
Appeal Decision

Site visit made on 15 August 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 25 August 2017

Appeal Ref: APP/U2805/C/16/3165510

45 Breedon Close, Corby, Northamptonshire, NN18 9PG

- 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 Tim Haines against an enforcement notice issued by Corby Borough Council.
 - The enforcement notice was issued on 4 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission change the use of the land from a residential use to a mixed use of residential and motor vehicle repairs.
 - The requirements of the notice are:
 1. Cease repairing motor vehicles for reward on the land.
 2. Cease the storage of vehicles for spare parts at the front of the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeal is dismissed.

Reasons

The appeal on ground (b)

2. This ground of appeal is a claim that the matters stated in the Enforcement Notice which may give rise to the alleged breach of planning control have not occurred. The burden of proof rests with the appellant and the test of the evidence is on the balance of probability.
3. There is evidence from the Council that motor vehicle repairs have taken place alongside the residential use at the property. Furthermore, the appellant confirms that motor vehicle repairs take place; both in his responses to the Council's PCN¹ and in his Statement² to the appeal. Clearly therefore, motor vehicle repairs have taken place and thus I conclude that the matters stated in the Enforcement Notice which may give rise to the alleged breach of planning control have occurred. As such, the appeal on ground (b) must fail.

¹ Questions 5-12

² 47 invoices issued in 2014-15, 75 invoices issued in 2015 -16, and 50 invoices issued in 2016-2017. No evidence of how many of these were for activity away from the house has been submitted.

4. However, in light of his evidence taken as a whole it seems to me that what the appellant is actually arguing is that although motor vehicle repairs have occurred, the level of repairing activity carried out does not result in a material change of use of the residential property, such that there has not been a breach of planning control.
5. Given these circumstances I will deal with the appeal as though it had also been made on ground (c) since it would be in the appellant's interests for me to do so, and the alleged breach has been addressed by the Council in their evidence, hence there would be no prejudice to the Council's position.

The appeal on ground (c)

6. This ground of appeal is that the alleged matters, if they occurred, did not constitute a breach of planning control. The burden of proof rests with the appellant and the test of the evidence is on the balance of probability.
7. The alleged mixed use is described in the Notice as comprising two elements, those being residential use and use for motor vehicle repairs. The issue in this case therefore is whether the introduction of motor vehicle repairs has resulted in a material change of use from the lawful use as a residential dwelling house.
8. The appellant acknowledges that he runs a business at his property specialising in the repair of Jaguar motor vehicles, but not outside of the hours of 9:15am to 3:20pm or at weekends. Any weekend work to vehicles is stated to be limited to private vehicles owned by him. He disputes the Council's evidence that the level of his business activity results in harm to the amenity of surrounding residents through noise and disturbance, and that numerous cars connected with his business are parked in Breedon Close. Additionally he states that 95% of his property area remains in residential use when repair activity is being carried out.
9. Nonetheless, he accepts that low loaders have been used to deliver or collect vehicles to or from the property, although he states this is a rare occurrence of not more than once per year. He also accepts that spare parts are delivered to the property for use by him in repairing customers' cars. Also, his own evidence and responses to the Council's PCN I have previously referred to (paragraph 3 above) indicate to me that, even allowing for some repairing activity away from the house, there is a substantial level of business use at the property taking place; on average five to six vehicles per month are repaired at the property. The Council's evidence and that of neighbours, which he disputes, indicates the level of use is greater.
10. On the balance of all the evidence before me, I disagree with the appellant's view that the appeal site remains predominantly residential. I consider that the frequency and level of use of the property for repairing motor vehicles for reward is substantial and has resulted in a significant change in the character of the use of the property. That change, as a matter of fact and degree, amounts to a *material change of use* as alleged in the Notice and consequently requires planning permission. Since no planning permission has been granted for the mixed use there has therefore been a breach of planning control.
11. The appeal on ground (c) that there has not been a breach of planning control therefore fails.

The appeal on ground (f)

12. This ground of appeal is that the requirements of the Notice exceed what is necessary.
13. When a ground (f) appeal is made it is essential to understand the purpose of the Notice. Section 173(4) of the Act provides that the purpose is to (a) remedy the breach of planning control that has occurred or (b) to remedy any injury to amenity which has been caused by the breach.
14. In this case the Notice requires the unauthorised mixed use for residential use and vehicle repairs to completely cease by prohibiting the repairing of motor vehicles for reward³ and the storage of vehicles for spare parts. Hence, it is clear that the purpose of the Notice is to remedy the breach of planning control. Since the Notice goes no further than requiring the cessation of the unauthorised mixed use the requirements of the Notice are clearly not excessive.
15. The appellant suggests that objections could be resolved by restricting the times and number of hours he uses his driveway for repairing vehicles. However, that would require the imposition of planning conditions on a grant of planning permission. No appeal has been made on ground (a), that planning permission should be granted, and such a consideration is not relevant to an appeal on ground (f).
16. The appellant also refers to the Articles of the Human Rights Act 1998. However those are not engaged in legal grounds of appeal, as is the case in this appeal.
17. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR

³ Vehicle repairs associated with, and undertaken in the normal course of domestic occupation by occupiers of the property, are not prohibited by the notice.