



Appeal Decision

Site Visit made on 24 May 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2021

Appeal Ref: APP/P4605/C/20/3265113

Land fronting 300 Yardley Road, South Yardley, Birmingham, B25 8LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Kazhal Abdullah against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 2 December 2020.
- The breach of planning control as alleged in the notice is without planning permission:
 - i. the change of use of the land to a hand carwash and valeting service (sui generis) in the approximate position edged in green on the attached plan.
 - ii. the erection of boundary screen in the approximate position marked in blue on the attached plan.
- The requirements of the notice are:
 - i. cease the use of the land as a hand carwash and valeting service,
 - ii. remove the boundary screen, and
 - iii. remove all signage and equipment related to the use as hand carwash and valeting service.
- The period for compliance with the requirements is: 1 month after this enforcement notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. The appeal site comprises part of an open forecourt which has a hard concrete surface and is bound by plastic sheeting. Within the wider site are garages and a semi-detached property, which is used as an office and customer waiting area. In addition to the hand car wash and valeting service use, there are other uses within the wider site including tyre fitting and auto repairs. The car wash and valeting activities appear to take place within an area to the front of the forecourt, although there is no delineation within the site which would prevent vehicles being washed/valeted elsewhere on the forecourt or to prevent other uses taking place within the appeal site. In particular, I saw that paraphernalia from the tyre fitting use was located on the forecourt.
3. Temporary planning permission was granted for a range of car related uses, including car sales, MOT testing, valeting of vehicles and window tinting on the wider site at 284-300 Yardley Road in 2011 and 2013. The Council advise that conditions attached to the 2013 permission do not appear to have been discharged and a requirement of the permission was that the use should cease by 30 January 2016. In 2018, a full application was refused for the above uses

and an appeal dismissed. The Council state that since that time, the wider site has been broken down into its different component parts and individual applications made for the separate uses.

4. Whilst applications may have been made for the separate uses, there does not appear to be any clear delineation between the different activities on 296-300 Yardley Road. The Council confirms within its statement of case that the ground floor of No 300 Yardley Road is used as an 'office for customer waiting area'. Furthermore, users of the various activities within the wider site would use the same access and are likely to use the forecourt for parking. From the evidence before me, therefore, I consider the site comprises a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another.
5. I have a duty to get the notice in order. In mixed use cases, the allegation should refer to all the components of the mixed use, even if it is considered expedient that only one should cease. Whilst I have wide powers of correction, it is not clear from the evidence whether these other uses are lawful. Expanding the breach to identify them could therefore cause injustice to the Council since it would result in deemed planning permission being granted under s173(11) of the Act if the requirements relating to the use as originally alleged are complied with.
6. Planning permission, reference 2019/09049/PA was granted for the '*relocation of existing car wash valeting within the curtilage of the site at Land fronting 296-300 Yardley Road*', subject to conditions, including a condition that the scheme is implemented in accordance with approved plans. Whilst the activities being carried out on the site are not in accordance with the above consent, it seems to me that it is the appellant's failure to comply with conditions attached to 2019/09049/PA which is the Council's principal concern, rather than the principle of a car wash in this general location.
7. Where an enforcement notice refers to a material change of use the allegation can be corrected to refer to a breach of condition, subject to there being no injustice. I shall therefore consider whether the allegation could be changed to refer to a breach of condition.
8. The approved scheme proposed the relocation of the car wash and valeting area to be on the boundary with the adjoining car sales business and car parking to be located along the boundary with No 302 Yardley Road. It also required, amongst other things, the submission of details of boundary treatments, which the Council state would deal with the boundary treatment issues in terms of visual amenity and local character.
9. It seems from the evidence, however, that the Council does not consider the above permission has been implemented. This seems at odds with the report for the above application which describes the permission sought as retrospective. However, this is not a matter which is dealt with by the appellant, nor does either party attempt to identify what would need to be done in order to ensure compliance with the planning permission. I cannot, therefore, be sure that amending the breach to refer to a breach of condition would not cause injustice because it is unclear what the appellant would need to do to comply with the planning permission.

10. Furthermore, in respect of the boundary screen, the enforcement notice specifies that the breach of planning control has occurred within the last 4 years. Were I to change the allegation to refer to breach of condition, the time limit would be 10 year¹. Consequently, if I were to change the breach this would cause the appellant injustice in terms of the appeal under ground (d).

Conclusion

11. For the reasons given above, I conclude that the enforcement notice is invalid. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. Accordingly, the enforcement notice will be quashed.
12. In these circumstances, the appeals on the grounds set out in section 174(2)(a), (c), (d) and (f) 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.

M Savage

INSPECTOR

¹ S171B (3) of the Act states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.