



Appeal Decisions

Site visit made on 2 June 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Appeal A: APP/R4408/C/20/3245421

Appeal B: APP/R4408/C/20/3245422

5 The Brambles, Royston, Barnsley S71 4TA

- 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 Mrs Amylee Shaw (Appeal A) and Mr Christopher Shaw (Appeal B), against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 3 January 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the land to a mixed use as residential dwelling house and base for vehicular purchasing, sales and mechanical maintenance of motor vehicles.
- The requirements of the notice are (i) Cease the unauthorised change of use relating to the purchasing, sale and mechanical maintenance 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 requirements is one month.
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are allowed and the enforcement notice is quashed.

Application for costs

1. An application for costs was made by Mrs Amylee Shaw and Mr Christopher Shaw against Barnsley Metropolitan Borough Council. This application is the subject of a separate Decision.

Reasons

The appeals on grounds (b) and (c)

2. An appeal on ground (b) is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. In this case the two grounds of appeal are inextricably linked, and as such I deal with both as one composite appeal.
3. The breach alleged is the material change of use of the property by way of the buying, selling and mechanical maintenance of motor vehicles. It follows that for this allegation to be valid, on the balance of probability, such that a material change of use has occurred, evidence of commercial activity would be expected, which would go beyond activity that was incidental to the enjoyment of the dwelling.

4. The Council's statement refers to complaints and photographic evidence regarding a variety of different vehicles being present at the property and the increased comings and goings, delivery and maintenance of motor vehicles there, often at unsociable hours, resulting in noise and disturbance.
5. In enforcement appeals the burden of proof is on the appellant and the standard of proof is the balance of probability. The appellants have provided various supporting evidence, including statements from friends and associates, in connection with the presence and maintenance of vehicles at the property.
6. In terms of vehicle presence, the evidence provided indicates that Mr Shaw sold the vehicle registered RE04RCX in part exchange for MT56KTV in October 2019. Vehicle W179TCW was given to Mr Shaw by a friend in November 2019, apparently as a substitute for MT56KTV, which had since broken down, before being disposed of free of charge to another friend in December 2019. Vehicle YE07HMF was also sold by Mr Shaw around the same time.
7. Since then, vehicles EO62OJP and CA55HAW have been acquired by the appellants for their personal use. Various other vehicles are also claimed to be regularly parked at the property, including a second vehicle belonging to Mrs Shaw; a motorbike and vehicles belonging to a relative and a support worker to the family. The vehicles of other visiting relatives are also said to be present on occasion.
8. In terms of vehicle related activities, Mr Shaw has explained that a photograph depicting an engine being hoisted in his garage was in relation to maintenance being carried out on vehicle MT56KTV, and the paint spraying of a car part was in relation to a personal collision associated with vehicle W179TCW. He also explains that a photograph showing vehicle NA62DYG being lifted with a jack, was in relation to the inspection of a friend's car. A supporting statement to that effect has also been provided by the owner of that vehicle.
9. From my visit I noted that there were four vehicles, including a motorbike, parked on the site, each of which has been accounted for above. Whilst the appellants' garage contained a number of car related accessories including some tyres, engine oil and light bulbs, there was nothing to suggest that this was at a greater level than what might be expected with regard to a typical domestic garage. There was no vehicle maintenance work being undertaken at the time of my visit.
10. It appears that in recent months several vehicles have been acquired and / or disposed of by Mr Shaw. However, whilst the turnover of vehicles at the property may, over a relatively short period, have been higher than in many domestic situations, the explanation of the need for a temporary replacement vehicle and the acquisition of more reliable vehicles for use by the family are plausible explanations in this case. The frequent changing of personal vehicles does not in itself result in a breach of planning control.
11. From all of the evidence provided, it seems to me that Mr Shaw enjoys maintaining his own vehicles, a task that I accept is likely to be more demanding the older the vehicle is, and occasionally carries out some maintenance of vehicles belonging to friends or family relatives. Whilst, for this reason, vehicle maintenance activity may be greater than that associated with many domestic properties, this in itself would not mean that there has been a material change of use of the property.

12. I have been provided with no evidence from the Council of alleged vehicle deliveries to the site on recovery trucks; or any regular comings and goings of potential customers or maintenance of vehicles, not in the ownership of the appellants, that might be associated with the commercial use of the site. There does not appear to be any evidence of business-related sales of vehicles taking place at the property. Nor has it been made clear to me how the vehicle maintenance activities depicted in the photographs provided have caused harm to the living conditions of nearby residents. The Council has not set out what it considers to constitute 'unsociable hours' or provided evidence that vehicle maintenance has taken place at such times. Overall, from the information before me, the nature and level of comings and goings do not appear significantly out of the ordinary for a residential property.
13. The periodic maintenance of a vehicle belonging to a residential occupant at the same site, and at quieter times of the day, would not be enough in itself to cause a material change of use. However, if this type of activity persisted and became more frequent, it could potentially become the subject of a statutory nuisance investigation by the Council.
14. However, from the information before me I am satisfied, on the balance of probability, that the appeal site is not being used for both residential purposes and commercially for the buying, selling and maintenance of vehicles. Accordingly, there has not been a material change of use of the property and the allegation of the current use is incorrect.

Conclusion

15. For the reasons given above I conclude that the appeals should succeed on grounds (b) and (c). Accordingly the enforcement notice will be quashed.

Formal Decisions

16. The appeals are allowed and the enforcement notice is quashed.

Roy Merrett

INSPECTOR