
Appeal Decision

Site visit made on 2 February 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Appeal Ref: APP/L5810/C/20/3260942

London House, 243-253 Lower Mortlake Road, Richmond TW9 4LS

- 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 Ali Khan on behalf of Silver Bells Administration Limited against an enforcement notice issued by the Council of the London Borough of Richmond-upon-Thames.
 - The enforcement notice was issued on 10 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission and within the past 10 years, the unauthorised material change of use from office use (B1a) to use as a car- wash (sui generis use) of the Town and Country Planning (Use Classes Order) 1987 ("the Car Wash").
 - The requirements of the notice are:
 - (a) Cease the use of the Car Wash;
 - (b) Remove all furniture and equipment to facilitate the use of the Car Wash from the Property.
 - The period for compliance with the requirements is 6 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) 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.

Procedural Matters

2. Arguments relating to the planning merits of the development that has been undertaken can only be assessed in an appeal made on ground (a). As the fee was not paid for the ground (a) appeal within the prescribed timeframe, this lapsed, and the planning merits arguments put forward in the appellant's case have played no part in my decision.
3. The appellant has not submitted his appeal on the basis of ground (b), 'that the allegation has not occurred as a matter of fact'. However, he has addressed this ground in his submission, in so far as he considers that there has not been any change of use. I have therefore considered this under a ground (b) appeal below.

The appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
5. The appellant states that there has not been any change of use by having the car wash, as the premises are vacant. However, the Council's Enforcement Officer's Report explains that the enforcement officer first witnessed the that the car wash was in operation to front of the office building on 12 March 2020. In a later site visit on 14 July 2020, the Council's enforcement officer witnessed that the car wash use was still in operation. The Council and a third party have also provided photographic evidence of the car wash use in operation, which includes signage for the car wash, advertising that they are open for car wash 7 days a week. The appellant also states that the car wash is a temporary operation.
6. Therefore, on the balance of probabilities, I consider that the matters as alleged by the notice have occurred as a matter of fact. There has therefore been a breach of planning control and the very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof.
7. Accordingly, the appeal on ground (b) must fail.

The appeal on Ground (f)

8. The appeals on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
9. The appellant states that the building is vacant and has been stripped out for redevelopment, and therefore does not result in any loss of employment contrary to the KOA policy. It is further stated that the car wash is a temporary operation, providing additional site security and that the signage for the car wash can be improved. The appellant also submits that they will prevent the likelihood of vehicles 'backing-up' onto the highway by having appointments only customers, controlling the numbers of cars, and that a transport statement will be submitted.
10. Given that a ground (a) appeal has lapsed, I cannot assess the planning merits of the case, and I must take the notice at face value. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not overcome the breach of planning control and planning permission would still be required.
11. On this basis, the ground (f) appeal fails.

Conclusion

12. For the reasons given above I consider that the appeal should not succeed. I shall uphold the enforcement notice.

R Satheesan

INSPECTOR