
Appeal Decision

Hearing Held on 15 December 2020

Site visit made on 17 December 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 04 January 2021

Appeal Ref: APP/F5540/C/19/3238912

Premises known as Cranford Bridge Depot, 10 Park Lane, Cranford TW5 9RW

- 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 Sam Popal against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 26 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the extension of a structure within the Metropolitan Green Belt and the change of use of the property for car repair business.
 - The requirements of the notice are:
 - i) Demolish the extended structure (as shown in a hatched area on the plan attached to the notice);
 - ii) Cease the use of the property for commercial use;
 - iii) Remove all resultant debris from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) 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 be corrected: by the deletion of the word "extensions" and the substitution of the word "extension" in section 2 of the notice, *The Land Affected*; by the deletion of the hatched area in the north-west corner of the land edged red on the notice plan. Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

Application for costs

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

The appeal on ground (b)

3. The breach of planning control alleges the extension of a structure which is required to be demolished by step 1. However, the notice plan shows two hatched areas, one adjoining the building, the other as a stand-alone structure. Put simply, the appellant's case on this ground is that the latter structure did not exist when the notice was issued.

4. The Council accepts that this is so and asked me to correct the notice accordingly. I shall do so using the powers available in s176(1) of the principal Act.
5. The appeal on ground (b) therefore succeeds.

The appeal on ground (c)

Introduction

6. The breach of planning control alleged appears to include both operational development (the extension of a structure) and a change of use (to car repairs). It is perhaps notable that the notice does not allege the change of use as being 'material'.
7. However, in their respective cases, neither party draws a distinction between the two elements. At the Hearing, the Council explained that its concern was with the car repairs activity and its effect on the Green Belt, highway safety and, to a lesser extent, the Conservation Area within which the appeal site lies. Inclusion of the extension within the breach was to ensure that development facilitating the unauthorised use would also be removed.
8. Having made this clear, the Council was given the opportunity to consider if the notice accurately reflected its intentions and perhaps to withdraw it if it did not. Following a short adjournment, the Council confirmed that it did not consider it necessary to withdraw the notice and the Hearing continued.
9. During my site inspection I saw that the 'extension' is, in fact, a temporary structure over which there is a roof that extends from the building to its side. On reflection, I accept the Council's explanation for the drafting of the notice and have therefore considered this ground of appeal on the basis that the breach is the change of use alleged and that the extension is facilitating development rather than a separate breach of operational development. There can be no injustice to the Council in so doing.
10. There is no requirement in law for a local planning authority alleging a material change of use to specify what the previous use was. However, it is often useful to do so as it enables the necessary assessment of 'material' to be undertaken. Nowhere in the officer report seeking authorisation to take enforcement action is the previous use of the appeal site identified or any explanation given as to why the car repair use amounts to a material change of use.
11. The Council's appeal statement does identify the previous use of the appeal site as an MOT centre (*sui generis*) and gives what appears to be a planning case reference number. The statement still does not explain why a change of use from MOT centre to car repairs is considered to be a material change. In a pre-Hearing note, I asked if further detail about the previous MOT centre use could be provided. The Council did so but confirmed that, in fact, it concerned a different site altogether.
12. In appeals on the legal grounds the onus rests on the appellant to prove the case, on the balance of probabilities. However, the fact is that when this notice was issued, the Council appears to have had no evidence at all about the previous use of the land and therefore no basis on which to conclude that a material change of use had occurred.

13. Nevertheless, once the appeal was lodged further documentary and oral evidence about the history of the appeal site has been provided by both parties. Piecing that together allows the determination of this ground of appeal.

The evidence

14. The appeal site was part of a slightly larger site occupied by Thames Water and any predecessor water authorities. It lies on a thin strip of land between Park Lane and the A4 Bath Road. To the west is the River Crane and beyond that and to the south of the A4 is Heathrow Airport. There is no evidence about ownership before 2008 or when the use of the site by the water authority began. Nor is there any evidence about the planning history of the land prior to 2008.
15. The earliest aerial image of the site provided by the parties dates from 2003. This shows the building, some tree cover and some further items along the western boundary. No evidence was given about these and it is not possible to discern what they are. By January 2006 the items along the western boundary had been removed. The tree cover was not in leaf and it can be seen that there is only one building on the site. Given the date conventions on Google Earth, I believe the 2008 aerial image is from March and shows the trees once again coming into leaf, but the building remains clearly visible.
16. Written evidence about the use of the land in the 2000s has been given on behalf of the appellant by people who have a good knowledge of the area given their various roles in the local community. This was elaborated upon by Mr Ali and Mr Jabbar during the Hearing.
17. Their evidence is that the site was used to maintain and remove blockages in the local sewerage system which, I understand, serves the airport. This involved comings and goings of what were described as industrial vehicles and the use of generators, compressors and pumps. The activities generated both noise and unpleasant odours. The building was used to store the equipment and machinery although during the Hearing Mr Jabbar was insistent that the machinery was also operated from within the building.
18. During my site inspection I saw a large inspection/maintenance chamber to the rear of the building on the retained Thames Water land. Although this is hard to pick out in the early aerial images, in my view, its presence corroborates the evidence given about the activity. However, no evidence was given about the frequency with which the site was used as described.
19. Evidence provided by the Council is that the legal ownership of the appeal site passed to a pension fund on 30 May 2008. An email dated June 2009 from the fund to the Council states that the property was in disrepair and empty and unoccupied from May 2008 to April 2009, the period covered by the business rates demand that was the subject of the correspondence.
20. In August 2008 a planning application¹ for 'Demolition of the existing building and erection of a new warehouse' was submitted. An extract from the Design and Access Statement (DAS) says that 'the site has been historically used as a storage and distribution centre...' and the officer report describes the site as containing a brick building previously used by the Water Board for storage

¹ Ref: P/2008/2799, 00855/H/P1

- purposes. The report also describes the application site as being bounded on all sides by fencing thereby confirming that by 2008 the appeal site was entirely physically separate from the retained Thames Water land. Planning permission was refused in October 2008.
21. In January 2009 the Council received a complaint that the building was being extended without planning permission. There is no evidence that the Council took any action in respect of this complaint. That structure now houses the paint shop. Given that the notice does not relate to this building, it is reasonable to assume that the Council now considers it to be lawful by passage of time. The Council did not challenge that point when put to them at the Hearing.
 22. The next aerial image is from June 2010. However, the trees are once again in full leaf and obscure all bar the building on the site. The evidence is that it was during 2010 that the appellant began the use that is the subject of the notice.
 23. In February 2011 an enforcement officer visited the site and established that a car repair workshop had been set up. My understanding is that, at this stage, the appellant was renting the premises from the pension fund.
 24. One year later, the site was offered for sale at auction. The Council wrote to the pension fund beforehand to suggest that the site was either not offered for sale or that prospective buyers were made aware of the Council's view of the planning status of the property. This was that the current use for car repairs was a breach of planning control and that planning permission for it was unlikely to be given. The letter also records and comments upon the pension fund's understanding of the previous use of the land. This was that the building had been used as a workshop for at least 30 years. The Council however explained '...that the use of the building by the Environment Agency, as statutory undertakers, may have been considered to be operational development. In any event, it was likely to be of a completely different scale, nature and intensity of use to the current use.'
 25. The auction details include a photograph of the site. This shows the brick building being used for car repairs and what appears to be an open-fronted structure to the side set back from the building line of the front elevation of the building. In a further email from the pension fund to the Council dated 5 April 2012 it was confirmed that the property was sold at auction with the guidance about the planning status that the Council had required. My understanding is that the freehold was not purchased by the appellant at this time.
 26. The appellant finally became the owner of the appeal site in 2015. He then erected the extension that is complained of in the notice. This can clearly be seen by comparing the images of the site provided for 2013 and 2015. In the latter only, the original brick building has been extended to the side twice and the two structures roofed over. Apparent in both images is the concrete surfacing to the retained Thames Water land giving vehicular access to what is a substantial structure to the rear of the appeal site building. This is, I believe, the large inspection/maintenance chamber referred to above.
 27. During February and March 2017 a further enforcement site visit took place following which a breach letter was sent to the appellant about both the unauthorised structure and the unauthorised use of the land and buildings for car repairs. This enforcement activity appears to have post-dated an

application for permission to demolish the existing buildings, erect another building and retain the existing use as a car body repair shop. This application was withdrawn in February 2017 just before the enforcement site visit.

28. Another year later, in February 2018, an application was made for planning permission for 'Demolition of existing single storey buildings and erection of new single storey detached building and continued use as car body repair garage (Use Class: B2)'. Planning permission was refused. However, in describing the site, the officer report confirms that the car body repair use falls within Use Class B2.
29. Finally, in May 2019 an enforcement officer undertook a further site inspection and confirmed that the unauthorised use was continuing. A report was prepared in August 2019, the recommendation that an enforcement notice be issued in the terms set out was agreed in September and the notice issued later that month.

Appraisal

30. An understanding of the planning unit and how it has evolved is usually critical to an assessment of whether or not there has been a material change of use. Neither the Council nor the appellant give any consideration to this matter in their evidence.
31. The principles for identifying the planning unit have been established by the courts². Applying those principles, it is clear to me that while occupied by Thames Water and the predecessor water authorities, the wider area of land, including what is now the appeal site, was a single planning unit.
32. The appellant does not seek to argue that its use then fell within Class B2 of the Town and Country Planning (Use Classes) Order 1987, as amended (UCO). Instead, the appellant's case on this ground is that the use was akin to a B2 use.
33. The use cannot be considered akin to a B1 use. Uses that would cause detriment to the amenity of a residential area by reason of noise, smell or fumes are precluded from the Class. The evidence is that the water authority activity generated all three.
34. Nor can it be considered as a B8 use. Notwithstanding the evidence of Mr Jabbar, the use of the building by the water authority seems, on the balance of probability, to have been the storage of the equipment used on site. However, that storage use was clearly part and parcel of the primary use of the site and not a primary use in its own right.
35. Use of land and buildings by water authorities for their specific purposes does not fall within any of the Use Classes. Nor does it fall within any of the prescribed *sui generis* uses although the list is not exhaustive.
36. On the evidence before me, if the water authority use does not fall within Use Class B2, General Industrial, it is a *sui generis* use very much akin to such a use, as the appellant contends. In my judgement therefore, until around May 2008 when the ownership of the property formally changed, it was a single planning unit in either an explicit B2 use or one very much akin to such a use.

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 12071 is the leading case

37. Applying the principles established by the courts it is clear that by August 2008 the land previously occupied by the water authority was now two planning units. There were two land owners (the pension fund and the owner of the retained water authority land if not Thames Water itself), there was complete physical separation of the two parcels of land (the fencing to all sides of the appeal site noted by the Council), each site had an access from the highway and, while the appeal site was vacant at that time, there was no functional relationship at all between the two parcels.
38. Then mere sub-division of a planning unit does not amount to a material change of use. In this case, the land retained by Thames Water has remained in the same use as previously.
39. The car repair use of the appeal site began in 2010. The Council has been consistent in its view that this is a use falling within Use Class B2. To the extent that a car repair business generally causes some noise and, potentially, odours, especially when paint spraying, I believe that position to be correct.
40. Its statement that the building was previously used for storage purposes (see paragraph 20 above) is not necessarily inaccurate (emphasis added). However, first, it appears to rely on the assertion by that applicant in the DAS and, second, it gives no consideration to the previous use of the whole site and thus whether or not storage was the primary use. In any event, there is simply no evidence that the land has ever been used as a storage and distribution centre as claimed in the DAS. In my view, almost no weight can be given to the extract from that document.
41. Tellingly, the extract from the letter written by the Planning Manager included above (paragraph 24) strongly suggests that the Council considered any material change of use that had occurred as a result of the establishment of the car repair business to be caused by intensification. However, at the Hearing the Council confirmed that this was not its case.
42. The question therefore is whether the new planning unit (the appeal site) is in a materially different use from the previous planning unit of which it was a part. The current use is acknowledged by the Council, correctly in my view, to be within Use Class B2. The previous use of the planning unit was akin to a B2 use if not actually falling squarely within the B2 Use Class.
43. Changes within the same Use Class shall not be taken to involve the development of land (s55(2)(f) of the Act). If the previous use and the current use should be considered as falling with the same B2 Use Class no development has taken place.
44. Alternatively, if the water authority use is considered to be akin to a B2 use, the current car repair use (Use Class B2) is not materially different in character. Both generate noise and odours and vehicles come and go to both. There has, therefore, not been a material change of use and thus development as described in s55(1) of the Act has not occurred.
45. In either case, the matters alleged and confirmed by the Council at the Hearing as being the breach of planning control it believes to have occurred do not, in my judgement, constitute a breach of planning control. The appeal on ground (c) therefore succeeds.

Conclusion

46. From the evidence at the Hearing I conclude that the notice is incorrect, in that *The Land Affected* refers to 'extensions' when, in fact, the notice is directed at only one. It is also clear to me that the plan attached to the enforcement notice is incorrect, in that it erroneously includes a hatched area in the north-west corner of the red-edged area to indicate the position of a second extension which did not exist when the notice was issued. Accordingly, the appeal should succeed on ground (b) to this extent. I shall correct the notice and the extent of the land affected thereby to reflect this.
47. As to the appeal on ground (c), I am satisfied on the evidence that the matters alleged in the notice do not amount to a material change in the use of the land and buildings and the appeal on this ground should succeed in respect of those matters which, following the correction of the enforcement notice, are stated in it as constituting the breach of planning control. In view of the success on legal grounds, the appeal under the various grounds as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Brian Cook

Inspector

APPEARANCES

FOR THE APPELLANT:

Nicholas Kingsley-Smith	Kingsley Smith Solicitors LLP
LLB(Hons)	
Sam Popal	Appellant
Mohammed Ali	Operations Manager
Atik Jabbar	Trustee, Heathrow Jamia Mosque

FOR THE LOCAL PLANNING AUTHORITY:

Faisal Qureshi	Planning Enforcement Officer
Matthew Rees	Head of Development Management