The Planning Inspectorate

Appeal Decision

Inquiry Held on 26 March 2021

Site visit made on 31 March 2021

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 May 2021

Appeal Ref: APP/G5180/C/19/3241458
48 Bromley Common, Bromley BR2 9PD

- 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 by Erol Ercoz against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, ref. ENF/18/00223/COMMER, was issued on 22 October 2019.
- The breach of planning control alleged in the notice is without planning permission the material change of use of the land from residential to a mixed use for residential (Class C3) and car repair business (Class B2).
- The requirements of the notice are to:
  1. Cease the use of the car repair business operating within the residential curtilage of the land.
  2. Reinstate the land to its residential use.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by:

   DELETION of *two months*; and,

   SUBSTITUTION of *nine months* as the period for compliance.

   Subject to these variations the enforcement notice is upheld.

Procedural matter

2. Evidence at the Inquiry – held as a virtual event – was taken under solemn affirmation.

Background matters

3. The appeal site lies on the south-western side of Bromley Common - the A21 classified road - and south-east of the town centre. The premises comprise a substantial semi-detached house set back from the road, in a development of broadly similar houses in terms of size and plot size. There is a double fence arrangement to the front, with an approximately 1 metre high fence on the road boundary with an approximately 2 metre high fence set about 2 metres behind it. An LDC was granted for the relocation of this latter fence to its

present position in 2017[1]. There is also a pair of metal gates, also set back from the road by some 6 metres. The area to the front of the house and the short drive between the road and the gates are entirely paved. At the back is a grassed garden, beyond which are open fields.

4. There is a large double garage close to the southern corner of the house and close to its main back wall. This was built in 2003 subsequent to grant planning permission[2], and I understand was completed by 2005. The workshop, which is at the front of the building, has a separate space across the rear that is used as an office and storeroom. The overall plan dimensions of the garage are approximately 7.5 by 12 metres, giving a footprint of similar size to that of the house itself.

5. The garage building is equipped with an electrically powered vehicle lift – installed in 2007 - a hoist – for removal of heavy items such as engines and gear-boxes – and a compressor. This latter item was installed in 2003 but replaced in 2017. More recently – in 2018 – equipment for the cleaning and maintenance of diesel particulate filters (DPFs) was installed, as well as the 3-phase electrical supply necessary to run it. There is also shelving for storage of motor oil and other products, tool cabinets and benching. -There was disagreement about when the compressor might have been installed, but there is nothing substantial to suggest it was other than stated by Mr Icoz.

6. In 2003 an LDC was granted for existing use of the front garden for the parking of commercial vehicles was approved[3]. The decision notice specified this was for parking a commercial van and an ice-cream van in connection with an ice-cream/burger business, which was operated by the appellant. In 2012 a LDC application for the existing use of the garage as a car electronics, diagnostic and air-conditioning repair centre was refused[4]. In 2018 an application for a LDC for the continued use of the garage as a car repair workshop was also refused[5]. A further application in 2019 for the existing use of the garage for vehicle repairs, diagnostics and air-conditioning workshop remains in abeyance[6] subject to determination of this appeal.

The appeal on ground (d)

7. This ground is that the development enforced against is immune from enforcement action as a result of the passage of time. In a case such as this, entailing the material change of use of the land, under s.171B(3) of the Act, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach of planning control – that is, the breach must have occurred and been continuous for a ten year period from a date before 22 October 2009 at the latest.

8. In a ground (d) appeal the burden of proof is on the appellant to show that this is the case on the balance of probabilities. The courts have found that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no

[1] Decision notice ref. DC/17/02560/PLUD, dated 20 October 2017.
[2] Decision notice ref. 03/01890/FULL6, dated 17 July 2003.
[3] Decision notice ref. 02/04003/ELUD, dated 27 February 2003.
[4] Decision notice ref. 11/02640/ELUD, dated 1 February 2012.
[5] Decision notice ref. 18/02216/ELUD, dated 6 July 2018.
[6] Application ref. 19/003998/ELUD.

good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the case.

9. The appellant is a vehicle technician, clearly highly qualified, and says that after leaving his former premises in Peckham in 1991 he has run his car repair business exclusively from the appeal site since 2004, and that it still continues. This firm was – and is - known as Erol Motors (EM). Another part of Mr Icoz's operation is Auto-King Technology (AKT) established in 2010.

10. Erol Motors carry out conventional car maintenance operations such as general servicing, and engine and gearbox repairs as well as work based on electronic diagnosis. That part of the appellant's operation still entails vehicles being brought to the site for attention of one sort or another. There are also off-site repairs.

11. A significant part of the AKT business is the supply of diagnostic tools for the motor trade. Equipment is ordered from AKT on-line, and I understand is shipped from China direct to the recipient. There is no intermediate handling of goods at the appeal site. It is also apparent that repair and maintenance work has been carried out under the AKT name, but mainly post-2018, and the appellant said that Erol Motors did the heavier repairs, and AKT was more focussed on technical investigation.

12. There is a significant difference in character between the use for vehicle repairs and diagnosis carried out by both EM and AKT, and the on-line business carried out by AKT. The former entails vehicles being brought to the site, parked there, and then worked on in one way or another, whether for heavy repairs or for electronic diagnosis and adjustment, which I would regard as a Class B2 industrial use unsuitable in a residential area. The other is an office based activity, with goods being supplied directly to customers from elsewhere, and probably with few customer visits to the site, which I regard as a Class B1 use that is suitable for a residential area.

13. The appellant has put in a large number of documents – more than 1700 - dated in financial years from 2005 to 2020. These include many invoices raised by EM predominantly for vehicle repairs, and by AKT both for supply only of equipment and for vehicle repair work.

14. I have also received some 80 letters of representation, about 64 of which – principally existing customers - support Mr Icoz and the remainder support the Council. I have taken these representations into account in coming to my determination.

15. I note that a few invoices are missing from the numbered sequences in each year, but the numbering is continuous from the end of one year to the beginning of the next. I also note that repair/maintenance invoices mostly include an element of supply as well as the labour cost. AKT invoices – which are for the most part supply only - include an element for shipping or postage as well VAT. I assume that Erol Motors was below the turnover threshold for VAT registration.

16. Mr Icoz says that there are few documents for 2014/15 as a result of a burst water main flooding his garage. However, there is a more or less complete series of AKT sales invoices in numerical sequence covering that whole year. However, I have seen none raised by EM, and there are few if any EM invoices

for subsequent years. Given the general completeness of sales and purchase invoices over the 15 year period, it appears to me that a good overall picture is presented.

17. The Council have analysed the majority of the appellants invoices for the financial years 2005/06, 2011 to 2014, and 2018/19 - as to which parts of the appellant's business they relate – EM and/or AKT - the numbers sent in successive years, and the split between supply only and repair works. I have perused the appellant's documents and consider the Council's analysis provides a representative picture of the use of the appeal site for purposes additional that of residential over the relevant periods. The analysis was not significantly challenged by the appellant.

18. In the financial year 2011/12 Erol Motors raised some 12 invoices with 5 missing from the sequence. Of the total, 2 were for the supply only of goods, the remainder for repair/maintenance and materials. In that period AKT raised about 38 invoices of which 36 were for supply only, and 2 for repair jobs – both of which were carried out off-site.

19. The Council draw my attention to a series of 7 invoices issued by Erol Motors for the period from 23 December 2011 to 5 May 2012. These show that a grand total of approximately £1,319 was earned by the firm in that time. I note that invoice no. 223 dated 25 March 2012 has been omitted from that sequence. This was for the sum of £280, and is somewhat obscure in that instead of the usual practice of addressing to a firm or individual it says 'ice cream', and it is not at all clear as to whether this is for vehicle repairs or some other service. Even if this is included, the grand total comes to £1,599.

20. These 7 or 8 invoices cover a period of over 4 months, and some are issued over one month apart. Between 20 March and 5 May 2012 inclusive – a period of over 6 weeks - a sum of £220 was taken for what can properly be described as vehicle repair work – or £500 including the 'ice-cream' invoice (EM invoices no. 222 to 225). This can hardly be regarded as a regular sustainable business and it makes a rather small contribution to the appellant's overall operation. The appellant says he had visited Turkey 7 times in that year. Nevertheless, looking at both the EM and AKT invoices, there are remarkably few significant gaps, and these visits do not appear to have altered the overall picture.

21. In the financial year 2012/13 EM raised some 22 invoices, all of which were for repairs/maintenance carried out on site. AKT raised 38 invoices, all for supply only. I notice that the first EM invoice for the following year, 2013/14 – no. 249 - comes over a month after the last invoice of the previous year. Furthermore, the total number of repair jobs for 2013/14 – both EM and AKT – is about 18.

22. Going on to 2018/19, no EM invoices have been submitted, whereas there are 125 for AKT of which 118 are for repairs/maintenance and the remaining 7 for supply only. By this time all repair work appears to have been undertaken by AKT, and it was at a significantly higher level than in earlier years.

23. The Council claim that work entirely lapsed for the period between March 2014 to December 2014. They have not provided any detailed analysis of work for this period, but refer to EM invoices no. 259 and 261, for which they give dates of 22 March 2014 and 15 December 2014. However, invoice no. 259 is dated '15/14/2014' (sic) and no. 261 is dated 15 March 2014. These invoices appear in what is otherwise a complete numerical sequence between March 2013 and

March 2014, and I infer there is a typographical error in the date of invoice no. 259, which more probably should be 15 January 2014, and that there is no clear evidence of this alleged lapse.

24. The Council say that number of repair jobs carried out in each year from 2011 to 2014 – in region of 16 to 22 – does not amount to there being a viable car repair business. Mr Icoz argues that while some jobs might be completed within a few hours others may take up to 2 or even 4 days. Considering this, even if all repair jobs undertaken took 4 days, it might be expected there would be 50 to 60 such jobs per year – on the basis that Mr Icoz, who is a sole trader - worked for 45 weeks of that year. Even that relatively low threshold has not been reached.

25. Given the low volume – and value - of vehicle repair work carried out by both firms during 2011 to 2014, I consider that vehicle repair work was of a sporadic nature, and as a matter of fact and degree I do not consider that vehicle repairs could be regarded as more than an incidental or hobby use taking place on this residential site. Even if this were a temporary suspension of what had been a more substantial and identifiable separate use, such use would not have subsisted for the necessary 10 years from 2004. If an identifiable and substantial use had occurred after that year, that could not have achieved the 10 years of continuous use before issue of the enforcement notice.

26. Overall, I do not consider the appellant has provided evidence that is sufficiently precise and unambiguous to show that, on the balance of probabilities there has been a material change of use of the land from residential to a mixed use for residential (Class C3) and car repair business (Class B2). I conclude that the appeal on ground (d) must fail.

Other matters

27. The Council also argue that the appellant had used deliberate deceit to conceal the true use of the garage for vehicle repairs, and that this amounts to the type of positive deception found in the Supreme Court case of *Welwyn/Hatfield*[7]. The tests set out in that case were that there should have been positive deception, that was directly intended – and indeed did – undermine the planning process, and that the wrongdoer must have profited directly from that deception.

28. The Council say that their planning enforcement officer – Mr Murray - visited the site in March 2012 and March 2013 to investigate whether an unlawful change of use had taken place to use of the garage for commercial car repairs. This followed a complaint made in February 2012. On the first visit there were 10 cars on the site, which Mr Icoz said belonged to him, his wife and their son. A DVLA check on ownership details showed the majority of vehicles to be owned by Mr Icoz.

29. According to Mr Murray's contemporaneous report and photographs he saw in the garage an ice-cream van being refurbished, a motor cycle, miscellaneous tools and garden equipment. There was also a van outside the garage, an ice-cream van about to be scrapped, and 2 cars on the section of drive outside the gates. Mr Icoz said these latter 2 vehicles belonged to neighbours who he had

[7] *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council* [2011] UKSC 15.

given permission to park there. Mr Icoz also said he ran an internet business – Auto King Technology – which imported equipment from China for direct delivery to customers – no goods came via no. 48, and customers did not call at the house.

30. On a visit about a year later, following a renewed complaint, the officer saw 8 cars, an ice-cream van and 2 motorcycles in the garage. Mr Icoz repeated that he let friends park in the driveway, and said that his son is a motor mechanic and brings different cars home. He himself said his hobby was cars and that he does his own repairs for the family. Furthermore he repeated that he ran the AKT internet business from the site. The officer came to the conclusion that a material change from residential use had not occurred, such use for car repairs as there was should be seen as incidental to the residential use, and it would not be expedient to take enforcement action.

31. Mr Murray has now retired, but his statement prepared for this Inquiry accords closely with the reports made at the times of inspection. The appellant argues that this evidence is second-hand and has not been tested under cross-examination given under solemn oath or affirmation, so the nature of the questions put at the times of the visits was not clear, and there is no mention of the vehicle lift installed in the garage. Whatever questions were put to Mr Icoz, the Council's enforcement log includes the information that his hobby is cars, he carries out repairs for his family, and that his son brings cars home from his work as a mechanic in Lewisham. The only realistic source of this information is most likely to be Mr Icoz himself, and I consider it highly unlikely that it would have been fabricated by Mr Murray.

32. At the Inquiry Mr Icoz stated that when matters were raised of whether or not he was carrying out commercial repairs, he had answered on the basis that he had not been doing any at that particular time. Furthermore, the Council say that when the LDC application was refused in February 2012, before Mr Murray's visit, the appellant must have been aware that a breach of planning control had occurred, and that he would gain benefit from gaining a lawful use.

33. I am also aware that Mr Icoz has made statements about the nature of his business as 'Bromley Catering' – being a mobile ice-cream/burger vendor – and Erol Motors - a mobile mechanic. In correspondence between Mr Icoz and the Council about the size of the then proposed double garage, a letter of 2001 says he runs a mobile catering business from the premises and the garage is needed for storage and security of goods and vehicles.

34. In 2011 the Council's legal department sought clarification on a number of questions concerning the nature of Mr Icoz's business and use of the garage. The appellant instructed a technical service firm as agent to respond. The response essentially confirms the existence of a car repair business, with goods supplied by AKT as a subsidiary. In this context the appellant must have been aware that establishment of the car repair business would be advantageous to him, even though he himself was relatively inexperienced in the planning process. His 2018 LDC application also indicated the importance he attached to the use becoming lawful.

35. This case is not egregious in the manner of *Welwyn/Hatfield*, in that there has been no physical concealment of a building. However, I consider that positive deception has taken place to mislead the Council into considering there had been a material change of use, and that this was directly intended to undermine the planning process. While he did not refuse visits to the site or attempt to conceal the vehicle lift or other equipment, he provided misleading information concerning the nature and extent of the use. Mr Icoz would profit directly from this deception, in that he would be able to pursue his car repairs operation on the appeal site more or less unconstrained. This adds considerable weight to my conclusions on the ground (d) appeal.

The appeal on ground (g)

36. This ground is that the compliance period is too short. The appellant argues that longer than 2 months would be needed to make new arrangements for his business premises, his customer contacts, and time for re-installation of his specialist equipment.

37. It is common ground between the parties that the compliance period should be extended up to 9 months.

38. I can well understand that a longer period would be required to make all the new arrangements needed regarding premises, customers and suppliers, and equipment. Furthermore, the appellant might well be hampered to some extent by any continuing Covid-19 restrictions. I consider a period of 9 months should be allowed to enable the arrangements to be made.

Conclusions

39. For the reasons given above I conclude that a reasonable period for compliance would be nine months. The appeal succeeds to that limited extent under ground (g), and I am varying the enforcement notice accordingly, but the appeal is otherwise dismissed and will be upheld.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Fitzsimons	of Counsel, instructed by
He called:	
Ercol Icoz	The appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Ian Rees Phillips	Of Counsel, instructed by
He called:	
Karen Daye	Principal Planner Bromley Borough Council.

INTERESTED PERSONS:

Andrew Bate	Local resident

DOCUMENTS

1 Attendance list.
2 The Council's letter of notification of the appeal.
3 Statement of Common Ground.