
Appeal Decision

Site visit made on 9 March 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2020

Appeal Ref: APP/T5150/C/18/3219507

Garages rear of 45-47, Ranelagh Road, London NW10

- 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 Geoffrey Whilby against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 19 November 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises for use as car repairs and for the storage of car parts and car repair equipment.
 - The requirements of the notice are:
 - Step 1 Cease the use of the premises for car repairs and for the storage of car parts and car repair equipment.
 - Step 2 Remove all vehicles, car parts and materials, car repair equipment associated with this use and remove all other associated paraphernalia from the premises.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

2. The appellant ticked ground (c) on the appeal form. However, the information submitted in support of the appeal related to ground (d) and the appellant's email of 12 February 2019 confirmed that only ground (d) is advanced. I have therefore considered the appeal on this basis.
3. Although the appellant has not appealed under ground (g), since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. S176(1)(b) of the Act gives an Inspector appointed by the Secretary of State wide powers to vary the terms of an enforcement notice, provided it does not cause injustice. In light of this, the views of the appellant and Council were sought to establish whether the compliance period should remain unchanged or a different compliance period should be specified. I have taken these views into account in reaching my decision.

Ground (d)

4. An appeal on ground (d) is made on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in

respect of any breach of planning control which may be constituted by those matters. Consequently, the main issue is whether the appellant has proved on the balance of probability that the use of the land began on or before 19 November 2008¹ and, if so, whether it continued without significant interruption for at least 10 years thereafter. Case law has established that it is for the appellant to make their case on the balance of probabilities.

5. There is no dispute that the site is being used for car repairs and for the storage of car parts and car repair equipment. Section 171B(3) of the Town and Country Planning Act 1990 (as amended) sets out that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Consequently, the main issue is whether the use began more than 10 years before the date of the issue of the enforcement notice, the relevant date being 19 November 2008.
6. The appellant, Mr Geoffrey Whilby, asserts that he is the joint owner of the site and has owned the garage since September 2013 and that since its purchase it has been used for the purposes it is currently being used for. The appellant has submitted an affidavit to this effect which also asserts that the site was in this use years before the purchase in 2013, however, it is not identified within the affidavit on what basis this claim is made or whether the appellant has sufficient knowledge of the site prior to his purchase of it to make this claim.
7. The appellant's affidavit also makes reference to the use of the premises by Mr Campbell, who has also provided an affidavit. Both the appellant's affidavit and the affidavit of Harold Campbell confirm that Mr Campbell rented the property named 45a Ranelagh Road between 1980 and 2004 and operated under the trade name of Campbell Auto Services, for the same purposes as being rented out by the Landlord Mr Geoffrey Whilby. Whilst no record for Campbell Auto Services exists on Companies House, it is my understanding that not all businesses have to be registered with Companies House.
8. Prior to 1992, it was necessary to show that the breach of planning control had taken place prior to 1 January 1964 and that it had continued from then; s174(2)(e) as originally enacted. However, it is not alleged that the use took place prior to 1964. After 1992, the use is alleged to have continued until 2004, at which point Mr Campbell states that he retired.
9. Although this period would be in excess of 10 years, there is a paucity of corroborating documentary evidence. Furthermore, I have been provided with no substantive details of the activities carried out by Mr Campbell on the site during this period and am therefore unable to conclude, on the basis of the affidavit, that there was probably a continuous use, or that any use which occurred during that period was the same as the activities taking place following Mr Campbell's retirement in 2004. Moreover, there is a significant gap in documentary evidence between 2004 and 2013.
10. The appellant has provided auction details for a sale dated 23 September 2013. The property is detailed as a 'Garage Workshop' and was being sold subject to a lease dated 25 February 2009 made between WWF Investments and Junior Henry for a term of 6 months from 25 February 2009. The Council has provided Companies House records for the site which show that Franklyn Auto's Limited was incorporated on 15 August 2014 and was dissolved on 29 March 2016. A

¹ Namely 10 years prior to the date of issue of the notice.

business card submitted by an interested party advertises the site as Franklyn Auto's Limited. The Director of the company is not the same as the appellant, which suggests that the site was being leased, however, no details have been provided by the appellant to show how the site operates or how it has operated since he purchased it in 2013.

11. I have been provided with a copy of the lease for the site between 25 February 2009 and 25 September 2009. The use allowed is identified as 'car repairs and servicing'. The appellant asserts that this agreement is the same contract passed onto him, however I have not been provided with lease agreements for the intervening years. Furthermore, since this is less than 10 years before the enforcement notice was issued it does not therefore show 10 years continuous use. Moreover, the affidavit provided by Mr Whilby and the 2013 sale particulars refer to a Land Registry Title No. NGL297771, the title plan for which covers 2 garages, not the area covered by the enforcement notice.
12. The Council advise that complaints to its planning enforcement team regarding the use were only received just over a year ago and has drawn my attention to the criminal history of the site and suggests that following the investigation of a murder, asserts that the use was likely to have ceased. I agree the site is unlikely to have operated whilst investigations were ongoing. However, in my view, such an interruption is itself unlikely to have been so significant so as to interrupt the ten year period. Furthermore, a representation made by an interested party suggests that the site has been operating for many years. In any event, that representation also indicated that, whilst the garage began working from a small car port, it has spread around the yard. Although the representation was anonymous, and this must limit its weight, it is consistent with the Council's contention that the use has not occurred across the area the subject of the notice for 10 years.
13. Reference has also been made to a significant increase in activity at the site in 2019, however, this is after the enforcement notice was issued. Furthermore, the appellant has failed to show, on the balance of probabilities, that the use began more than 10 years before the date of the issue of the enforcement notice and so it has not been necessary for me to consider whether a material change of use by intensification has occurred.
14. It has not been demonstrated with sufficient precision and lack of ambiguity that, on the balance of probabilities, the use in question took place without material interruption, such that the planning authority would not have been able to take enforcement action, throughout the relevant period.

Ground (g)

15. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK.
16. The Council advise that, given the on-going harm to neighbouring residential premises, there should be no change to the compliance period. It should be possible to comply with the requirements to stop and remove associated items without any impact on the social distancing or government guidance rules in place as a result of the Coronavirus pandemic. The Council also advise that if it

transpires that further time is needed, and it is justified with evidence, the Council can decide to use its own powers to extend the compliance period.

17. In light of the above, and in the absence of evidence to the contrary, I consider that the compliance period does not fall short of what should reasonably be allowed. Consequently, I conclude that the ground (g) appeal should fail.

Conclusion

18. For the reasons given above, I consider the appeal should not succeed. Accordingly, I dismiss the appeal and uphold the enforcement notice.

M Savage

INSPECTOR