



Appeal Decision

Site visit made on 16 September 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/A5270/X/18/3202076

44b Lea Road, Southall UB2 5QA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Masood Ahmed of Mass Global Motors against the decision of the Council of the London Borough of Ealing.
 - The application Ref 177596CPE, dated 6 October 2017, was refused by notice dated 22 December 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the repair of general cars, mechanical and body work Class B2 and tyre fitting services sui generis use.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether the Council's decision to refuse the certificate was well-founded.

Reasons

3. The application seeks to establish that the use of the premises for car repairs, mechanical and body work and tyre fitting services is lawful. Section 191(2) of the Act says that uses and operations are lawful at any time if –
 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Section 171B(3) provides that in the case of a breach of planning control of the type involved here, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. The appellant claims that the use of the premises for the uses claimed has been carried out for more than 10 years.
5. Section 191(4) says that if, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter

- described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
6. In an application of this kind, the onus is on the applicant (and appellant) to furnish adequate evidence to satisfy the decision maker of the lawfulness of the use on the balance of probabilities. In this case, the Council has offered no evidence which might corroborate or dispute the claim, and they are not required to do so. On the basis of the appellant's evidence, the starting point is the letter of Mr Rahman Soraya (the owner) who says that the premises have always been used as a car mechanics workshop since he bought them over 15 years ago (as at 2017).
 7. The Planning Practice Guidance says that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
 8. The owner's letter does not have the force of a statutory declaration or affidavit, but unless there is contradictory evidence, this does not matter. However, the claim is scant on detail. It does not say who carried out car repairs, on what scale, and whether it was carried out in part or all of the appeal premises. The letter makes no mention of body work or tyre fitting.
 9. Documentary evidence has been submitted; however, none of it (with the exception of a copy of a lease dated 28 June 2017, to which I shall refer below) says what the premises were used for. A number of repair and service invoices have been submitted which give the address of the firm carrying out the repairs as the appeal premises, but they do not amount to unambiguous evidence as to the use of the premises, never mind as use for a 10 year period. Again, they say nothing about tyre fitting. Accordingly, they have some supportive value about the use for carrying out car repairs, but fall well short of the precise evidence necessary to grant a certificate.
 10. More importantly, the appellant's own evidence is contradictory. The copy of the lease dated 28 June 2017 indicates that the lease runs from 27 March 2017. One of the clauses of the lease deals with "the permitted use", which it defines as "Use within Use Class B1 of the Town and Country Planning (Use Classes) Order 1987 as at the date this lease is granted." Class B1 covers a number of uses, including for any industrial process, being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. I consider that car repairs and bodywork are likely to result in noise, and possibly smell and fumes, and could not be carried out in a residential area without detriment to the amenity of that area, and thus would fall outside of the definition of Class B1.
 11. Class B2, which is the use which the application seeks to certify, is defined as "Use for the carrying on of an industrial process other than one falling within class B1 above or within classes B3 to B7 below". Thus, the two uses are clearly distinct. I recognise that this clause in the lease may have been inserted in error, or in ignorance of the relevant use class for car repairs, but it forms

part of a legal document signed by the owner and occupier of the site, and I attach significant weight to it.

12. The appellant says that neighbours can corroborate the claim to lawfulness. However, they have not done so, despite being provided with an opportunity to make representations when the Council notified them of the application.
13. As it stands, the evidence lacks sufficient clarity and is too ambiguous for me to be satisfied on the balance of probabilities that the use for car repairs and tyre fitting is lawful. I therefore conclude that the Council's decision to refuse the application was well-founded and that the appeal must be dismissed.

JP Roberts

INSPECTOR