is doubt, there is a procedure in s192 of the Act to confirm if the proposed use would be lawful.
21. I conclude that, as a matter of fact and degree, the character of the appeal site has materially changed from a residential use to a mixed use that includes the storage, servicing and repair of vehicles. Section 57(1) of the 1990 Act states that planning permission is required for any development of land other than for specific exceptions not claimed here. No such planning permission has been granted and s171A(a) states that development without the required planning permission is a breach of planning control.
22. On ground (c) therefore the appellants have failed to prove, on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control, and the appeals on this ground must fail.

Conclusion

23. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice as corrected.

Formal decision

24. It is directed that the notice be corrected by deleting requirements 2. and 3. of the notice and replacing them with the following:
 2. *Remove all motor vehicles from the land, with the exception of any vehicles that are used for purposes incidental to the enjoyment of the dwellinghouse.*
 3. *Cease the use of the land for the servicing and/or repairing of motor vehicles, save where such use is for purposes incidental to the enjoyment of the dwellinghouse.*
25. It is further directed that in the period for compliance "i.e. by the 3rd January 2017" is deleted.
26. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR