



Appeal Decision

Site visit made on 22 September 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2020

Appeal Ref: APP/A5270/C/20/3244098

Land to the rear of 42-44 Lea Road, Southall, Ealing UB2 5QA

- 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 Act).
 - The appeal is made by Mr M A Arian against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 22 November 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the land for motor repairs and maintenance and tyre and exhaust sales and fitting and the division of the original planning units at no 42 Lea Road and 44 Lea Road respectively to create a new planning unit at the rear of the two properties.
 - The requirements of the notice are:
 - A. Cease the use of the premises for vehicle repairs and maintenance, tyre and exhaust sales and fitting;
 - B. Remove from the land all vehicles and equipment associated with the unauthorised use;
 - C. Reinstate fence between 42 and 44 Lea Road between points marked x and z on the attached plan;
 - D. Remove the breeze block wall and metal gate between points marked y and z on the attached plan;
 - E. Remove the fence the rear of 42 Lea Road between points marked a and b on the attached plan;
 - F. Remove the gate the rear of 42 Lea Road between points marked z and a on the attached plan; and
 - G. Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - 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.

The Appeal on ground (d)

2. The main issue is whether at the date that the notice was issued, it was too late to take enforcement action against the development. In this case, the development enforced against is a use of the land and buildings. By reason of S171B(3) of the Act, no enforcement action could have been taken after the end of the period of 10 years beginning with the date of the breach. The appellant therefore needs to demonstrate that the use subsisted continuously

for a 10 year period prior to the date that the notice was issued. The use would need to have been continuous for 10 years at the latest by 22 November 2009. The onus is upon the appellant to demonstrate their case with the relevant test being on the balance of probabilities.

3. The appeal site is accessed through the driveway between the dwellings at Nos 42 and 44. The site opens out behind those buildings with a hard-surfaced area where I saw a number of vehicles parked with some being worked on with hand tools. At the back of this hard-surfaced area are buildings along the rear boundary one of which is a workshop that also had vehicles inside. Next to that is another, separate building. There were various vehicle related items such as tyres stored externally including alongside the access driveway.
4. I have been provided with a Statutory Declaration¹ dated 26 June 2020, which has been signed by the person who has owned at least part of the property since 3 July 2002. That states that the property was being used for car repairs already by the time of their ownership. It is clarified that this was as a detached garage building accessed from Lea Road although no detail is provided about the nature or scale of the use at that time, for how long that use had already been taking place or the extent of the ownership at that time. It is not suggested that the use had already achieved immunity from enforcement action by 2002. Neither does it explain when the areas of land behind Nos 42 and 44 were amalgamated into the present planning unit.
5. The Statutory Declaration states that there have been a number of tenants and there is no detail about any breaks between each occupancy. That is however apart from between 1 May 2012 to 31 October 2012 when the owner confirms that the premises were empty. The Council has produced some aerial images in their evidence, the dates of which are not disputed by the appellant, and one of which is dated 26 May 2012, within this period. This image shows that the open part of the appeal site, behind No 44 was apparently clear of vehicles and outside storage at that time. There appears to be a line of separation between the northern and southern parts of the appeal site at this time which corresponds roughly with the line marked between 'X' and 'Z' on the notice and which is referred to in requirement 'C'. A single vehicle is parked behind No 42 at that time. This aerial image is very clear and confirms what the owner of the site says about this being a period when the site was empty. Furthermore, this statement appears to relate only to the southern part of the site behind No 44. This tallies with the Land Registry documents submitted by the appellant showing the state of the title in 2014 with only the southern part of the site outlined in red.
6. At least part of the current appeal site was therefore empty for nearly 7 months and the remaining part may not have been within the same ownership or available for the use as alleged. This in my view is a significant period of time for the use to be inactive. As a matter of fact and degree the use appears to have ceased during that period. Had the Council considered taking enforcement action against the alleged use during that period, they could have been unsuccessful because part of the site was empty, was not being used at all and part of it may have been in different ownership and use. That period could not therefore have counted towards immunity from the current enforcement action. I reach this view taking account of the case of Islington

¹ Entered into under the provisions of the Statutory Declarations Act 1835

LBC v SSHCLG & Maxwell Estates [2019] EWHC 2691 (Admin); [2020] JPL 532 as referred to me by the Council.

7. I have insufficient information to lead me to a view that the use had already gained immunity from enforcement action prior to 1 May 2012. Following a significant period of inactivity, between 1 May 2012 to 31 October 2012, the use then appears to have recommenced. Even if the use has been continuous since the end of that period, it involved on the balance of probabilities a separate period of use and therefore a separate breach. Enforcement action was taken before the expiry of a further 10 years use.
8. The appeal on ground (d) therefore fails.

Conclusion

9. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

A Harwood

INSPECTOR