
Appeal Decisions

Site visit made on 10 February 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 April 2020

Appeal A: APP/R4408/C/19/3234123

Appeal B: APP/R4408/C/19/3234124

37 Armroyd Lane, Elsecar, Barnsley S74 8ET

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Aidan Sanderson (Appeal A) and Mrs Laura Sanderson (Appeal B) against an enforcement notice issued by Barnsley Metropolitan Borough Council.
 - The enforcement notice was issued on 25 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of land to a mixed use as residential dwelling house and base for motor vehicle sales.
 - The requirements of the notice are: -
 - (i) Cease the unauthorised change of use relating to the sale of motor vehicles at the property and ensure the only vehicles stored at the premises are those directly owned and operated day to day by the registered occupants of the dwelling house.
 - The period for compliance with the requirement is one month.
 - The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
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The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. The description of the alleged breach states that the material change of use is a mixed use as a residential dwelling house and base for motor vehicle sales. As a dwelling house is clearly a residential use the word '*residential*' is superfluous and I intend to delete it. It is not clear what a '*base*' for motor vehicle sales is from the evidence before me and I do not consider that this wording is required. Moreover, it is clear that the appellants understand that the allegation is a material change of use to a mixed use as a dwellinghouse and motor vehicle sales. As such, I intend to delete the wording '*base for*' from the description. I consider that I can carry out these corrections without injustice to the parties.
3. The description of the alleged breach only cites the mixed use of a dwellinghouse and motor vehicle sales and does not allege that vehicles are

being stored on the land. As such, I consider that the part of the requirement relating to the storage of vehicles should be deleted. Therefore, I intend to delete the wording '*and ensure the only vehicles stored at the premises are those directly owned and operated day to day by the registered occupants of the dwelling house*'. I consider that I can carry out this correction without injustice to the parties.

4. The appellants have stated that advice was sought from the Council at a planning drop in session at Barnsley library and was told that it is perfectly fine to run a small business from home, there are many people who do this and that they were shown the planning portal website to give me an idea what sort of business would/would not require planning permission.
5. However, I have not been provided with the date of when the appellants attended this drop-in session or the details of what type of business or working from home was discussed at that session. It would appear that the advice given was of a general nature of what type of activity may/may not require planning permission when working from home. In this case it seems no advice was ever given that the specific development that forms the alleged breach would not require planning permission. Nonetheless, even if it was, informal advice from a Council Officer (which the drop-in session would seem to have been) cannot later prevent the issue of an enforcement notice if it is found the development does require planning permission. This is a well-known aspect of planning law and requires no further elucidation here.
6. In addition, I have no evidence to indicate that an application was made for a formal decision through sections 191/192 of the 1990 Act. For the reasons given above, I conclude that the enforcement notice is valid, the Council are not prevented from issuing it and that no injustice would be caused by correcting the errors and misdescriptions in accordance with my powers under section 176(1)(a) of the 1990 Act.

The ground (b) appeals

7. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The appellants must show on the balance of probabilities that the matters as alleged in the notice have not in fact occurred.
8. The appellants state that the property is not used for motor vehicle sales as the business is based online, sales mostly occur by telephone, most vehicles are stored at a storage unit and that there is no signage or advertisement to indicate that the cars are for sale. As such, they consider that the activities that do occur at the property do not amount to a material change of use of the premises. Nevertheless, this is not a relevant argument to advance on ground (b) as it falls to be considered in a ground (c) appeal. I have dealt with this matter within the ground (c) appeal below.
9. The appellants have also stated that part of the dwelling is used as a home office associated with their business and that on average 2 cars are kept at the property each week and 2 customers view, collect their vehicle from the appeal site and complete any necessary paperwork. Even though, there are not any physical advertisements the purpose for having the motor vehicles on the site is associated with the sale of them to customers. From the evidence supplied it

is likely that, whether or not they amount to a material change of use, motor vehicle sales are taking place at the property.

10. Therefore, on the balance of probability the matters alleged in the notice have taken place and consequently the appeal on ground (b) must fail.

The ground (c) appeals

11. This ground of appeal is that those matters, if they occurred, did not constitute a breach of planning control. In an appeal on this ground the appellants have to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. I am unable to take into account the planning merits of the development on this ground.
12. The appellants consider that operating a business from their home is permitted as it does not constitute a material change of use. Reference is made to the section on the Planning Portal in relation to working from home. Briefly, the advice is that *'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'*. Whether an activity amounts to a material change of use is a matter of fact and degree, amongst the considerations being whether there is a change in the character of the use of the land and whether there are off-site impacts.
13. Mr Sanderson estimates, as stated above, that on average 2 vehicles associated with the business are parked at the site and that this number of vehicles are viewed and collected by potential customers by appointment each week at the appeal site. However, the Council has stated that complaints have been received regarding a continuous number of different vehicles being present on the site with people attending the site to test drive and purchase the vehicles. Moreover, third parties have indicated that numerous vehicles have been parked within the appeal site and on the highway adjacent to the site and that customers have arrived at the site to purchase and test drive vehicles.
14. There is little evidence, other than written statements, such as a diary of vehicles seen/advertised as part of the business or a log of vehicles sold by the appellants' business, from any of the parties in relation to the motor vehicle sales. I also note that a former neighbour of the appellants has stated that the business activities never caused any disturbances to him. However, I have little evidence to indicate what level of 'business activities' were carried out at their previous address.
15. I observed that at the time of my site visit a number of vehicles were parked on the parking area to the front of the property and that the dwelling appeared to be undergoing renovation works. I also witnessed, during my site visit, that a small car transporter arrived and parked on the highway adjacent to the property and the occupant of the vehicle went into the appeal site for a short period of time. Nevertheless, no vehicles were unloaded from or loaded onto the transporter before it left.
16. In this case, it is clear that motor vehicles associated with the appellants' business are parked, viewed, collected and therefore traded from the appeal

site even though there is no physical signage or advertisements. The level of vehicles sales, based on the figures supplied by the appellant, are not so insignificant that they are '*de minimis*'; that is to say they could be disregarded altogether. However, the evidence on the number of cars at any one time that have been traded from the site and therefore the level of activity associated with the sale of motor vehicles is contradictory. I also note that some of the vehicles that have been parked and would have arrived/left the property are likely to have been associated with the refurbishment works on the dwelling.

17. Furthermore, the evidence before me indicates that a number of vehicles associated with the business are now stored off-site at a storage unit. Moreover, the occupier of an adjacent dwelling has stated that on a few occasions he has discussed with Mr Sanderson the issue of him using his property to resale motor vehicles. He goes on to state that '*Our latest discussion in Sept 2019 ended with Mr Sanderson confirming to me that this issue was a temporary measure and at the end of October the business would be operated away from this location*'
18. Nonetheless, the fact that the Council received complaints '*regarding a continuous number of different vehicles being present on the site with people attending the site to test drive and purchase the vehicles*' provides some evidence of a level of activity materially different from a dwellinghouse use. As such, even though the appellants have provided information on the number of vehicles that currently park at and customers collect from the appeal site it is reasonable to consider that at the time the notice was issued that the level and character of activities that occurred at the site were materially different from those associated with a dwellinghouse.
19. Furthermore, the requirements of an enforcement notice do not preclude the appellants from carrying out what they are lawfully entitled to use the property for once the notice has been complied with. To that end it is open to the appellants to apply for a determination under sections 191/192 of the 1990 Act as to whether operating a specific level of business or working from the property is lawful.
20. In conclusion, the appellant has not provided sufficient evidence to indicate, on the balance of probability, that the alleged breach of planning control does not constitute a material change of use of the land for the purposes of section 55 of the 1990 Act. As such, on the balance of probabilities, express planning permission is required for the making of a material change of use of the land for the mixed use of dwellinghouse and motor vehicle sales. It has not been obtained. I find that the matters alleged constitute a breach of planning control. Therefore, ground (c) fails.

The ground (f) appeals

21. The ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
22. Having regard to its requirement, the purpose of this notice is to remedy the breach of planning control. As a result, and in the absence of an appeal on

ground (a) as set out in section 174(2) of the 1990 Act and a deemed planning application, the power available to me under section 176(1) of that Act only relates to whether the requirements exceed what is necessary to remedy the breach and not the planning merits of the case.

23. The appellants' ground (f) appeal relates to the part of the requirement that relates to the storage of vehicles on the site. However, I intend to delete that part of the requirement for the reasons given above.
24. Given that the corrected notice does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The appeals on ground (f) fails.

Other Matters

25. No appeal on ground (g) was made in respect of the 1 month period of time for compliance with the enforcement notice. However, since the enforcement notice was issued it is of course now clear that the current Coronavirus pandemic has placed severe restrictions on the ability of people, services and businesses to move about freely. The main parties were given the chance to comment on any implications for the compliance period in this respect, but no responses were received.
26. In my view 1 month is still a reasonable period of time for the appellants to comply with the requirements of the enforcement notice. I am also mindful that the Council could exercise its own powers, to extend the time for compliance with the notice, under section 173A(1)(b) of the 1990 Act should it be satisfied that it becomes reasonably necessary to do so. This is however, a purely discretionary power within the Councils' gift to exercise.

Conclusion – Appeal A and Appeal B

27. For the reasons given above I consider that the appeals should not succeed, and the enforcement notice is upheld.

Formal Decisions – Appeal A and Appeal B

28. It is directed that the enforcement notice be corrected by: -
- Deleting the word '*residential*' and the wording '*base for*' from the description of the alleged breach;
 - Deleting the wording '*and ensure the only vehicles stored at the premises are those directly owned and operated day to day by the registered occupants of the dwelling house*' from the requirement (i).
29. Subject to these corrections the appeals are dismissed and the enforcement notice is upheld.

D. Boffin

INSPECTOR