



Appeal Decision

Inquiry Held on 20, 21 and 22 January 2021

Site visit made on 25 January 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 February 2021

Appeal Ref: APP/P4415/C/19/3240437

Land at Grange Farm Cottage, 12 and 14 Church Street, Wales, Sheffield

- 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 Richard Jennison against an enforcement notice issued by Rotherham Metropolitan Borough Council.
 - The enforcement notice, numbered EN2018/0045, was issued on 4 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, a material change of use of the land from a residential use to a mixed residential and commercial use namely the storage and sale of motor vehicles.
 - The requirements of the notice are (i) Cease the use of the land for the commercial storage and sale of motor vehicles (ii) Remove from the land all vehicles associated with the unauthorised use and not registered to the occupant of the land.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (e), (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 substitution of the plan annexed to this decision for the plan attached to the enforcement notice and the deletion of the words "12 and" in paragraph 2 "The land to which the Notice Relates."
2. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 28 days and the substitution of 3 months as the period for compliance.
3. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

The Notice

4. The parties agreed that the plan of the land attached to the notice should be corrected by the insertion of the plan annexed to this decision. The address of the land on the notice also needs to be corrected so that it refers only to 14 Church Street (and so that the reference to 12 Church Street is removed.)

Ground (e)

5. An appeal on this ground is on the basis that the copies of the enforcement notice were not served as required by s172¹. I find that the appellant cannot rely on this ground in relation to himself because he received a correct copy of the notice and has made a valid appeal, and he has not proven that he was substantially prejudiced by any defect in the service. Ms Hodgkinson's evidence regarding this does not need to be considered in light of the fact that the appellant did not pursue any challenge based on the timing of the service of the notice on Mr Jennison.
6. The appellant has also raised an argument under this ground in relation to the Owners and/or Occupiers of the Meadow Gardens and Valley View properties. The appellant alleges that these people have a right of access over the appeal site which would constitute an interest in the land and which would be materially affected by the notice. However, no evidence regarding the alleged right of way was submitted to the Inquiry and, in any event, any such right of way, whilst capable of constituting a legal or equitable interest for the purposes of s172, would not have been materially affected by the notice, as the situation will either continue as alleged currently or the commercial use will need to cease. In either case, any private law rights of way would not be affected by the planning use of the site. The same is true of the Owner/Occupiers of the field to the west of the property in that they are not materially affected by the notice as any private law rights are a separate issue from the planning status of the site and any issues of obstruction arising from the use of the land would be a matter between those individuals and Mr Jennison as the owner of the property over which the right of way lies. Any future enforcement action regarding Meadow Gardens and Valley View that may be taken by the Council is separate to this appeal.
7. A copy of the notice was sent addressed to Mr Graham Jennison who is deceased and the appellant has argued that his Personal Representatives should have been served due to the legal interest under Land Registry Title Number SYK305195. I was not provided with a copy of the plan to go with this title number and I am unclear as to which land it relates as the description given is 'land lying to the South of School Road, land on the East side of Mansfield Road and land on the West side of Mansfield Road, Wales' which is not precise enough to locate the land in the absence of the plan. Whilst I do note that that the Council sent a copy of the notice addressed to Mr Graham Jennison, it has not been shown during the course of this appeal that the Personal Representatives had an interest in the land affected by the notice, let alone that they would have been materially affected by it.
8. The appellant also argued that BMW Financial Services Limited should have been served with a copy of the notice as they have a financial charge on title SYK271328 and which forms part of the appeal property (although the appellant's closing submissions referred to BMW Financial Services Limited as having a financial charge over two sections of the Appeal Property the evidence submitted only includes an entry on one registered title). A financial chargee of this nature is in the same position as a mortgagee who do not routinely need

¹ Section 172 of the Town and Country Planning Act 1990 provides (2) "A copy of an enforcement notice shall be served - (a) on the owner and on the occupier of the land to which it relate; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice."

to be served, as whilst they will have a legal or equitable interest in the land, it will not normally be materially affected by the planning use. The equitable charge in this instance appears to be a financial charge imposed by court order and would not be directly or materially affected by whether the commercial use can continue.

9. For the reasons set out above, I do not find that the appellant made out his case, on the required balance of probabilities, that copies of the notice were not properly served. The appeal on this ground does not therefore succeed.

Ground (d)

10. In order to succeed on this ground, the appellant must show that the land has been a mixed residential and commercial use, namely the storage and sale of motor vehicles, for a continuous (i.e. substantially uninterrupted) period of 10 years prior to the issue of the notice. The burden of proof is on the appellant. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, provided the appellant's evidence alone is sufficiently precise and unambiguous, the appeal should be allowed. The test to be applied in weighing the evidence is on the balance of probabilities.

Evidence on behalf of the appellant

11. The appellant's case is that he has used the land (which included 12 Church Street until it was sold in 2018) as the mixed residential and commercial use stated in the notice continuously since 1975. The appellant does not accept that there has been a material change in the use of the land during that time period, which he says therefore has always been in a mixed use. In his own evidence, on which he was questioned under affirmation, Mr Jennison stated that since the mid-1990s he has generally had between 4 to 8 cars stored and available for sale from the appeal site, although he was taken seriously ill during 2016 which meant that there was very little trade taking place during most of 2018.
12. In addition, the appellant closed his car sales business site on Cemetery Road in 2017 but he does not accept that this affected his use of the appeal site. The appellant provided four photographs of the appeal site which show:
 - i) Image 1, August 2008, view from Church Street of 2 vehicles;
 - ii) Image 2, September 2009, view from Church Street of 1 vehicle;
 - iii) Image 3, Pre-2014, aerial image showing 3 vehicles, one possibly burnt out (plus one in front of The Stables which did not belong to the appellant); and
 - iv) Images 4 and 5, Pre-1997, aerial photo showing 5 vehicles (and Mr Jennison gave evidence that one of the vehicles did not belong to him.)

Mr Jennison's evidence in relation to Images 1 and 2, which were taken from Church Street, was that it was not possible to see from those photos what was on the rest of the yard and in the car port. This is correct, as evident from my site visit, but this does not alter the fact that the photographs only provide direct evidence of there being one or two vehicles on the appeal site at the time that they were taken.

13. It is necessary for the appellant to provide corroborative evidence in this case, in accordance with planning practice guidance and case law, as the Council has submitted evidence to contradict the appellant's version of events.
14. The appellant provided evidence from various other people including his wife, friends/customers and employees/contractors (all of whom provided sworn oral evidence during the Inquiry apart from Mr Newman and Mrs Hodgkinson). Gwyneth Jennison gave evidence that she agreed with her husband's written proof because she did not believe that he would lie, but that she could remember very little, if anything, of the detail and that could not herself provide evidence about the numbers of cars on the appeal site or at Cemetery Road during different periods of time. Daniel Richardson moved into The Stables on 31 October 2019, which was after the issue of the notice on 4 October 2019, and confirmed that he could not give evidence about what had happened at the site prior to that date. His evidence under cross-examination was that the average number of vehicles he had seen on the appeal site since he moved in was around 6 – 9 , but it could be fewer or more at different times, probably up to around a maximum of 12, but that it did not bother him.
15. The appellant accepted that the premises at Cemetery Road was his principal sales site and that everyone worked from there but came over to the appeal site when necessary. Mr Jennison's evidence was that he generally could have had between 8 to 12 cars at the Cemetery Road site which included the land he acquired at the side and vehicles parked on the road if need be, and this accords with the evidence of Mr Wheeler and Mr Sedgewick (although Mr Sedgewick said there could be up to 22 vehicles at absolute capacity including the surrounding area). The appellant also confirmed that he had a car sales site on Fitzwilliam Road from the mid-1980s to the 1990s which was a much larger site which could hold up to 40 cars but that generally had about 20 cars for sale on it. Regarding the car sales business more generally, and the number of cars on the appeal site associated with the business, Mr Jennison gave evidence that there were no constant numbers as this would go up and down depending on business.
16. Both Mr and Mrs Jennison gave evidence that at various times they would use stock vehicles as their own modes of transport and that they could both have several cars for their own personal use, including a 'kennel car' to transport their dogs, making a total of five vehicles on site. Mr Jennison also said that cars were part of his work and a hobby and that he would also have some project cars, including two in recent years, and made reference to a Range Rover and old Alvis that was there for a long period of time. Mr Jennison also gave evidence that 14 Church Street was rented out from the mid-1990s until 2016 and confirmed that at least one tenant had her own car. During this period, Mr Jennison lived in 12 Church Street but owned both dwellinghouses and the yard and car port (and the tenants in 14 Church Street were permitted to use the yard for parking).
17. Mr Jennison's evidence regarding staff is that there was never any repair work done at the appeal site but that cars were cleaned, valeted and stored and that arrangements were made to show the cars there for sale if that was more convenient. Andrew Webster gave evidence that he has worked part-time for the appellant on and off since 2006 which involved collecting and delivering cars, organising MOTs and repairs and undertaking cleaning and valeting of vehicles. He confirmed that there was no set pattern to the work, which was

depending on need, and that he would deliver vehicles to both the appeal site and Cemetery Road. Mr Webster agreed that that the appeal site was used as an overflow if there was no room at Cemetery Road but that there was no pattern to how often he would go to the appeal site and he could not estimate how many times he would visit over the course of a year, or of the proportions between the 2 sites. Mr Webster's evidence was that there had been no real change in the business since around 2010, until the last year caused by the Covid Pandemic, and that he has seen no decline following the sale of Cemetery Road as he had still been busy fetching cars and taking them for their MOT etc.

18. Andrew Sedgewick's evidence was that he has worked in various capacities for the appellant for over 20 years and that throughout this time, when employed full-time between 2004 and 2010 and when working on a more casual basis between 2014 and 2018, he worked between 70 and 80% of his time at Cemetery Road and would go to the appeal site on a needs basis. He gave evidence that he had driven thousands of cars to the appeal site over the years and that up to around 22 cars could be stored at Cemetery Road, including vehicles parked on the road, at that time but it was more usually between 12-15. In his view the appeal site was used for convenience with most sales taking place at Cemetery Road. There was a period when Mr Sedgewick did not have a driving licence and it was more convenient for him to work at the appeal site as closer to his own home. Mr Sedgewick has worked for the appellant following the closure of Cemetery Road and gave evidence that in his view the number of cars for sale decreased but that did not really increase the number on the appeal site. He did not know the appellant prior to 1996 and worked elsewhere between 2010 and 2014 so was unable to provide evidence for those periods.
19. Michael Hannaby gave evidence that he had undertaken business interactions with Mr Jennison on average every couple of months or so from the early-2000s until several years ago (which included the purchase of 4 cars and the borrowing, part-exchanging, selling and repairing of cars). He had visited the appeal site as well as Cemetery Road and estimated that around one third of these transactions were at the appeal site and two thirds at Cemetery Road, and he could remember buying one car from the appeal site but was unsure if that was before or after the Cemetery Road Site had closed.
20. John Whitfield gave evidence that he had bought various cars from the appellant between around 1985 and 2007, some for himself or his family members and some for his employees. He recalled collecting four of those from the appeal site but that some would have been collected from Cemetery Road (although he did not know from which site his staff would have collected their cars) and he could not say whether he used one site more than the other. Mr Whitfield had also visited the site around 2 or 3 times a year to collect Mr Jennison to go fishing and shooting, the last time being approximately 8 or 9 years ago, and he always saw cars at both properties but the numbers would fluctuate.
21. Timothy Wheeler also gave evidence on behalf of the appellant that he was a regular visitor to the appeal property between October 2008 and the end of 2017. On cross-examination, Mr Wheeler gave evidence that the numbers of vehicles on site would fluctuate, although as a rule there would be 5 or 6 vehicles (although he also referred to the figure of "6 to 7 or 8") and that

whilst he assumed that they all belonged to the appellant he did not ask and did not know whether some would have belonged to the other neighbours. He also gave evidence that the appellant and his wife would drive stock cars that were for sale as their own means of transport including an additional car for transporting the dogs, and that he himself had bought 3 cars during the time that he knew the appellant from the appeal site.

22. Phillip Sherburn gave evidence that he has his own car repair premises and has undertaken work for the appellant regularly since around 2005. He stated that he initially collected most of the cars from the Cemetery Road site but once his own business relocated to near to the appeal site it became more mixed and he collected more regularly from there, with Mr Jennison either taking vehicles there for him to collect or delivering himself to Mr Sherburn's garage and then being dropped off home. Mr Sherburn said that the actual work on the cars is undertaken at his own premises.
23. Written statements were also provided by Tina Hodgkinson and John Newman, but these were not sworn or tested under cross-examination and I therefore given them limited weight as a result. Mr Newman states that he has collected and returned approximately 10 – 20 cars a year from the appeal site from 2007 to date. Ms Hodgkinson cannot give evidence regarding the use of the site prior to 2018 but says that she was aware that the appellant was running his business as a second-hand car dealer from 14 Church Street when she purchased her property in December 2018. Ms Hodgkinson thinks that the appellant normally has between 5 to 10 cars at the appeal site, which accords with the figures given by other witnesses on behalf of both parties for the period after the closure of the Cemetery Road site.

Evidence on behalf of the Council

24. In summary, the case put by the Council is that they first received complaints about a commercial use at the appeal site on 20 March 2018, which was after the closure of the Cemetery Road premises. All the evidence presented by the Council was given under oath or affirmation. Jon Wragg gave evidence that he made six site visits during 2018 and 2019 when he saw between 6 and 8 vehicles parked in the yard area, more than on any of the photographs provided by the appellant in evidence. Photographs provided by the Council taken in February and March 2019 and September 2020 also show multiple vehicles parked, although some shown belong to the owner of 12 Church Road. Mr Wragg's evidence is that he has not found any online references to car sales from the appeal property which date from more than two years ago, i.e. they all post-date the closure of the Cemetery Road premises.
25. Evidence was given by June Naylor, who lived at Game Cottage for around 15 years until 2017, that there were never any sales vehicles being stored within the appeal site during that time, although Mr and Mrs Jennison may have used vehicles personally that were subsequently sold on. Mrs Naylor gave evidence that she could see the yard area and car port from her upstairs bedroom window and from the area by the bin store. I am satisfied from my site visit that it is possible to see whether vehicles were parked on the yard and in the car port from the area behind the trellis, even with the planting. Mrs Naylor was clear under cross-examination that she did not work during that time and was often in her house and that the only people who she saw washing the vehicles were Mr and Mrs Jennison. She gave evidence that she did not see

many cars being stored there although the vehicles being driven by Mr and Mrs Jennison did change regularly.

26. Patricia Clayton gave evidence that she had previously been a magistrate for 22 years, and had lived in The Stables between around 2000 and 2014 when she would regularly see into the yard as she needed to go some way up the access road in order to pull onto her drive. Mrs Clayton's evidence was that there would always be three cars in the yard and car port area, and that she worked from home a lot of the time. She had seen one of Mr Jennison's employees bringing cars into the site, but it was never more than once or twice a year. Her evidence was that it had never been used as a car lot where cars were maintained or sold. Mrs Clayton accepted that she had made arrangements with Mr Jennison to sell her car at the appeal site and was subsequently paid there, but the arrangement was that the car was to be sold from Cemetery Road which is what happened. Mrs Clayton's evidence was that she was at the appeal site in September 2017 and saw a lot of vehicles so approached the appellant. Her evidence was that Mr Jennison said that these vehicles would be removed but Mrs Clayton says that she spoke to him again and he said he was allowed to sell up to 10 cars. Mr Jennison said in his evidence that he cannot recall these conversations. Mrs Clayton went on to say that since that time there have been between 8 and 10 cars whenever she has visited, which is a lot more vehicles than had been there previously. I was satisfied from the site visit that it was possible to see the yard area as described by Mrs Clayton, and this also accords with Mr Richardson's evidence (who currently lives in The Stables) as he was able to give details about the numbers of cars he had seen in the appeal site.
27. David Cooper and David Garrity gave evidence that since 2017 they had been approached by potential customers of Chapel Motors and asked whether it was located at their properties (Mr Cooper could recall 4 occasions), and that this was probably due to the photograph of their properties being included on the Chapel Motors entry on Google Maps. Mr Cooper confirmed that he could not see into the appeal site from his property and Mr Garrity gave evidence that he can see part of the yard area next to the field from his back bedroom and is therefore able to see any vehicles parked there and that he can also check what is for sale online and see the photographs of the rest of the yard. Their evidence was that prior to 2017 they had not been personally contacted or spoken to by anyone looking for Chapel Motors. Mr Cooper said prior to 2017 he was aware that the appellant was in car sales and that he may have sold some vehicles from the appeal site for convenience, but to the best of his knowledge it was not massive numbers, and that this seemed to increase in volume and intensity after 2017 with a further increase in activity from late 2018/2019. Mr Garrity did not live in his house between 2009 to 2014 but gave evidence that in his opinion the car sales and storage started from the appeal site after the closure of the Cemetery Road Site in 2017, although he also accepted that Mr Jennison may have had cars that were for sale for his own personal use but that it was not obvious to him prior to that time that the business was running from the appeal site as there no visitors or apparent advertising of the site.
28. Stephen Mallender cannot see onto the appeal site from his property but gave evidence that he passes through to deliver the local community magazine quarterly since 2013 to deliver to 12/14 Church Lane and The Stables and Game Cottage, and including the detached properties at the rear since they

were occupied. His evidence was that he could see into the yard and car port area (even before the occupation of the detached properties) when walking from Game Cottage across the yard to No.14. Mr Mallender gave evidence that he cannot comment on the daily business on the appeal site but that there was a big increase in the number of vehicles present following the closure of the Cemetery Road site around 2017 as prior to that time there had only been around 3 or 4 cars belonging to the residents. He said that the last time he had been to the appeal site there were 5 cars.

Assessment of the Evidence

29. The appellant, in seeking to make out the mixed use of the site as residential and commercial use namely the storage and sale of motor vehicles as lawful, must provide sufficient evidence to show on the balance of probabilities that there has been a substantially uninterrupted use as such for 10 years. In this case the evidence put forward by the appellant was not sufficiently precise and unambiguous in terms of the type of use or in relation to a specific 10 year period to show that lawful use. The appellant himself said that the number of vehicles would fluctuate, a word which was also used by some of his other witnesses, and he did not provide sufficient information to show that he used the appeal site continuously for a mixed commercial use. The use as described by Mr and Mrs Jennison is clearly ancillary to the residential use of the property, and the appellant did not show on balance that the storage of motor vehicles or sales from the site was more than that. It would not have been possible for the Council to take enforcement action regarding that use and the 10 year period necessary to bring about immunity from enforcement was not accruing prior to the establishment of car storage and sales from the site as a primary use in about 2017.
30. The evidence that the appellant provided in corroboration, from various friends, customers, employees and contractors was not of a consistent use over a 10 year period but of sporadic events or "on and off" periods which took place over many years. Mr Webster and Mr Sedgewick cannot give evidence of the continuous use of the appeal site over a 10 year period, but do agree that the Cemetery Road site was the main business site with significantly less work occurring at the appeal site, and that being done on a "convenience" or "overflow" basis.
31. The Council make the point, which I accept, that the evidence regarding the numbers of vehicles on the appeal site provided by those witnesses who were working for Mr Jennison is likely to be at a higher level than the average number as they said they were only sent there on a needs basis, i.e. at times when it was busy enough to require them. In addition, the appellant's witnesses, including Mr Jennison himself, all gave evidence that Chapel Motors operated at Cemetery Road over the years. It seems likely on balance, that some element of commercial work transferred to the appeal site following the closure of the Cemetery Road site at the end of 2017.
32. The only photographs produced by the appellant from prior to 2017 show far fewer than the numbers of vehicles that he claims were regularly on site during that period. In addition, the appellant was not able to produce any documentary records associated with his business to identify that the commercial use was taking place at the appeal site, for example any sales invoices, or adverts/listings for the sale of vehicles from the appeal site. The

appeal site does not appear on the commercial rating list (from the beginning of 2010 to date) and the business was registered for VAT at the Cemetery Road site. Indeed the VAT records, if produced, would have shown the level of business following the closure of Cemetery Road (and therefore given an indication regarding how much business had transferred to the appeal site).

33. It is also relevant that there is clear and consistent evidence which contradicts the appellant's version of events. Five local residents gave sworn evidence that the commercial use did not start until 2017, and this timeline fits in with the first complaints received by the Council in March 2018. All of these witnesses have knowledge of the appeal site over many years and accepted that the appellant may have driven cars which were subsequently sold as part of his business, and that a small element of business use may have occurred at the site for the convenience of the appellant. But they did not accept that it had been at the level described by the appellant until after his premises on Cemetery Road had closed. The level of use accepted by these witnesses prior to the end of 2017 accords with a use ancillary to the primary residential use of the appeal site.
34. Whilst there have been various disputes between the appellant and some of his neighbours over the years it does not follow that this means that this evidence, which was tested under cross-examination, should not be given weight. It appears that many of these disputes pre-dated 2017 by some considerable time. It would therefore be odd, if such a level of commercial use truly did pre-date 2017, that these complaints would not have been made earlier, if motivated purely by ill feeling. The motivation for making representations is not relevant if it appears, as in this case on the balance of probabilities, that that evidence is likely to be accurate.
35. Planning Practice Guidance provides that planning permission will not normally be required to home work or run a business from home provided that a business does not result in a material change of use, and lists one factor that may be considered in assessing whether there has been such a change of use as disturbance to the neighbours. In this case, it seems on balance, that there was previously a limited use of the appeal site associated with the appellant's business which was ancillary to the residential use, until the closure of his main commercial site at Cemetery Road. A material change of use of the appeal site to a mixed residential and commercial use is evidenced in part by the complaints received after that time which reflect the unacceptable impact of the development on the residential amenity of the area.

Conclusion on ground (d)

36. The appellant accepts that the current use is that of mixed residential and commercial but has not shown on balance that this mixed use has taken place for a substantially uninterrupted period of 10 years prior to the service of the notice. The appeal on this ground is therefore unsuccessful.

Ground (f)

37. The purpose of the notice in this case is to remedy the breach of planning control, i.e. the change of use to a mixed residential and commercial use namely the storage and sale of motor vehicles. The first requirement, 5(i), to cease the use of the land for that purpose, is clear and unambiguous and

achieves this purpose. The second requirement, 5(ii), is also precise in that it requires the removal of vehicles associated with the unauthorised use only.

38. The appellant argued that the requirements could be varied to prescribe the number of vehicles to be permitted on the site and the areas in which they can be parked but this would be difficult, if not impossible, for the Council to effectively enforce and therefore unreasonable.
39. I am satisfied that the steps required do not exceed what is necessary to remedy the breach of planning control and the appeal on this ground cannot therefore succeed.

Ground (g)

40. The Council has accepted that the period for compliance with the notice should be extended from 28 days to three months taking into account the effects of the ongoing Pandemic and the personal circumstances of the appellant. I agree, that in all the circumstances, including the small number of vehicles that I saw on the appeal site during my visit and the evidence given by the appellant regarding the availability of commercial storage, that 3 months is a proportionate time for compliance and I direct that the notice be varied accordingly.

Zoë Frank

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Timothy Wheeler (who also gave evidence)

He called:

Richard Jennison
Gwyneth Jennison
Andrew Sedgewick
John Whitfield
Michael Hannaby
Andrew Webster
Phillip Sherburn
Daniel Richardson

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Kozelko of Counsel

He called:

Jon Wragg
Dianne Wolley
David Garrity
David Cooper
Patricia Clayton
Stephen Mallender
June Naylor



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 22 February 2021

by Zoë Franks, Solicitor

Land at: Grange Farm Cottage, 14 Church Street, Wales, Sheffield

Reference: APP/P4415/C/19/3240437

Scale: Not to scale

