



Appeal Decision

Site visit made on 5 August 2020

by **K Stephens BSc (Hons), MTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/G4620/C/19/3239303

BM Autos, Pleasant Street, West Bromwich B70 7DT

- 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 Jagdeep Chalotra (of AG Auto Parts Ltd) against an enforcement notice issued by Sandwell Metropolitan Borough Council.
- The enforcement notice was issued on 10 October 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission, the material change of use of the land from the servicing of vehicles (B2) to a mixed use of B2 and vehicle dismantling/breaking and storing of scrap vehicles and scrap car parts (sui generis) ("the Unauthorised Use")*.
- The requirements of the notice are:-
 - Cease the unauthorised use.
 - Remove from the site all existing scrap vehicles together with scrap car parts and other materials associated with the unauthorised scrap vehicle dismantling/breaking.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (e) of the Town and Country Planning Act 1990 ('the Act') as amended.

Summary decision: The appeal is dismissed and the enforcement notice is upheld with corrections, as set out below in the Formal Decision.

Matters concerning the notice

1. The requirements of the enforcement notice (the 'notice') depend on knowing what the affected "Land" is. Paragraph 2 of the notice refers to the site 'edged black on the attached plan'. This is an error because the site is actually shown edged in red and shaded pink on the plan. There is no suggestion that the recipient of the notice does not understand where the allegation is. As no injustice would be caused, I will correct paragraph 2 of the notice accordingly.
2. The allegation is also incorrect. When a site is 'mixed use' it is a *sui generis* use, so the use classes described in the Schedule 1 of the Use Classes Order¹ do not apply. It can reasonably be inferred that the alleged use should be described as "*....to a mixed use comprising the servicing of vehicles, vehicle dismantling/breaking and storing of scrap vehicles and vehicle parts*". I will correct paragraph 3 of the notice accordingly.
3. The Council has described the alleged use as the 'unauthorised use' and required that to cease. But the 'unauthorised use' is the alleged mixed use that includes the servicing of vehicles - that element of the mixed use is lawful and should not be required to cease. Therefore, I shall correct the requirement in

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

paragraph 5.1 of the notice to require the cessation of 'the vehicle dismantling/breaking and storing of scrap vehicles and vehicle parts'.

The Appeal on Ground (e)

4. An appeal on ground (e) is that copies of the enforcement notice were not served as required by s172 of the Act: that is, on the owner and on the occupier of the land to which it relates; and on any other person having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. As with grounds (b) and (d), this is a legal ground of appeal and the onus is on the appellant to make his case on the balance of probability.
5. Mr Chalotra for the appellant company contends the notice was served on the wrong company and therefore the notice is null and void.
6. The land subject to the notice is described by the Council as 'The site of the BM Autos', but Mr Chalotra states there has never been a company by that name on the site, nor has a company ever traded under that name. The appellant company is AG Auto Parts Ltd. Although there is no signage on the site with that company name, there is no dispute that AG Auto Parts Ltd are trading from the land subject to the notice.
7. It is not clear why the Council got the appellant company name wrong, or whether the Council could have been reasonably expected to get the name right. However, those matters are of little consequence because the Council served copies of the notice on Mr Chalotra as a land owner, whose company is AG Auto Parts Ltd. He would have seen from the attached plan that the notice related to the land where the company was trading from. Indeed, through Mr Chalotra, the appellant company made a valid appeal against the notice.
8. I find that on the balance of probability the notice was served as required by s172 of the Act. In any event, s176(5) provides that failure to serve the notice as required may be disregarded if the appellant or person required to be served with a copy of the notice has not been substantially prejudiced. I find that the appellant company was able to appeal and therefore was not substantially prejudiced and so the appeal on ground (e) must fail.
9. Given the evidence on this issue it would be appropriate, and would cause no injustice, for me to correct the notice to delete the erroneous reference to BM Autos from the site address in paragraph 2.

The Appeal on Ground (b)

10. Ground (b) is that the matters alleged in the notice have not occurred as a matter of fact. A ground (b) appeal does not require consideration of whether those matters are no longer occurring. The burden of proof falls on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred as a matter of fact.
11. However, I need to consider ground (b) on the basis of the corrected allegation, namely a "*mixed use comprising the servicing of vehicles, vehicle dismantling/breaking and storing of scrap vehicles and vehicle parts.*"
12. The appellant's case is, in effect, that the alleged change of use has not occurred because the site remains solely used for the servicing and repair of

vehicles. Any activity which might have appeared to the Council to be 'vehicle dismantling/breaking' or 'storing of scrap vehicles and vehicle parts' was not the primary use, but activity incidental to the lawful use of vehicle servicing and repairs.

13. To support this, Mr Chalotra states that the appellant company is not a scrapyard and does not deal with end-of-life vehicles as any vehicles to be scrapped are dealt with by the local scrapyard. He relies on the Environment Agency not finding any evidence of car scrap, breakage, or end-of-life activities at the site. The Environment Agency's comments (8 March 2018 and 24 October 2018) are reported in the Council's statement. He also confirms that his company services and repairs specialist motor vehicles (BMW's) as part of the planning permission on the site for a B2 (or General Industrial use)² and that some parts are kept on site due to the cost, and difficulties of obtaining, second-hand parts. However, this evidence does not show precisely or unambiguously that vehicle servicing is the sole primary use of the site and that 'vehicle dismantling/breaking' or 'storing of scrap vehicles and vehicle parts' has not occurred on the site.
14. The Council has provided a statement comprising records of site visits, including occasions when scrap parts and broken/damaged cars were on site. The Council also refer to a meeting in which Mr Chalotra admitted to he used to take parts of vehicles, but doesn't anymore because he now has enough parts. There is also the 2011 planning application³ to 'adjust' the planning permission from servicing to 'servicing and vehicle dismantling' that was refused. Following refusal of planning permission, Mr Chalotra says that the 'planned diversification' of the business did not happen. The appellant's submitted photos show a vehicle-related business and cars at the site, but do not unambiguously show that the alleged matters have not occurred as a matter of fact.
15. S174(2)(b) of the Act is that matters 'have not' occurred. Even if broken and scrap vehicles were removed from the site, the appellant has not shown on the balance of probability that the alleged change of use had not occurred by the date the notice was issued.
16. On my site visit the cars I saw parked around the frontage of the site were intact, did not have obviously damaged bodywork or parts missing. I saw 6 ramps inside the building and some cars being worked on. I also saw various second-hand or salvaged car parts, such as doors, bonnets, engines and other components, stored in an orderly fashion on tall shelved racks inside the building as well as outside in the secure compound to the side and rear of the building. However, my observations are not decisive, but add weight to my conclusions that the alleged matters have occurred.
17. The appellant's evidence is limited and for the reasons above it follows that I conclude the corrected alleged matters have occurred and the appeal on ground (b) fails.
18. Whilst there is no ground (c) appeal – that there is no breach of planning control – the material change of use was likely to have been in breach of planning control. The appellant's uncontested evidence is that planning

² under the Use Classes Order

³ Reference number DC/11/53967

permission pertaining to the site was for B2 or general industrial use. While B2 uses may include the servicing of vehicles, Article 3(6) of the Use Classes Order makes it clear that no class includes use for part (g) 'as a scrapyards, or a yard for the...breaking of motor vehicles'.

The Appeal on Ground (d)

19. Ground (d) is that at the date that the notice was issued it was too late to take enforcement action. In order to succeed on this ground the appellant has to show, on the balance of probability, that the alleged use began more than ten years before the date the notice was issued on 10 October 2019, and the alleged use continued from then without material interruption for a period of ten years so as to be immune from enforcement. Hence a ground (d) appeal requires comparison between the use of the appeal site when the notice was issued on 10 October 2019 and the use as it existed ten years before that. The burden of proof rests with the appellant.
20. The appellant alleges the business has been trading on the site in its current format for over ten years. In support of this Mr Chalotra submits evidence from the Council's Revenues and Benefits department that shows two companies have been liable for Business Rates on the site since April 2008 - which is when Mr Chalotra purchased the site as evidenced by the submitted HM Land Registry Register extract - and these are firstly BMW Auto Parts and later AG Auto Parts Ltd. These company names are enough to show that the site has probably been used for some use related to vehicles or vehicles parts for more than ten years. But they are not enough to show, on the balance of probability, that the alleged mixed use (i.e. the *servicing of vehicles, vehicle dismantling/breaking and storages of scrap vehicles and vehicle parts*) commenced before 10 October 2009.
21. It is undisputed that the 2011 planning application was made in respect of vehicle dismantling. As a result of refusal of planning permission, Mr Chalotra states that the 'planned diversification' of the business did not happen. This would lead me to infer that the alleged mixed use was not being carried out in 2011 and hence not in the ten years before the notice was issued. Mr Chalotra has also stated that vehicle dismantling did not take place during the ten year period. He has not shown that this element of the mixed use ceased for an insignificant period. Even if the alleged mixed use commenced more than ten years before the notice was issued, the appellant has not shown that the alleged mixed use took place for any continuous ten year period.
22. From the evidence before me I find, on the balance of probability, the alleged use is not immune from enforcement action. The appeal on ground (d) fails.

Other Matters

23. The appellant has referred to improvements he has made to the building and the site, supported by various photographs, and other reasons why he considers the alleged mix use is acceptable. Local residents and councillors, on the other hand, have set out objections to the use. I cannot consider the merits or otherwise of the development because the appellant has not sought planning permission via an appeal on ground (a). The appellant also suggests there are other garage and car repair businesses on the industrial estate and feels victimised by the Council, but this is also a matter outside my remit.

Conclusion

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decision

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

- The **deletion** of the text of paragraph 2 in its entirety and **substitution** with the following: '*Land at Pleasant Street, West Bromwich, B70 7DT as shown edged in red and shaded pink on the attached plan ("the Land")*'.
- The **deletion** of '*to a mixed use of B2 and*' in paragraph 3 and **substitution** with: '*to a mixed use of servicing of vehicles and*'.
- **Adding** '*for vehicle dismantling/breaking and storing of scrap vehicles and scrap cars parts*' to the end of paragraph 5.1.

26. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

K Stephens
INSPECTOR