



Appeal Decisions

Site visit made on 28 January 2020

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 8 March 2020

Appeal A Ref: APP/C4615/C/19/3230172

Appeal B Ref: APP/C4615/C/19/3230173

2 Sovereign Drive, Dudley DY1 2UE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr D Blewitt against an enforcement notice issued by Dudley Metropolitan Borough Council. Appeal B is made by Ms H Jones.
- The enforcement notice was issued on 29 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, and within the last four years, the part change of use of the Land for the commercial storage, maintenance and repair of commercial vehicles.
- The requirements of the notice are:
 - i Cease the business operation of the Land for the commercial repair, storage and maintenance of vehicles not ancillary to the main dwellinghouse;
 - ii Remove from the Land all vehicles that are stored or parked on the Land in connection with a commercial/business use, including the flatbed van;
 - iii No more than three vehicles to be stored on the Land at any one time.
- The period for compliance with the requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, the appeals 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.

Summary of Decision: The appeals succeed in part and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters

1. The wording of the allegation “part change of use” indicates the Council considers the Land is in a mixed use, which is defined as two or more primary uses operating within the same planning unit. It is clear from the notice that the land targeted is the house and garden at No 2 Sovereign Drive, which corresponds with the unit of occupation. It is not apparent that a smaller part of the unit was physically separate and distinct, and/or occupied for different and unrelated purposes at the date the notice was served. Hence, I consider the planning unit to be the whole of the property at No 2 as shown on the plan.
2. Where there is a mixed use, it is not open to the Council to decouple elements of it. The use of the site is the single mixed use with all its component activities. That being the case, the allegation should refer to all the components of the mixed use, even if it is considered expedient that only one should cease. In this case, and based on the submissions, the allegation would need correction to include the ongoing residential use of the site. This would lead to a consequential correction to requirement (i), as set out below.

3. In addition, the reference to four years within the allegation is incorrect. Under section 171B(3) of the 1990 Act as amended, the relevant time limit for development involving a material change of use is 10 years. It is crucial that the correct time period is specified as this may influence the grounds of appeal.
4. Furthermore, the Council explains that the reference to 'commercial vehicles' means non-residential vehicles and operations. In view of this, and taking account of the above matters, I consider the notice should be corrected to state the allegation accurately and with a greater degree of precision, as follows:

"without planning permission, and within the last 10 years, the material change of use of the Land from residential to a mixed use of residential and commercial comprising the repair/modification of vehicle components and storage of customers' vehicles".
5. Having sought the views of the appellant and the Council, I am satisfied I can correct the notice to address these matters without injustice.

The appeals on ground (b)

6. In order to succeed on an appeal on ground (b), the appellants must show on the balance of probability that the matters alleged in the notice, as corrected, have not occurred as a matter of fact.
7. The appeal premises comprises a two-storey detached house, a detached garage, driveways and a rear garden. The appellant is a self-employed IT consultant, specialising in electronics and computer hardware/software. His business primarily concerns remapping car engine control units (ECUs), which I understand involves changing or overwriting the programme to customise or improve the car's performance. I am advised that at least 50 percent of the business is carried out by post, with the appellant undertaking the remapping on his laptop somewhere within the house.
8. The appellant explains that his business has started to expand beyond software configuration to include mechanical work on car engines. Most of this work is not carried out directly to the vehicle, as customers tend to re-fit the engine themselves. A limited number of customers call at the house and only by appointment. Regarding the vehicle storage, the appellants own several cars themselves, and a flatbed van which is used in connection with their hobbies. However, it is acknowledged that customers' cars are stored at the premises, on occasion for up to several months. The appellant is also involved in buying and selling components, which requires deliveries and collections.
9. The appellant explains that he does not maintain or repair commercial vehicles, but only works on private cars. I am satisfied that the corrected allegation would overcome this point.
10. The appellant argues that the alleged commercial use is not a primary use but is 'de minimis', meaning that it is on too small a scale for the law to take account of it. However, the appellant's business operation, as described, is clearly greater than de minimis by his own evidence and description of what takes place. If this assertion were not accepted, it is further argued that the commercial use is ancillary/incidental to the primary residential use of the property.

11. Whether or not a use is incidental is a matter of fact and degree. Activities which are not integral to the use as a dwellinghouse but are incidental to it and within its curtilage are excluded from development¹. This allows for uses on a scale and nature incidental to the reasonable enjoyment by an occupant of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage. Incidental uses are not distinguished by scale, although that may be relevant. The essential feature is that there should be some functional relationship between the incidental use and the primary use. That functional relationship should be one that is normally found; it is not based on the personal choice of the person carrying out both activities together. Crucially, it is necessary to consider what is reasonable.
12. Some of the activities described by the appellant could be considered to be normally found in association with a residential use, for example, parking the flatbed van, which is used for transporting his personal event car, or parking the appellants' own vehicles on the driveway. However, remapping of ECUs, mechanical work to car engines, storage of customers vehicles and buying/selling components would not. These activities result from the appellant's business operations, which he chooses to run from home. This is not a normal relationship. It cannot be considered to constitute reasonable enjoyment by an occupant of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage.
13. Therefore, as a matter of fact and degree, I consider that the commercial use is not incidental to the primary residential use but comprises a primary use in its own right. As such, I find that the matters alleged in the notice, as corrected, have occurred as a matter of fact. The appeals on ground (b) must fail.

The appeals on ground (c)

14. In order to succeed of an appeal on ground (c), the appellants must show on the balance of probability that the matters alleged in the notice, as corrected, do not constitute a breach of planning control. The making of a material change of use constitutes 'development'² for which planning permissions is required³.
15. For there to be a material change of use, as alleged, there needs to be some significant difference in the character of the activities from what has gone on previously. Once a business is carried out from the dwellinghouse or curtilage, even if it is not full time or does not sustain the entire livelihood of the operator, a material change of use may result. In addition, an extended hobby can materially change the character of a dwelling, as well as impinging on the living conditions of neighbours.
16. The commercial use of the premises is not confined to one particular area. Customers' cars would be stored on the driveway, while the appellant works primarily in the house. The buying and selling activities involves deliveries/collections, which despite assertions to the contrary, are likely to be at a frequency greater than that which would be normally found at a residential property. In addition, customers visit the premises.

¹ By virtue of Section 55(2)(d) of the 1990 Act as amended.

² 'Development' is defined in section 55(1) as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use of any buildings or other land.

³ Section 57(1) of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Section 171A(1)(a) provides that carrying out development without planning permission constitutes a breach of planning control.

17. The cumulative effects of the totality of the commercial activities are that there has been a significant difference in the character of activities than those which would normally be associated with a residential use. Moreover, the nature of the activity has resulted in offsite effects, such as disturbance to nearby residents, which has planning consequences. Overall, I consider that the physical change in the land and activity resulting from the introduction of the commercial use constitutes a significant difference in its character, amounting to a material change of use for which express planning permission would be required.
18. In the absence of any planning permission for the mixed use at the property, the appeals on ground (c) must fail.

The appeals on ground (f)

19. Section 173(4) of the 1990 Act as amended indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case, the reasons for issuing the notice refer to the effect of the development on the public realm and the occupants of neighbouring properties. It is apparent that the purpose of the notice is to remedy the breach of planning control. What must be considered is whether the requirements of the notice exceed what is necessary to achieve that purpose.
20. Requirements must always respect lawful use rights, including rights to revert to any lawful use⁴. The appellant explains that the household owns eight cars in addition to a flatbed van. Parking on a driveway can be considered incidental to the reasonable enjoyment by the occupants of the normal residential use of the buildings and land, provided the vehicles are for personal use. In this case, I consider that parking the flatbed van and the appellants' own vehicles would be a use incidental to the primary residential use of the dwellinghouse and its curtilage. Therefore, the requirements that seek to remove or restrict incidental parking exceed what is necessary to remedy the breach.
21. As explained above, in view of the corrected allegation, I intend to make a consequential correction to requirement (i). In addition, I will amend requirement (ii) and delete requirement (iii) in order to protect lawful rights.
22. I find that the steps required by the notice exceed what is necessary to remedy the breach of planning control. The appeals on ground (f) succeed to this extent.

The appeals on ground (g)

23. The appeals on ground (g) are that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed. The appellant is seeking an extended period to make alternative arrangements for his business operations. Given that the business operations form the appellants' livelihood, I consider that an appropriate period for compliance would be six months and I will vary the notice accordingly.
24. To this extent the appeals on ground (g) succeed.

⁴ *Mansi v Elstree RDC* [1964] 16 P & CR 15335.

Conclusion

25. For the reasons given above, I conclude that the requirements are excessive to remedy the breach of planning control and the period for compliance falls short of what is reasonable. I shall correct and vary the enforcement notice, prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

Formal Decision

26. The appeals are allowed on grounds (f) and (g).

It is directed that the enforcement notice is corrected by:

(i) the deletion of the allegation in paragraph 3 and its replacement with:

“without planning permission, and within the last 10 years, the material change of use of the Land from residential to a mixed use of residential and commercial comprising the repair/modification of vehicle components and storage of customers’ vehicles”.

(ii) the deletion of requirement (i) and its replacement with:

“Cease the commercial use of the Land, comprising the repair/modification of vehicle components and storage of customers’ vehicles”.

and varied by:

(i) the deletion of the words “including the flatbed van” in requirement (ii);

(ii) the deletion of requirement (iii) in its entirety; and

(iii) the substitution of six months as the period for compliance.

Subject to these corrections and variations the enforcement notice is upheld.

Debbie Moore

Inspector