



Appeal Decision

Site visit made on 7 July 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal Ref: APP/C4235/C/21/3269219

5 Mona Avenue, Heald Green, Cheadle, Stockport SK8 3AW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Nicholas Edwards against an enforcement notice issued by Stockport Metropolitan Borough Council.
- The enforcement notice was issued on 22 January 2021.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the material change in the use of the land from a dwellinghouse to a mixed use as a dwellinghouse and a use for the repair of motor vehicles.
- The requirements of the notice are to cease the use of the land for the repair of motor vehicles.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as 'legal' grounds of appeal is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
2. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under Section 174(2)(d) of the 1990 Act as amended.

The ground (d) appeal

3. In order to succeed on the appeal on ground (d), the appellant must show on the balance of probability that the material change of use took place on or before 22 January 2011¹ and that use continued after the date of change without significant interruption, such that it is too late for the Council to take enforcement action.

¹ Ten years prior to the issue of the Enforcement Notice.

The Evidence

4. No 5 Mona Avenue (the appeal site) is a semi-detached house with a detached garage. The appellant says he has carried out his business activities continuously from his home since May 2004. I understand the business relates to a specialist area of car repairs, which is described as the diagnosis and repair of vehicle electronic control units. It is explained that much of the business is mobile as the appellant often travels to the customer's location, although the repair of the units takes place within the garage at the appeal site. It is acknowledged that some vehicles, in approximately 30-35 percent of cases, are brought to the site to be examined and repaired in the garage. It is stated that customers do not visit the property.
5. The appellant has provided details from HM Land Registry which shows NL Ingham has been the owner of the property since 26 May 2004. It is stated that the appellant has subsequently changed his surname to Edwards by Deed Poll. It is also explained that the business was in operation prior to the property purchase and it transferred to the appeal site in 2004. Evidence in support includes a letter from 'Matsu' containing information about an electronic mobile payment terminal, dated 14 May 2004.
6. The appellant details that the business currently operates as "Williams Diagnostic Repairs". I understand that the business has had several names over the years but, when operating as a limited company, the registered office address was always No 5. And, even as a sole trader, the operating centre was the appeal site.
7. The appellant has submitted copies of 'statement of account' invoices covering April/May 2004; January, April and August 2005; January 2006; and March and June 2007, which are addressed to the appellant (in his former name) at the business address of 5 Mona Avenue. Also supplied is an invoice for advertising in the Thomson Directory, dated July 2006, and a payment schedule for advertising in Yell, June 2010 to July 2011.
8. Bank statements dated September 2011, May/June 2015, May and October/November/December 2018 and February/March 2019 are provided along with a letter from Companies House and a letter from the Government Gateway, both dated December 2013 and relating to Williams Tuning Ltd at the appeal site.

Analysis

9. The Land Registry details confirm the appellant is the owner of the property. The letter from 'Matsu', concerning the mobile payment terminal, simply indicates that the appellant was considering purchasing the system. Although addressed to the appellant at the appeal site, it does not show that the business was operating from the premises at that time.
10. The statement of account invoices lend support to the appellant's case but the information is incomplete in terms of the time period. The same applies to the advertising and the bank statements. While they provide some relevant evidence, the information does not show how the business operated from the appeal site for a continuous period of 10 years or more. Crucially, it is not apparent that there were no breaks in use, especially during the period when the business was operating under different names or status.

11. Moreover, the evidence does not show how the land was used and occupied for the matters alleged in the notice. The financial records do not clearly relate to the business, despite the address details. I can make assumptions about the transactions but it is not readily apparent that the accounts relate to the appellant's business activities.
12. Overall, I find the evidence to be incomplete and ambiguous. It does not show on the balance of probability that the material change of use took place on or before 22 January 2011 and that use continued after the date of change without significant interruption, such that it is too late for the Council to take enforcement action.

Conclusion

13. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

14. The appeal is dismissed and the enforcement notice is upheld.

Debbie Moore

Inspector