



Appeal Decision

Site visit made on 3 September 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 19 October 2020

Appeal Ref: APP/A1720/C/19/3230945

**Land at Woodcote Lodge, 6 Bridgefoot Drive, Fareham, Hampshire
PO16 0DB**

- 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 Mrs Alicia Bayer against an enforcement notice issued by Fareham Borough Council.
 - The enforcement notice was issued on 14 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from residential use (Use Class C3) to a mixed use comprising residential use and use for car sales and car storage (Use Classes C3 and Sui Generis).
 - The requirements of the notice are:
 - (a) Cease the use of the Land for a mixed use of residential purposes (Use Class C3) and car sales and storage purposes (Use Class Sui Generis) and return the Land to exclusively residential use.
 - (b) Remove from the Land all cars advertised for sale or stored on the Land in association with the car sales and storage element of the unauthorised use.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by altering the period for compliance from one month to six (6) months. Subject to this variation, the appeal is dismissed, 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 as amended.

Procedural Matter

2. The agent's appeal statement refers to the appellant as Mr Elliott Bayer although the appeal form lists Mrs Alicia Bayer as the appellant. Mr and Mrs Bayer and their family live at the appeal property and are also directors of Bayer Car Sales Ltd, the car sales business conducted from the property. I have therefore taken the contents of the appeal statement to represent both their views, albeit it is only Mrs Bayer who is listed as the appellant. This represents no injustice to the Council.

Reasons

Ground (d)

3. This ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is upon the appellant to demonstrate, on the balance of probability, that the mixed use has occurred for a continuous period of 10 years or more prior to the issue of the Notice.
4. The appellant has provided a range of documentary evidence purporting to show the continuous 10 year use of the property for the mixed use alleged in the notice prior to its issue, and indeed that its use for the storage and sale of cars in connection with Bayer Car Sales Ltd is continuing to this day.
5. Mr Bayer states in his declaration that he commenced operating the business on 1 November 2008 from the site, that he formed the limited company in 2011¹, has had an average of 10-20 cars stored at the site and that the level of business has generally been stable and consistent. The answers to the Council's questions in the two Planning Contravention Notices (PCN) returned by Mr and Mrs Bayer on 8 February 2019 essentially confirm this. This is backed up by a number of Exhibits. These include correspondence from various workers involved with the business.
6. First, a witness statement from Mr Gouge, who confirms he has been employed by the business at the site since November 2008, and that between 15 and 35 cars have been kept for retail sale at any one time, mainly on the site (Exhibit C). Second, Mr Darnton confirms in a witness testament that his company, PD Delivery Services, collected vehicles nationwide (generally between 6 to 8 a week but as many as 12 a week) for Bayer Car Sales and delivered them exclusively to the site from November 2008 until his business closed in November 2013 (Exhibit D). Third, Mr Austin, Director of Mainland Vehicle Deliveries Ltd, who confirms in an email that his company has delivered 30-35 vehicles per month on average since 2014 (Exhibit E).
7. Fourth, Mr Savage in his witness statement confirms that he (via his company Bumper Scuffs) has carried out repairs to cars including paintwork at the site for over 13 years; he confirms that he has never seen less than 10 cars on the site (Exhibit F). It is worth pointing out here that the Bayers in the PCNs state that they own 7 personal cars between them, which are obviously kept on the site, albeit it is unclear for how long they have had 7 cars. Fifth, Arthur Daniels & Company, the business's accountant, confirms that car sales have varied between 770 and 1126 per year since the business started trading on 1 November 2008 and that the business has always operated from the site (Exhibit B). Bank statements for the business have also been provided every year from 2008 (Exhibit G) as have sales invoices from car dealers (Exhibit H) some of which make clear that the site is the address where the car was scheduled for delivery.
8. The Council's main argument centres on the site visit by its officer, Mr Snook, on 6 November 2014, at which there were only 6 cars on the site for sale through the business, a similar amount apparently being noted by other officers who had visited the site on other occasions in connection with

¹ The Companies House record states Bayer Car Sales Ltd was incorporated on 3 May 2011 – Company number 07620671 and gives the site address as the registered office address

applications for extensions to the house around that time. Mr Snook's notes say that Mr Bayer told him at this visit that around 2 to 3 customers visited the site per week. On this basis the Council concluded at the time that there had not been a material change of use, as it had also concluded after two separate visits in 2009 and 2010 following complaints. The number of vehicles seen at the various visits of the Council officers, and recorded by them at the time, are far less than the numbers indicated by the appellant's workers. This casts some doubt on the accuracy of those recollections.

9. It was only following Mr Snook's visit to the site on 11 September 2018 that the Council considered that a material change of use had occurred at the site. This was on the basis that 22 vehicles were for sale through the business on Autotrader of which 12 were present on the site and that Mr Bayer had informed him that around 6-7 viewings take place weekly at the site.
10. The Council argues that Exhibit B does not show clear evidence that both the sales and storage business operated on a consistent level at the site over the 10-year period prior to the application. In particular, it argues that the figures show a steady increase in car sales from 2014 to 2018.
11. The accountant's letter shows a steady increase in car sales, in fact from 819 units in 2011/12 to 1126 vehicles in 2016/17, albeit that 909 cars were sold in 2008/09, 770 in 2009/10 and 1,110 in 2017/18 indicating there have been upwards and downwards variations year on year. I acknowledge the appellant's point that any business selling cars will exhibit different levels of trade each year. But it is clear from this information that there have been increasing sales year on year since 2011/12, the year after the business became a registered Company.
12. The accountant's information does not refer to the number of cars delivered to and traded from the site, or the number of callers to the site in connection with the business, albeit understandably because that is not an accountant's role. The two PCNs both state that there are now (or were in February 2019) on average 7 weekly retail viewings of cars and 30 visitors to the site in connection with the car sales business. Mr Snook's notes of his 2014 visit records Mr Bayer stating that only 2 or 3 customers visited the property a week at that time. The case notes from the Council's visit on 19 September 2009 – the first enforcement officer visit pursuant to a complaint about an alleged car sales use – records Mrs Bayer stating that there were no (my emphasis) business visitors or callers to the address at that time. This undoubtedly seems to indicate that the business use has grown significantly since then.
13. Looking at the numbers of cars sold by the business and the number said to having been delivered to the site, it is clear that there is a mismatch between the former and the latter. The number of cars delivered to the site (in Exhibits D and E) total in the region of 30 a month, or 360 a year. But that is less than half of 770, the lowest annual sales figure of vehicles recorded by the accountants. That may be because, as Mr Bayer told Mr Snook at his 2014 visit, the majority of the stock were not being delivered to the site but were merely sales where he acted as a 'middleman' and that the cars were stored elsewhere. It is though clear now that sales are far higher than 770 vehicles a year, which suggests that a considerably larger actual number are being stored for sale on the site at any one time.

14. However, and more fundamentally, recently there have been an increasing number of complaints from residential neighbours about the impact of the car sales business on their living conditions. Neighbours point out that there has been a marked increase in the following adverse effects in the last two or three years: noise from revving engines and pressure washers on the site, visitors' cars parked on the double yellow lines and curbs in the road, cars being backed in and out of the site blocking the drive to Nos 3-6, cars waiting with engines running in the road, an increase in the number of car transporters delivering vehicles to the site and a marked increase in foot traffic by visitors to the site. The observations of neighbours are consistent with the observations of the Council's officers.
15. The appellant points out that this is his business address where customers view vehicles and that he has no other premises, albeit he may store additional cars in other nearby locations when necessary, such as in the nearby Lysses public car park to the north of the site or in repair garages as confirmed in his PCN.
16. I acknowledge that the site has always been his business premises since November 2008. But the evidence suggests that no visitors attended the site in September 2009 in connection with the business. 2-3 a week on average apparently did so in 2014, and 30 do so now as acknowledged by the PCNs. It also appears to be the case that No 6's drive is much fuller with cars now or at the time the Notice was issued than it was in 2014, when planning and enforcement officers only saw 6 for sale vehicles stored there. This would explain the neighbours' complaints about the single carriageway drive to Nos 3-6 being blocked on a regular basis by cars leaving the site, because the numbers of cars parked in the drive inevitably means that they have to be manoeuvred for viewings et cetera more often than previously when there were less of them on the site.
17. In conclusion, there have been increased sales year on year since 2011, an increased number of visitors including prospective buyers to the site as acknowledged by the appellant, and an increase in the numbers of cars stored at and traded from the site, which together have adversely impacted the living conditions of residential neighbours in Bridgefoot Drive. This change in the character of the activity on site and its impacts on surrounding land indicate that there has been a material change in the use of the site.
18. The Council decided, based on what its officers were told by Mrs Bayer in 2009, and Mr Bayer in 2014 that no material change of use from the site's authorised use as a Class C3 dwellinghouse had occurred at those times. It decided in 2018 that a material change of use to a mixed use comprising residential use and use for car sales and car storage had occurred. I agree for the above reasons that at some time between 2014 and 2018 this material change of use occurred. Anytime within that four-year period is less than 10 years from the date the Notice was served. Consequently, the appeal under ground (d) fails.

Ground (a)

19. This ground is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
20. Bridgefoot Drive is a residential cul-de-sac off East Street, just east of Fareham town centre. It comprises 10 detached dwellings, Nos 1A, 1B and 2-9

consecutive. The main part of it, parallel to East Street, gives access to Nos 1A, 1B, 2, 7, 8 and 9. There are double yellow lines preventing parking at any time on it. It is narrow, albeit two cars can just about pass each other, providing no other car is illegally parked on the road. Halfway along it is a single carriageway spur road that heads north and gives access to Nos 3-6 consecutive, in other words a road of insufficient width for two cars to pass each other. The access to No 6 is on the east side of this spur road, just before the accesses to Nos 3, 4 and 5. This means that cars entering or exiting the driveway of the appeal site have the potential to block access and egress to Nos 3-5.

21. I did not witness any cars using either the main drive or the northern spur road during my site visit. However, from my visit it is obvious that any cars being delivered to or picked up from No 6 would temporarily halt any access or egress to Nos 3-5. The same would apply to vehicles parked on No 6's driveway being manoeuvred for viewing or test drive purposes. This is because No 6's drive seems now to be generally heavily parked, which means that cars may need to exit and re-enter the site to enable another car to be viewed properly or itself exit. There were 16 cars parked on the drive during my visit. It could comfortably take 20. In either case it would be necessary to manoeuvre cars in and out of the premises to enable a car parked further into the drive to exit. It is unclear to what exact extent such vehicle movements arising from the car sales business is a problem but the recent complaints from neighbours suggest that it is a significant one, which is unsurprising.
22. Neighbours also complain about cars parking on the main part of Bridgefoot Drive including on the curbs next to the houses. I can appreciate that this causes pollution from car exhausts when engines are left on. I can also understand that such parking by visitors, suppliers or customers of the business can make access and egress for residents more problematic. Whilst I acknowledge the appellant's comment that delivery of vehicles by car transporter is very infrequent, I appreciate that on the few occasions it has occurred it could give rise to a significant blockage of the Drive, not least because the transporter would have to reverse out of it. There are also complaints about increased noise from cars coming and going and noise of revving engines and power washers on the site.
23. In conclusion, the size, width and layout of Bridgefoot Drive, and particularly the narrow width of the spur road to Nos 3-6, makes the number of car deliveries and visitor numbers to No 6 occasioned by the car sales business to be problematic because it blocks or restricts residential neighbours' access to or egress from their houses, which they should reasonably expect to go generally unhindered. The business causes and is likely to continue to cause noise from car engines and power washers used to clean the cars.
24. In other words, the car sales business is totally unsuitable in this small narrow cul-de-sac where residential neighbours are in close proximity. The business would best be located on a commercial site where there is good access, and sufficient room for staff, visitors, customers and suppliers to park and to conduct all the activities associated with this business without harming the living conditions of residential neighbours.
25. Policy CS5 of the Council's Core Strategy (CS) explains that permission will be granted for development which does not affect the safety and operation of the

strategic and local road network. The car sales use fails to comply with this Policy for the above reasons. CS Policy DSP2 states that proposals should not have a significant adverse impact on neighbouring development, adjoining land or the wider environment by reason of, amongst other things, noise, air pollution or fumes. The car sales use fails to comply with this Policy for the above reasons.

26. Consequently, planning permission should not be granted and the appeal on ground (a) fails.

Ground (g)

27. This ground is that any period specified in the notice falls short of what should reasonably be allowed.
28. The time for compliance in the Notice is one month. I appreciate that the business will have commitments and that one month would be an insufficient amount of time to secure alternative premises and fulfil such commitments.
29. The appellant suggests that it would take between one and two years for the business to permanently relocate to other premises and that a minimum period of 12 months should be given to comply. Such a long period would in effect amount to a temporary planning permission for a use that is continuing to significantly harm neighbouring residents' living conditions.
30. Given that this unauthorised use has been causing such problems for a considerable period of time, I consider such a period would be unreasonable. However, finding a suitable alternative premise for the business and negotiating a lease or acquiring a site will realistically take well in excess of a month. I consider that 6 months would be plenty of time for this to take place. The compliance period in the Notice is altered to 6 months accordingly.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Nick Fagan

INSPECTOR