



Appeal Decisions

Site visit made on 13 May 2020

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

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 May 2020

Appeal A: APP/X2410/C/19/3241032

Appeal B: APP/X2410/C/19/3241033

Land at 2 Peter McCaig Way, Quorn, Leicestershire LE12 8FP

- 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 appeals are made by Mr Paul Taylor (Appeal A) and Mrs Kim Taylor (Appeal B) against an enforcement notice issued by Charnwood Borough Council.
- The enforcement notice was issued on 9 October 2019.
- The breach of planning control as alleged in the notice is change of use of the dwelling to a mixed use of dwelling and the storage and sale of motor vehicles.
- The requirements of the notice are: -
 1. Cease using the property for the commercial storage and face-to-face sale of vehicles.
 2. Remove all vehicles from the property that are being stored for sales purposes or are currently being advertised for sale.
- The period for compliance with the requirements is one month.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections.

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.
2. Section 55 of the 1990 Act states, amongst other things, that "development," means the making of any material change in the use of any buildings or other land. Class C3 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO) relates to a use as a dwellinghouse as set out in the Schedule to the UCO.
3. To ensure that the description of the alleged breach reflects section 55 of the 1990 Act and the UCO I consider that the wording '*change of use of the dwelling to a mixed use of dwelling*' within the description of the alleged breach should be deleted. I intend to replace the deleted wording with '*without planning permission the material change in the use of the property from a dwellinghouse to a mixed use of dwellinghouse*'. I can carry out these corrections without injustice to the parties.

The ground (c) appeals

4. 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.
5. The appellants consider that the evidence submitted demonstrates that the business use is similar to an extension of a hobby type activity undertaken in the home which has been expanded to provide a modest source of income. They consider that operating the business from their home is permitted as it does not constitute a material change of use. Once there is a business operating from a dwellinghouse, even if it is not full-time, or does not sustain the entire livelihood of the operator, a material change of use may result. Activities such as the keeping of dogs in large numbers, even as a hobby, will amount to a material change of use if they are outside what could normally be expected to occur at a dwellinghouse and its curtilage. Consequently, whether a business or 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.
6. The appellants have stated that they do not sell more than 40 vehicles per annum and they have provided a vehicle stock record of those purchased and sold between 10 December 2018 and 12 October 2019. The details of 22 vehicles are included on that stock record and the appellants have also stated that viewings/collections are by appointment and that no vehicles are delivered or collected by transporter.
7. However, the Council states that it received complaints from local residents in relation to a car sales business being run from the appeal property with, at times, up to 12 vehicles being associated with the business. The Council has provided evidence of vehicles that were advertised for sale on eBay on 24 July 2019. I acknowledge that some of the vehicle details associated with the account appear to be duplicates.
8. Nevertheless, it appears that at least 8 different makes/models of vehicles are described in the eBay evidence. In addition, there is no dispute that the account relates to the appellants' business and the Council have stated that 5 of the vehicles advertised on eBay were observed on the drive of the appellants' property and one further vehicle, that was also advertised on eBay, was parked on the highway to the side of the property on 24 July 2019.
9. Moreover, a number of the cars detailed in the Council's evidence are not included in the appellants' stock record. I observed that at the time of my site visit a number of vehicles were parked on the drive area to the front/side of the property.
10. In this case, there is no dispute that motor vehicles associated with the appellants' business have been parked, viewed, collected and therefore traded from the appeal site even though there is no physical signage and no valeting or repairs appear to be carried out at the appeal site. 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.

11. The evidence on the number of cars at any one time that have been stored and traded from the site and therefore the level of activity associated with the sale and storage of motor vehicles is contradictory. Furthermore, I note that the appellants have the facility to store vehicles at another property.
12. However, it appears that based on the evidence before me that there have been around 3 to 6 cars stored for sale at the appeal property at any one time. The appellants stock record indicates that some of those cars are purchased and sold in relatively short periods of time. It is not uncommon for dwellinghouses to have a number of cars parked on their drives and these can include a vehicle associated with their profession such as a work van. I also recognise that vehicle owners may sell their cars privately from their dwellinghouses but in the main this is likely to be an infrequent occurrence.
13. Nonetheless, in this case the regular turnover of the make and models of vehicles being stored and sold at the appeal property is significantly more intensive than would be associated with a dwellinghouse use. In addition, in my experience, most sales of a vehicle would entail a physical viewing of the vehicle, including a test drive, especially as the vehicle would also need to be collected. Even though, these sales and collections maybe on an appointment only basis given the number of cars available for sale at any one time it is more likely than not that the development attracts visiting members of the public on a regular basis. As such, the activity associated with the coming and goings of those potential customers including car engine and audio noise, people conversing and the opening and closing of vehicle doors is on the balance of probabilities likely to be significantly greater than would be expected to be associated with a dwellinghouse use.
14. Consequently, 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.
15. 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. It is not a matter for these appeals to determine what level of vehicle sales, if any, may be regarded as ancillary to the primary use as a dwellinghouse.
16. As a matter of fact and degree I consider that, based on the evidence before me, the alleged breach of planning control goes beyond what can reasonably be regarded as incidental to a dwellinghouse use and it has significantly changed the character of the use of the appeal site. As such, on the balance of probabilities, express planning permission is required for the making of a material change in the use of the property from a dwellinghouse to a mixed use of dwellinghouse and the storage and sale of motor vehicles. It has not been obtained. I find that the matters alleged constitute a breach of planning control. Therefore, ground (c) fails.

The ground (a) appeal and deemed planning application

Main Issues

17. The main issues are: -

- The effect on the living conditions of neighbouring occupiers with regard to noise and disturbance;
- The effect on highway safety;
- Whether or not there are any other considerations, specifically the personal circumstances of the appellant that would justify the development.

Reasons

18. The appeal site is located at the junction of Peter McCaig Way and Thomas Firr Close and both of these roads are cul-de-sacs. The site is also in relatively close proximity to the junction of Meynell Road and Peter McCaig Way.

Living conditions

19. The surrounding area is predominantly residential in character. Adjacent residential frontages in the main contain windows serving habitable rooms and in some instances those frontages are close to the highway.

20. I noted at my site visit that there is a moderate background noise level from traffic on the surrounding road network, including Meynell Way, when standing within Peter McCaig Way. I acknowledge that this is a snapshot in time and that at other times the background noise level may be different.

21. The drive area for the appeal property is relatively large and there appears to also be a double garage that could be utilised for parking. As such, there is no dispute that the appeal site could facilitate parking space for approximately 6 vehicles. Nevertheless, the evidence before me also indicates that cars stored for sale have been parked on the highway adjacent to the appeal property at certain times.

22. Furthermore, as stated above, the sale of vehicles from the appeal property is likely to attract regular visits from members of the public even if it is on an appointment basis. In particular, it is likely to lead to a level of comings and goings that would be substantially higher than might be expected from a dwellinghouse use. Given, it appears that for the majority of the time parking space within the appeal property is likely to be unavailable for visitors it is highly likely that potential customers park within the highway either on Peter McCaig Way or Thomas Firr Close.

23. Consequently, it is likely that the activities associated with the coming and goings of those potential customers including car engine and audio noise, people conversing and the opening and closing of vehicle doors is occurring relatively near to habitable room windows of adjacent dwellings. As such, these activities are likely to result in material harm to the living conditions of those neighbouring occupiers due to noise and disturbance.

24. I note that the appellant states that the car sales business and deliveries/appointments could be curtailed by conditions to weekdays

between 09.00 and 17.00. However, those conditions would substantially restrict the hours that face-to-face sales and collections could take place. In my experience this type of sales and collections often take place on a weekday evening or at the weekend when prospective purchasers have more time available to travel for viewings and carryout test drives. Therefore, these suggested conditions could nullify the benefit of a planning consent and on that basis they would not be reasonable. In any case, these conditions would not overcome the harm I have identified above.

25. I conclude that the development is, more than likely, materially harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance. It follows that the development does not comply with Policy CS2 of the Charnwood Local Plan 2011 to 2028 Core Strategy (CS) and saved Policy EV/1 of the Local Plan 1991-2006 (LP) which, amongst other things, require new development to protect/safeguard the amenity of people who live nearby. With regard to paragraph 213 of the National Planning Policy Framework (the Framework) I consider that these policies are consistent with paragraph 127 of the Framework. This states, amongst other things, that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users. Consequently, the conflict with these policies has full weight.

Highway safety

26. LP Policy TR/18 states, amongst other things, that planning permission will not be granted for development unless off-street parking for vehicles is included to secure highway safety. It goes on to state that the adopted standards included as Appendix 1 will be used as a starting point in assessing the level of provision. However, I have not been provided with a copy of Appendix 1. Nevertheless, I note that the Highways Authority, within the Council's Enforcement Report, advised that they would require parking space for the maximum number of vehicles that is sold at any given time, along with customer, staff and home owner parking spaces as a failure to demonstrate sufficient off-street parking could cause highway safety issues along Peter McCaig Way.
27. The Framework states at paragraph 106 that maximum parking standards for residential and non-residential development should only be set where there is a clear and compelling justification that they are necessary for managing the local road network. At paragraph 109 it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
28. The nearby housing that is accessed from Peter McCaig Way has drive and parking areas that provide off-street parking. There was a low demand for on-street parking spaces in that road at the time of my site visit (mid-morning). I acknowledge, this only provides a snapshot in time and that at other times of the day that the levels of on-street parking may be higher.
29. I have found above that it is likely that potential customers associated with the development are likely to park within the highway. Nevertheless, the alignment and width of Peter McCaig Way ensure that there is sufficient visibility and space for vehicles to be able to easily pass parked vehicles without adversely affecting highway safety. Moreover, these factors also

ensure that the free flow of traffic is not appreciably impeded by on-street parking. In addition, I did not observe any evidence of unsafe parking or significant issues relating to the safe and efficient operation of the highway network.

30. Furthermore, there is no evidence before me to indicate how on-street parking has or would cause harm to highway safety or impede the safe and efficient operation of the highway network. As such, the clear and compelling justification that off-street parking spaces are necessary to manage the local road network is not before me.
31. Taking into account all of the above, I consider that, even with on-street parking from the development, it is highly unlikely that the development results in an unacceptable impact on highway safety or that the residual cumulative impacts on the road network are severe. It follows that the development does not conflict with LP Policy TR/18 and paragraphs 106 and 109 of the Framework.

Personal circumstances

32. If I were to dismiss the ground (a) appeal and uphold the enforcement notice the appellant would have to comply with the requirements of the notice. As such, the vehicles that are advertised for sale would be stored elsewhere and the face-to-face element of the vehicle sales would also be carried out elsewhere.
33. The appellant has stated that the home business has been proactively created by him in light of his personal circumstances and health status. A number of medical documents and a letter from the appellant's GP outlining his medical problems have been submitted as part of the evidence before me. I do not need to detail the issues highlighted in those documents. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Whilst it's not clear whether the appellant's personal circumstances would be categorised as a protected characteristic referred to under the PSED I have nevertheless had regard to it. Such a duty does not necessarily override other considerations, but it is a factor to be weighed in the planning balance.
34. I have also taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR). I recognise that dismissal of the appeal would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol. Article 1 concerns enjoyment of possessions; Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence. These are qualified rights, whereby interference may be justified if it is in the public interest; the concept of proportionality is crucial.
35. Nonetheless, the appellant has stated that he is only applying for temporary planning permission until 31 December 2020 as his longer-term aim is to relocate. I have taken this to mean that his aim is to relocate the motor vehicles sales business. The Planning Practice Guide (PPG) indicates that the

circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period.

36. The appellant already has agreement to store vehicles on another site. However, the level of storage that could be accommodated at that site or whether it could be used for face-to-face sales has not been indicated. As such, it could be that the time is required to source an alternative site. However, the rationale behind the length of time suggested for the temporary planning permission or the relocation is not clear. Therefore, based on the evidence before me it is not evident how or why the planning or personal circumstances will change at that time.
37. The material harm identified to the living conditions of the neighbouring occupiers would be mitigated to a degree by the fact that the harm would only be temporary but, even for a temporary period, the development would remain contrary to the relevant policies of the development plan. Equally, any benefits in terms of the personal circumstances of the appellant would also be temporary. As a result, based on the evidence before me, a temporary planning permission would not be justified in this case.

Other matters

38. The appellant has indicated that he would be willing to accept conditions should they be deemed necessary to make the development acceptable. Such conditions need to be considered against advice in the Framework and PPG. In particular, the Framework states that planning conditions should only be imposed where they are: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
39. Conditions which would restrict the car sales business to be carried out in conjunction with the residential use of the appeal property and to be carried out by the appellant would not mitigate the harm which I have found in relation to the living conditions of the neighbouring occupiers. Furthermore, I have found above that the suggested conditions on the hours of operation would not be reasonable and would not overcome the identified harm. The suggested restriction on the number of cars which are available for sale would not mitigate the harm which I have found in relation to the living conditions of the neighbouring occupiers.
40. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

Planning balance

41. I have found that the development conflicts with CS Policy CS2 and saved LP Policy EV/1. Consequently, it is contrary to the development plan when read as a whole. It also conflicts with paragraph 127 of the Framework.
42. Factors such as the appellant's personal circumstances are material considerations that must inform my decisions. I have given all of the appellant's submissions very careful consideration. However, given the conflict with local and national policies and the harm to the living conditions of the neighbouring occupiers, I do not consider the requirement to have due regard

to meet the needs of a person with a protected characteristic under the PSED is of sufficient weight, such that it would justify the grant of permission for the development which is subject of these enforcement proceedings.

43. The Articles identified above in terms of the ECHR are qualified rights, whereby interference may be justified in the public interest and applying the principle of proportionality. Any interference with the appellant's rights would be outweighed by the wider public interest in the protection of the legitimate aim of protecting the environment and upholding planning policy in accordance with the law. Refusal of planning permission would not have a disproportionate effect on the appellants so as to violate his rights.
44. To sum up, in my planning judgement, the considerations advanced in support of the ground (a) appeal, whether taken individually or cumulatively, do not, on balance, outweigh my findings on the first main issue above.

Conclusion on ground (a) and the deemed planning application

45. In this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
46. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The ground (g) appeals

47. A ground (g) appeal is that any period specified in the notice in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.
48. The appellants have requested that the time for compliance is extended until 31 December 2020, the same time period as requested for the planning permission. I have found in relation to the ground (a) appeal that a temporary planning permission would not be justified in this case. The appellants have not provided any additional evidence as to why they consider that the time period specified in the enforcement notice is not reasonable.
49. 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. The Council in response have stated that as the restrictions are in the process of being lifted, albeit the Authority accepts this is a slow process, it is not considered necessary at this point to agree an extension of the compliance period given within the notice.
50. In my view 1 month is still a reasonable period of time for the appellants to comply with the requirements of the enforcement notice taking into account all of the above. 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.

51. The ground (g) appeals therefore fail.

Conclusion – Appeal A and Appeal B

52. 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

53. It is directed that the enforcement notice be corrected by: -

- Deleting the wording '*change of use of the dwelling to a mixed use of dwelling*' within the description of the alleged breach;
- Replace the deleted wording with '*without planning permission the material change in the use of the property from a dwellinghouse to a mixed use of dwellinghouse*' within the description of the alleged breach.

Subject to these corrections the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR