
Appeal Decision

Site visit made on 28 June 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 25 July 2017

Appeal Ref: APP/G5750/C/16/3160930

24-28 Woodford Road, Forest Gate, London E7 0HA

- The appeal is made by Carla Templer under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 16/00920/ENFC) issued by the Council of the London Borough of Newham on 16 September 2016.
 - The breach of planning control alleged in the notice is "the material change of use to a tyre fitting workshop".
 - The requirements of the notice are as follows: -
 - "1. Cease the use as a tyre fitting workshop.
 - 2. Remove from the site all fixtures and fittings that solely facilitate the use as a tyre fitting workshop."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d).
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Correction of the enforcement notice

2. As the appellant has pointed out and was confirmed at my site visit, the upper floor of the building is a separate planning unit in residential use. The allegation in the notice should have been written so as to relate only to the ground floor.
3. The Council have also acknowledged that the notice should have stated that in their opinion the alleged breach of planning control occurred within the past ten years, not four years as stated in the notice.
4. No-one has been misled by these errors and I am satisfied that I can correct them without causing injustice. The corrections are in paragraph 5 below.

Appeal decision

5. It is directed (a) that paragraph 3 of the enforcement notice be corrected by inserting "of the ground floor of the building on the Land" between "use" and "to" and (b) that paragraph 4 of the enforcement notice be corrected by replacing "four" by "ten" in the first line under the heading.
 6. Subject to these directions, the appeal is allowed and the enforcement notice as corrected is quashed.
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Reasons for the appeal decision

Ground (c)

7. The allegation in the notice does not identify the use from which it is alleged that the premises have changed to a tyre-fitting workshop and the reasons given for issuing the notice refer to "former state", "change in use" and "intensification of the use" without explaining what the previous use is alleged to have been. The Council have, however, clarified their position in paragraphs 6.7 and 6.8 of their appeal statement as follows: -
 - "6.7 The Council relies on approved application: 64/10736/D which detailed: '*Change of use of ground floor as motor car showroom and installation of new front*'. The Council is not in possession of any subsequent application to establish the properties [*sic*] lawful use and thus relies on the above application as the last known lawful use of the unit. As such and in conjunction with the photographic evidence available at **Appendix 4** (figures Four and Five) officers maintain that the lawful use of the land is as a motor car showroom.
 - 6.8 The photographic evidence contained within **Appendix 4** demonstrates that in both 2008 and 2011 the site appeared to be in use in accordance with the above approved permission and that at some point between 2011 and 2014 a change of use occurred to an MOT centre. A further change then occurred between June 2014 and July 2016 when the site changed from an MOT centre to a tyre fitting workshop. As the above demonstrates there has been a sequence of unauthorised changes of use the most recent of which is to a tyre fitting centre."
8. The appellant has detailed knowledge of the premises, since they have been in the ownership of the Templer family since 1962, and has supplied extensive information about their use since then. She states that permission 64/10736/D was never implemented. The Council's records support this statement, since in planning application 68/10736/1925 the premises were shown as "Templers Service Station" consisting of a lubrication bay, workshop and spares room. This application was for a vehicular access to the lubrication bay, which was subsequently provided by the local authority.
9. The appellant relies as the starting point in the relevant planning history on a planning permission granted on 27 November 1946 for the use of the premises as a garage and petrol filling station, which is what they were when the family acquired them in 1962. A photograph of the exterior taken in 1965 shows the premises as they were then as the Templer Service Station. Signs advertise a breakdown service, vehicles collected and delivered, servicing, sales, spares and accessories and MOT testing. On the forecourt, there are petrol pumps, lubricants for sale, a motor scooter under repair and a rack containing tyres. All these activities are consistent with the use of the premises that was authorised by the 1946 permission.
10. The Templer family ran the business from 1962 to 1982, undertaking vehicle repairs and sales, including the supply and fitting of tyres, and petrol sales (until 1967). After 1982 the family let the premises to successive tenants - from 1983 to 1986, 1987 to 1996, 1997 to 2012 and 2012 to the present day. In each case, the appellant states that the use carried on was vehicle repairs

and sales, including the supply and fitting of tyres. She states that sales of vehicles have always been ancillary to the other activities.

11. As is to be expected, the activities carried on have varied in their range over the years. Information available to me is as follows: -

- Petrol sales ceased in 1967. [I assume this reflects the end of 'over the pavement' filling stations generally.]
- The planning officer's mid-1980s inspection report states "Car showroom ... Whilst not at all sure this use is lawful – the history file was in a mess ... the property looks like car showroom (well somewhat), there has been a history of vehicle related uses (both repairs, sales of spares and vehicles (perhaps m/cycles)) ...".
- The image captured in August 2008 shows the business was run by Ashwood Motor Co. There are vehicles displayed for sale and some vehicle repair work or dismantling is being carried out.
- The image captured in July 2011 shows the business was still being run by Ashwood Motor Co. It shows vehicle repair work. There are no vehicles displayed for sale.
- Ashwood Motor Co's business cards advertised sales, service and repairs at the premises.
- The images captured in August 2012 show a different company operating from the premises. Signage advertises MOTs, service and tyres. There are vehicles undergoing repairs and two stacks of tyres. There are no vehicles displayed for sale.
- The image captured in June 2014 shows the same company operating from the premises and the same signage. There are vehicles undergoing repair and some tyres on the forecourt. There are no vehicles displayed for sale.
- The business being carried on from the premises when the notice was issued, and still being carried on at the time of my visit, focuses on tyre fitting, but it also advertises and carries out servicing, repairs to brakes, wheel refurbishment, alloy wheels and MOT bookings and it supplies oils, batteries and various vehicle accessories. It is equipped and stocked to carry out all these activities. Photographs supplied by the appellant show servicing and repair work being carried out at the premises by the business, and work of this kind was being carried out at the time of my visit. The business does not display vehicles for sale.

12. I have no reason to doubt what the appellant has stated about the planning history of the premises. She has first-hand knowledge and has backed up her statements with extensive documentary information. The Council's position as set out in paragraphs 6.7 and 6.8 of their statement has been shown to be unreliable by a detailed examination of the Council's records, the images referred to and the appellant's evidence.

13. I have come to the following conclusions on the balance of probabilities. [This is the standard of proof, not proof beyond reasonable doubt as asserted in paragraph 6.6 of the Council's statement.] The lawful use of the premises

derives from the 1946 planning permission and nothing has occurred that would result in the loss of the use rights ensuing from that permission. The permission includes a garage, which in this context means commercial premises used for repairs, servicing and associated works relating to motor vehicles, such as MOT testing and tyre fitting, which has taken place since at least 1962. It also allows a limited number of vehicle sales, as an ancillary or 'side' activity of the kind that is frequently undertaken at such premises. There is insufficient evidence that vehicle sales have ever become the predominant activity – the planning officer's mid-1980s inspection report is inconclusive and the image captured in August 2008 is merely a snapshot of what was taking place on that particular day.

14. It follows therefore that the business currently being carried out from the premises, particulars of which I have set out in the last bullet point above, are authorised for planning purposes and that the matters stated in the notice do not constitute a breach of planning control. The appeal has therefore succeeded on ground (c).

Grounds (a) and (d)

The notice has been quashed as a result of the appeal's success on ground (c). Grounds (a) and (d) no longer fall to be considered.

D.A.Hainsworth

INSPECTOR