



Appeal Decisions

Site visit made on 9 February 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2021

Appeal A: APP/V4250/C/20/3254488

Appeal B: APP/V4250/C/20/3254489

Land at 36 - 38 Sandy Lane, Lowton WA3 1DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Neil Pont (Appeal A) and Mrs Claudia Pont (Appeal B) against an enforcement notice issued by Wigan Metropolitan Borough Council.
- The enforcement notice was issued on 20 May 2020.
- The breach of planning control as alleged in the notice is the unauthorised use of the land for the storage and repair of fairground rides, storage of associated vehicles and storage of associated equipment.
- The requirements of the notice are (1) cease the use of the land for the storage and repair of fairground rides; (2) remove all fairground rides from the land; (3) remove all vehicles associated with the unauthorised use from the land; and (4) remove all equipment associated with the unauthorised use from the land.
- The period for compliance with the requirements is 2 months from the date the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).

Summary of decisions: The appeals succeed in part on ground (g) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary matter

1. The effects of the use on the living conditions of neighbours, on highway safety and on the Green Belt can only be considered in an appeal on ground (a), that planning permission should be granted. However, an appeal against the notice on that ground is barred under section 174(2A) of the Act because the notice was issued after a related planning application had been made and before the prescribed period for determination of that application had lapsed.

The notice

2. Some aspects of the appellants' case in the appeals on ground (e) do not relate to whether the notice was correctly served but whether it is correctly framed.
3. The land marked by a red line on the plan accompanying the notice includes the dwelling at 36 - 38 Sandy Lane. While it may be that no fairground rides, or associated vehicles and equipment were being stored or repaired within the dwelling or its curtilage in the period leading up to the issuing of the notice, and on the date of issue, that does not mean they were not being stored or repaired within the red line area as a whole.

4. Similarly, while it may be that the workshop is not being used for any storage use, that does not mean that the storage activity alleged in the notice was not occurring within the red line area as a whole in the period leading up to the issuing of the notice, and on the date of issue.
5. Consequently, the notice is framed appropriately for the appeals to be determined without giving rise to any injustice.

Appeals A and B – ground (e)

6. Section 172(2)(a) of the Act requires that copies of an enforcement notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, if they are materially affected.
7. The appellants confirm that they and their mortgage provider received copies of the notice but question the service of copies on the previous owners of the land. However, that action was additional to, and so did not constitute a failure to comply with, the requirements of section 172(2)(a). Furthermore, even if there had been a failure, it has not been demonstrated that any person has been substantially prejudiced as a result.
8. For these reasons the appeals on ground (e) must fail.

Appeals A and B – ground (c)

9. For the appeals to succeed on this ground, the appellants need to demonstrate that the use of the land for the storage and repair of fairground rides and the storage of associated vehicles and equipment does not constitute a breach of planning control, because it is not development or does not require planning permission.
10. No evidence that the use alleged to be in breach of planning control is not development has been presented. I understand the appellants' view that the grant of planning permission for the workshop building in 1972¹ would have allowed some incidental external storage. However, there is no evidence of this because copies of the decision and the plans accompanying the application have not been provided. It therefore remains unknown whether the workshop permission applied to any of the yard area where the rides, vehicles and equipment are stored.
11. While changes of use from workshop to storage may be possible under permitted development rights, no storage use of the workshop building has been claimed. Also, as noted, it is not known if the workshop permission extended to any of the yard area. Accordingly, it has not been demonstrated that the workshop permission could have authorised the storage and repair of fairground rides and the storage of associated vehicles and equipment within the entire area edged red on the plan accompanying the notice. As such, it is not necessary for me to consider whether the workshop permission has been abandoned.
12. The site was previously used for car sales, which photographs provided by the Council indicate occurred over most of the site, including in the workshop. However, there is no planning permission or lawful development certificate to

¹ 11/1/4517 – To erect workshop for fuel pump servicing (rear of 38 Sandy Lane) granted 12 June 1972

confirm the precise nature and extent of that use and therefore whether it allows for the use alleged in the notice. In any event, the sale of motor vehicles is a *sui generis* use and, by reason of the customer activity involved, likely to be materially different in character from the use alleged in the notice.

13. For these reasons it has not been demonstrated that the use of the land for the storage and repair of fairground rides and the storage of associated vehicles and equipment does not constitute a breach of planning control. Accordingly, the appeals on ground (c) must fail.

Appeals A and B – ground (f)

14. To succeed on this ground, it must be demonstrated that the steps required by the notice are excessive and that lesser steps could overcome the alleged breach of planning control.
15. The notice requires the use of the land for the storage and repair of fairground rides to cease. No other use of the land, whether authorised or capable of being certified lawful, would be affected and the steps therefore do not amount to a nil use of the land.
16. Lesser requirements that would remove the breach of planning control have not been identified. Accordingly, the requirements of the notice have not been demonstrated to be excessive and the appeals on ground (f) must fail.

Appeals A and B – ground (g)

17. For the appeals to succeed on this ground, it must be demonstrated that the 2-month period for compliance with the requirements of the notice after it takes effect falls short of what should reasonably be allowed.
18. Evidence of the high value of items currently stored on the land has been provided. In view of this, it is understandable that a location where the owners can live adjacent may be desirable for security, though not necessarily essential. The appellants therefore may wish to find a site that also includes living accommodation, which would narrow the range of suitable premises. Evidence of the appellants' unsuccessful attempts to find space in other yards in the region used by travelling showpeople has also been provided.
19. In view of this evidence, the 2-month period specified in the notice may be too short. While the appellants suggest a 12-month period instead, that would be equivalent in effect to a temporary planning permission and would allow the prolonged retention of the unauthorised use. While it is not possible to consider planning merits in the absence of an appeal on ground (a), the Council's reasons for issuing the notice state that the use is contrary to policies of the development plan and the National Planning Policy Framework. This indicates that a lengthy period for compliance would be unacceptable.
20. A 6-month period would improve the appellants' chances of finding a suitable alternative location without unduly prolonging their use of the site for storage and repair. On that basis, the appeals on ground (g) succeed and the notice should be varied accordingly.

Conclusions

21. For the reasons given above, I conclude that the appeals on grounds (c), (e) and (f) should not succeed and the appeals on ground (g) should succeed. I shall uphold the enforcement notice with a variation.

Formal decisions – Appeals A and B

22. The appeals are allowed on ground (g) and it is directed that the enforcement notice be varied in section 6 by the deletion of “2 months” and the substitution of “6 months”.
23. Subject to this variation the appeals are dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR