



Appeal Decision

Site visit made on 16 January 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal Ref: APP/D0121/C/19/3225137

36 Addiscombe Road, Weston-super-Mare BS23 4LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Nigel Edwards against an enforcement notice issued by North Somerset Council.
 - The enforcement notice was issued on 15 February 2019 under ref. 18/00453/OTH.
 - The breach of planning control as alleged in the notice is: *"Without planning permission the material change of use of land from residential to mixed use of residential and business use for sale and repair of vehicles."*
 - The requirement of the notice is set out as follows:
"Cease the use of any part of the land as a vehicle sales business with associated use for the repair of vehicles and display and sale of vehicles for sale."
 - The period for compliance with the requirement is 7 days.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Background and matters of clarification

2. No. 36 is a 2-storey detached house which stands close to the junction between Addiscombe Road and Brownlow Road. The surroundings are residential in character.
 3. The property benefits from a rear garden mostly laid as lawn, a single garage attached to one side of the house, a front garden given over to hardstanding and a vehicular access on to Addiscombe Road. All this property and land was included in the scope of the enforcement notice and I am satisfied that the premises form a single planning unit that coincides with the curtilage of the dwelling, in which a material change of use is alleged to have taken place.
 4. At my site visit, 2 cars were parked on the front hardstanding. One (a Chevrolet Cruze) was awaiting repair and sale. The other (a Peugeot 508) was being used by the appellant. No other vehicles associated with the appeal property were evident on the street. As I explained at my site visit, I had noted the former vehicle only in the mid-afternoon period on the day before. The hardstanding is large enough to take 7 or 8 cars if they were all crammed in.
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5. The only objections from third parties that have been received in response to this appeal are from the occupiers of 29 Addiscombe Road. They object to the idea of planning permission being granted. I should clarify that as no appeal has been lodged on ground (a), an application for planning permission is not deemed to have been made. As such, the planning merits of the development alleged in the notice do not fall to be considered.
6. Grounds (b) and (c) are amongst what are termed the legal grounds of appeal, distinct from any planning merits. The burden of proof lies with the appellant, the test of the evidence being made on the balance of probability. An appeal on ground (b) is directed to the consideration of whether the matters alleged in an enforcement notice have occurred as a matter of fact. On ground (c) the appellant needs to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. In a case such as this, these 2 grounds of appeal are inextricably linked and I note that the written representations from the Council and the appellant essentially combine them as one. I shall do likewise. In short, if it is found that what has taken place at the appeal property has not been significant enough to cause the material change of use of the land from residential to a mixed use of residential and business use for the sale and repair of vehicles, there would be success on grounds (b) and (c). If the opposite was found, both grounds of appeal would fail.

The appeal on grounds (b) and (c)

7. The appellant points to current guidance on working from home held on the Planning Portal website which states:

“You do not necessarily need planning permission to work from home. The key test is whether the overall character of the dwelling will change as a result of the business.

If the answer to any of the following questions is 'yes', then permission will probably be needed:

- *Will your home no longer be used mainly as a private residence?*
- *Will your business result in a marked rise in traffic or people calling?*
- *Will your business involve any activities unusual in a residential area?*
- *Will your business disturb your neighbours at unreasonable hours or create other forms of nuisance such as noise or smells?*

Whatever business you carry out from your home, whether it involves using part of it as a bed-sit or for 'bed and breakfast' accommodation, using a room as your personal office, providing a childminding service, for hairdressing, dressmaking or music teaching, or using buildings in the garden for repairing cars or storing goods connected with a business - the key test is: is it still mainly a home or has it become business premises?”

8. Also of relevance, as referred to by the Council, is the Government’s online publication Planning practice guidance (Paragraph: 014 Reference ID: 13-014-20140306). This section is headed **“Do I need planning permission to home work or run a business from home?”** and it advises the following:

" Planning permission will not normally be required to home work or run a business from home, provided that a dwelling house remains a private residence first and business second (or in planning terms, provided that a business does not result in a material change of use of a property so that it is no longer a single dwelling house). A local planning authority is responsible for deciding whether planning permission is required and will determine this on the basis of individual facts. Issues which they may consider include whether home working or a business leads to notable increases in traffic, disturbance to neighbours, abnormal noise or smells or the need for any major structural changes or major renovations."

9. Whether something amounts to a material change of use is a matter of fact and degree in each case, to be assessed in the context of the planning unit. For a use to be considered incidental to the enjoyment of a dwelling house, it must be of a scale and nature that is incidental to the reasonable enjoyment of the normal residential use of the buildings and land which comprise the dwelling house and its curtilage. The key tests are reasonableness and whether the overall character of the dwelling changes as a result of the non-residential use.
10. This enforcement case was started by the Council in October 2016. On the basis that the appellant was conducting "less than one car sale per week as an average" from the property, carrying out only light repairs in front of the garage on an occasional basis to only the vehicles he was driving or kept at the property for sale, parking only one or 2 cars for sale at any one time along with his own car on the hardstanding and did not have any employees as such, the Council (in November 2016) did not consider that there had been a material change of use of the dwelling house. I do not disagree with the outcome reached at that time.
11. Additional complaints were made to the Council in 2018. This prompted the Council to re-examine the situation. A different conclusion was eventually reached and the enforcement notice was issued. The appellant is adamant that he was not and is not doing anything fundamentally different to what he was doing in 2016 and he believes that he achieves compliance with the working from home guidance found on the Planning Portal website. My reading of all the written material before me would tend to support the appellant's stance.
12. The evidence sent to the Council from the sole complainant covering 22 different days between 20 September 2018 to 13 February 2019 has not been submitted for my attention. It is impossible for me to make my own assessment of that material. However, the appellant has responded in some detail to all the associated issues potentially raised by the photographic evidence as recorded in the bullet points in paragraph 11 of the Council's statement. The appellant's observations on the material seem to me to be plausible and do not give me any undue cause for concern.
13. It is also significant that no other complainants made themselves known to the Council during its investigation. In my experience, if car sales with associated car repairs were being carried out at this property on a significant scale with unneighbourly consequences, then one would have expected the Council to be in receipt of complaints from more than one household, especially bearing in mind the site lies within a very pleasant and quiet established residential area. In fact, the Council evidently had before them 2 letters from another nearby household in support of the activities carried on by Mr Edwards.

14. Focussing on this appeal, third party representations have been received that are favourable to the appellant from or on behalf of the occupiers of 31 and 33 Addiscombe Road. The letter of objection from the third parties at no. 29 is more to do with a concern about the prospect of planning permission being granted. I have addressed that matter in paragraph 5 above. There has been no third party letter submitted detailing lists of activities on certain days at the appeal property. This and the content of the letter from Mrs Lisa Oxley (of no. 31 since May 2019) would appear to suggest that the sole complainant noted in paragraph 12 above has moved away, as confirmed by the appellant himself.
15. The Council makes little of its own visits to the property between 26 September 2018 and 11 January 2019. If photographs were taken at any of those visits, they have not been supplied. The occasional display of trade plates would be necessary when a car is not taxed. This would not be unusual in itself and I understand that trade plates are not displayed when such cars are parked on the driveway. I note that the cars made available for sale have not carried any form of for sale signage. These visits did not obviously point to a situation whereby the use for car sales and repairs was having effects (general activity, visitors, traffic and parking, noise and the like) over and above what might be expected if the property were in use as a single dwelling without any ancillary use.
16. The Council refers to conflicting evidence provided by the appellant when reading across his letters of 28 October 2016 and 12 November 2018 and his response to the Planning Contravention Notice dated 3 February 2019. The Council does not pinpoint what serious contradictions might be raised. Having "less than one car sale per week as an average" (2016), "selling circa 1 car per week" (2018) or "Typically I would sell 1 car per week" (2019) could all produce more or less the same tally of about 51-52 cars sold per year. Whether there is one visit or a maximum of 2 visits per week by customers would not be material in my view, in itself or as a contradiction or as viewed against the customers that may typically visit a wide range of home working settings carried on without needing planning permission. Such figures do not point to a marked rise in traffic or people calling.
17. I have studied *Peake v Secretary of State for Wales (1971) 70 LGR 98* but at 36 Addiscombe Road, I cannot identify a full-time commercial activity, any intensification on a scale to change the character of the property or the sale of motor vehicles belonging to others. If anything, repairs to the cars for sale on the premises seem to have reduced since around October 2018 for the reasons given by the appellant and as noted by one of the third parties. The hobby car sales use no doubt supplements the appellant's income. Whilst there is a registered company for the car sales activity, there is also one for his property interests which commenced in 2016 or shortly thereafter and which the appellant says provides him with his main source of income. The existence of the registered company for car sales could not of itself amount to a material change of use. It is more to do with keeping his financial affairs in order for his accountant.
18. I note the 2 appeal decisions supplied by the Council but it would be unwise to extrapolate too much from them since each case must be looked at on its own facts and in its own context. Still, the Inspector in the South Gloucestershire case said "...while the storage, repair, cleaning and selling of a car or cars owned by the occupiers of a dwellinghouse would be considered incidental to the

enjoyment of the property, as a matter of fact and degree, the storage of 11 cars belonging to other people in a prominent position occupying all the available space in front of your house and occasionally parked on the road, in my view, cannot be considered incidental to the enjoyment of your dwellinghouse.” In the appeal case before me, all the cars are owned by the appellant and I have not seen any photographs or other evidence to suggest that the whole of the front garden has been totally devoted to the parking of cars in a closely spaced layout redolent of used car sales lots. In the appeal case in Braintree, the appellant was apparently selling cars partly on behalf of a wide range of friends and contacts who live in the area, may have had one customer per day and deployed “for sale” signage at the property. None of this has occurred at 36 Addiscombe Road.

19. The appellant seeks to draw comparisons with other home working uses which could often be accepted as being incidental to the enjoyment of a dwelling house. This is understandable to provide a degree of context. For instance, a childminding service in a dwelling offering care for up to 3 or 4 children is often held not to require planning permission, yet there could be up to a total of 6 or 8 vehicular movements per day associated with such a use of a property.
20. Drawing these threads together, I find that the appeal property remains first and foremost a private residence. On the basis that a total of 2 or 3 vehicles (one of which is for the appellant’s daily use) are kept well-spaced apart in the front garden only without any display of for sale signage or trade plates and there are only one or 2 customers calling per week, reasonable observers are likely to take the view that the character of this private residence would be no different to that of other residential properties in this street. The interior of the garage appeared to me to be no different to a well-stocked domestic garage. There is insufficient evidence to suggest that the vehicle repairs that have been undertaken have been of such an intensity or nature as to have resulted in abnormal noise or smells or in undue disturbance to neighbours. There has not been a marked rise in traffic or people calling or any evidence of excessive activity at unreasonable hours. No major structural changes or major renovations have been required.
21. Having regard to all the written representations before me and to the findings of my site visit and applying current guidance on working from home held on the Planning Portal and Planning practice guidance websites, I consider on the balance of probability that what has taken place at the appeal property has not been significant enough to cause the material change of use of the land from residential to a mixed use of residential and business use for the sale and repair of vehicles. There is therefore success on grounds (b) and (c) because the alleged breach of planning control set out in the enforcement notice – that being the **material** change of use of the land - has not occurred and there has not been a breach of planning control. The enforcement notice will be quashed.

Andrew Dale

INSPECTOR