
Appeal Decisions

Site visit made on 10 September 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2019

Appeal Ref: APP/L5810/C/18/3217580

Land to the rear of 63-65 Raleigh Road, Richmond TW9 2DU

- 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 Colin Ferns of Colin Ferns Limited against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
- The enforcement notice was issued on 13 November 2018.
- The breach of planning control as alleged in the notice is a material change in the use of the former substation building (sui generis) at the rear of the Property to use for motor repairs, servicing and restoration (B2) in connection with the adjacent existing car repair premises.
- The requirements of the notice are:
 - i. Cease the unauthorised use of the former substation building for motor repairs, servicing and restoration; and
 - ii. Remove from the former substation building all furniture, fixtures, fittings, equipment and vehicles associated with the unauthorised use; and
 - iii. Reinstate the former internal wall which separated the substation building and the adjacent motor repairs premises.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is varied with a correction.

Appeal B: APP/L5810/W/19/3222431

Land to the rear of 63-65 Raleigh Road, Richmond TW9 2DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Colin Ferns of Colin Ferns Limited against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref: 18/3571/FUL, dated 19 October 2018, was refused by notice dated 30 January 2019.
- The development proposed is use of the former sub-station for maintenance and repair of motor vehicle parts and for the storage of cars and motor vehicle parts (within Use Class B2/B8); the erection of a single storey extension to provide additional WC and the erection of a screen trellis to properties in Raleigh Road.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. There is a typographical error in paragraph 5(iii) of the enforcement notice which relates to the measures the appellant is required to do. Rather than

reading "Reinstate the former internal wall *to* which separated the substation building and the adjacent motor repairs premises" the requirement should read "Reinstate the former internal wall which separated the substation building and the adjacent motor repairs premises". This can be corrected without causing injustice to parties.

Appeal A on ground (a) and Appeal B

2. The main issue is the effect on highway safety.
3. The vehicle repair workshop is situated off a mainly residential street and access is gained between two dwellings. I understand that the business has operated from the premises since the 1990s and specialises in repairing, maintaining and restoring Mercedes Benz vehicles.
4. At my site visit I noted that there are three hoists in the main garage area with an additional two hoists in the extended area, giving the opportunity for five vehicles to be worked on simultaneously. From my own observations it is clear that there is insufficient car parking provision on-site. At present cars are parked in the access road between Nos 63 and 65 Raleigh Road, which blocks the access route. In order to manoeuvre a car off the site all the cars parked in the access road need to move onto the residential street, normally in a reverse movement. The manoeuvre is difficult due to the relatively narrow residential street and other cars being parked on the street immediately adjacent to the access. The current situation is not safe, even though to my knowledge there are no records of accidents in the locality.
5. I understand that the business may have some parking permits for the controlled parking zone and some employees may park away from the site or alternatively use public transport to get to work. However, it is clear from my own observations and the evidence before me that customers' vehicles are parked in the access road and any increase in the number of customer or business vehicles would exacerbate the present conditions which are already unacceptable.
6. I am aware of the appellant's views that the additional space, hoists and facilities could provide additional space for the storage of vehicles which are currently stored elsewhere and the space could be used to replace the storage lost and in part provide storage for other aspects of the business's operations. It has also been confirmed that the use of the sub-station could be restricted to exclude the repair, servicing or restoration of motor vehicles. The appellant has also confirmed that he agrees with the conclusions of my colleague Inspector with reference to the provision of additional servicing bays and associated vehicle hoists, but the remaining concerns could be addressed by conditions to restrict the activities that can take place in the extended area.
7. It may well be the case that the appellant currently intends to only use the additional space for long term storage, but it is without question that the additional space would provide the opportunity for future intensification of the use of the site. I have considered the appellant's argument that the additional space would not necessarily increase the overall business capacity and capability of the premises, but there is insufficient evidence before me for me to conclude that that would be the case.

8. The appellant claims that the development would improve business logistics rather than allow him to take on more work, yet the evidence presented suggests otherwise, that the business is expanding by creating the additional employment space. Increasing the floorspace of the business on this particular site would in my opinion be likely to increase the intensity of business activities, even though that may be for storing particular items. At some point stored items would need to be moved into and out of the site, thus resulting in additional highway movements involving moving vehicles and equipment around an already very restricted site with potentially harmful consequences to local highway safety.
9. I am aware that the appeal site has an unrestricted B2 use and indeed the appellant has presented a fall-back position that the existing business could increase hours of operation to increase the intensity of the use of the site and also increase the number of associated vehicle movements. However, such a fall-back position directly contradicts the appellant's argument that the extension to the workshop area is not intended to increase the intensity of the use of the site. In addition, I do not consider the fall-back position to be likely and in any case, there is other legislation in place which may be used to control activities taking place on the site and the times when such activities take place. I am aware of the appellant's wider comments with respect to the fall-back position, but I give it little weight in the overall planning balance.
10. The appellant suggests conditions restricting the use of the site and the hours of operation of the workshop. However, a larger workshop with additional business capacity introduces an evident potential for a level of intensification in business activity on the site, even if it is associated with restricted displaced storage from elsewhere. In addition, the description of the development the subject of the appeals relates to maintenance, repair and storage uses and to restrict the use by condition as suggested would modify the development in such a way as to make it substantially different from that set out in the application and the enforcement notice and should not be used. The Planning Practice Guidance advises against such an approach. Furthermore, the courts have held¹ that the criterion on which a judgment should be exercised in a case such as this is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development the opportunity of such consultation. As such, the imposition of the condition restricting the use as suggested is not appropriate.
11. Therefore, I conclude that the development and the proposal are harmful to highway safety. As such there is conflict with Policies LP44 and LP45 of the Richmond Local Plan and the National Planning Policy Framework which together seek to ensure that development does not harm highway safety and provides sufficient levels of car parking.

Appeal A on Ground (f)

12. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the cessation of the use of the building for motor repairs, servicing and restoration, the removal of all furniture, fixtures, fittings,

¹ Wheatcroft v SSE [1982] JPL p37

equipment and vehicles associated with the unauthorised use and reinstatement of the internal wall, the purpose is clearly to remedy the breach. Any measures short of this would not achieve the overall purpose and in this respect the appeal on ground (f) fails.

13. Nonetheless, I am mindful that enforcement action is intended to be remedial and not punitive. With a ground (a) being included in Appeal A it would be possible to grant planning permission for part of the development under s177(1) of the Act. The appellant has suggested that requirements (ii) and (iii) of the notice are excessive because (ii) is too imprecise, exceeds what is necessary to arrest the unauthorised use and includes ancillary uses associated with the garage use such as storing tools and equipment. It is also contended that there are measures within step (ii) that are associated with use which does not lead to any increase in vehicular traffic.
14. As previously set out in this decision, the appellant has also suggested that restrictions on the property through a planning condition or conditions could mitigate the harm associated with the use and highway safety concerns. However, I have concluded that in this case such a condition would not be suitable. It is also clear to me that requirement (i) requires the current use to stop and that measure is required in order to mitigate the harm associated with the use. Measures short of that would not adequately mitigate the highway concerns because in my opinion the retention of the current use or a lesser use of the property may result in unacceptable additional use of the access between Nos 63 and 65 Raleigh Road. Furthermore, requirement (ii) is needed to ensure the building is not used for other activities associated with the commercial use of the site which may also give rise to increased levels of activity on the site – that includes storage uses associated with the vehicle maintenance and repair business
15. The appellant argues that (iii) does not involve a material change of use. The courts have held that where an enforcement notice alleges a material change of use and requires certain works to take place, the works must have been integral to the making of the material change of use. In this particular case, whilst the removal of an internal wall that once separated the substation from the workshop may not in itself require permission, it is clear to me that its removal has facilitated the unauthorised material change of use of land from a sui generis substation to use for motor repairs, servicing and restoration in connection with the adjacent existing car repair premises. Consequently, it is entirely reasonable for the enforcement notice to require the reinstatement of the former internal wall.
16. I conclude that lesser steps would not remedy the breach or overcome the harm identified and therefore the appeal on ground (f) fails.

The appeal on ground (g)

17. The ground of appeal is that the time given to comply with the requirements is too short. Three calendar months would be sufficient to cease the use of the building, remove items and reinstate the former internal wall. The 6 to 12 months compliance period suggested by the appellant would be excessive given the continuing harm caused by the use of the former sub-station. There is insufficient evidence to show that the requirements of the notice could not be undertaken within the 3 month period.

18. The requirements of the notice are relatively minor and the 3 month period seems to me to be reasonable and as such the appeal on ground (g) fails.

Other Matters

19. I have also noted the appellant's comments on the benefits of the development, including re-use of a vacant building, provision of employment floorspace, replacement storage facilities and additional vehicle storage space, but these do not outweigh the harm I have identified with respect to highway safety.

Formal Decisions

Appeal A

20. I direct that the enforcement notice should be corrected by the deletion from paragraph 5(iii) of the word "to". Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal B

21. The appeal is dismissed.

A A Phillips

INSPECTOR